



# Employment Relations (Breaks, Infant Feeding, and Other Matters) Amendment Act 2008

Public Act 2008 No 58  
Date of assent 9 September 2008  
Commencement see section 2

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**The Parliament of New Zealand enacts as follows:**

**1 Title**

This Act is the Employment Relations (Breaks, Infant Feeding, and Other Matters) Amendment Act 2008.

**2 Commencement**

- (1) This Act comes into force on the day after the date on which it receives the Royal assent.
- (2) However, sections 6 and 9 come into force on 1 April 2009.

**Part 1**

**Preliminary provisions**

**3 Principal Act amended**

This Act amends the Employment Relations Act 2000.

**4 Purpose**

The purpose of this Act is—

- (a) to insert new Parts 6C and 6D into the principal Act to—
  - (i) require facilities and breaks to be provided, so far as is reasonable and practicable in the circumstances, for employees who wish to breastfeed in the workplace or during work periods; and
  - (ii) require employees to be provided with rest breaks and meal breaks; and
- (b) to make it a ground for a personal grievance for an employee's employment to be adversely affected because he or she is a member of a KiwiSaver scheme or a complying superannuation fund.

## 5 Application

- (1) The amendments made by sections 7 and 8, to the extent that they relate to terms and conditions in employment agreements,—
  - (a) apply to employment agreements entered into on or after 2 September 2008; and
  - (b) do not apply to employment agreements entered into before 2 September 2008; and
  - (c) apply to variations of employment agreements entered into before 2 September 2008, if the variations were made on or after 2 September 2008.
- (2) The amendments made by sections 7 and 8, to the extent that they relate to other matters, apply—
  - (a) only to matters occurring on or after 2 September 2008; and
  - (b) whether or not an employee's employment agreement was entered into before 2 September 2008.

## Part 2 Amendments to principal Act

### 6 New Parts 6C and 6D inserted

The following Parts are inserted after Part 6B:

### Part 6C Breastfeeding facilities and breaks

#### 69X Interpretation

In this Part, unless the context otherwise requires,—

**breastfeeding** includes expressing breast milk

**work period** has the same meaning as in section 69ZC.

#### 69Y Employer's obligation

- (1) An employer must ensure that, so far as is reasonable and practicable in the circumstances,—
  - (a) appropriate facilities are provided in the workplace for an employee who is breastfeeding and who wishes to breastfeed in the workplace; and
  - (b) appropriate breaks are provided to an employee who is breastfeeding and wishes to breastfeed during a work period.
- (2) For the purpose of subsection (1)(b), the breaks are paid only if the employee and employer agree that they are paid.

- (3) In subsection (1), **circumstances** includes—
- (a) the employer's operational environment; and
  - (b) the employer's resources.

**69Z Breastfeeding breaks additional to breaks under Part 6D**

- (1) Breastfeeding breaks provided under this Part are in addition to breaks an employee is entitled to under Part 6D.
- (2) However, if an employee and employer agree, the same break may be taken for the purposes of this Part and Part 6D.
- (3) To avoid doubt, a break taken for the purposes of this Part and Part 6D is a paid break to the same extent as it would be if taken separately under Part 6D.

**69ZA Code of employment practice relating to employer's obligation**

As soon as practicable after the commencement of this Part, the Minister must approve, under section 100A, a code of employment practice relating to an employer's obligation under section 69Y.

**69ZB Penalty**

An employer who does not comply with section 69Y is liable to a penalty imposed by the Authority.

**Part 6D**  
**Rest breaks and meal breaks**

**69ZC Interpretation**

In this Part, unless the context otherwise requires, **work period**—

- (a) means the period—
  - (i) beginning with the time when, in accordance with an employee's terms and conditions of employment, an employee starts work; and
  - (ii) ending with the time when, in accordance with an employee's terms and conditions of employment, an employee finishes work; and
- (b) to avoid doubt, includes all authorised breaks (whether paid or not) provided to an employee or to which an employee is entitled during the period specified in paragraph (a).

**69ZD Entitlement to rest breaks and meal breaks**

- (1) An employee is entitled to, and the employer must provide the employee with, rest breaks and meal breaks in accordance with this Part.

- (2) If an employee's work period is 2 hours or more but not more than 4 hours, the employee is entitled to one 10-minute paid rest break.
- (3) If an employee's work period is more than 4 hours but not more than 6 hours, the employee is entitled to—
  - (a) one 10-minute paid rest break; and
  - (b) one 30-minute meal break.
- (4) If an employee's work period is more than 6 hours but not more than 8 hours, the employee is entitled to—
  - (a) two 10-minute paid rest breaks; and
  - (b) one 30-minute meal break.
- (5) If an employee's work period is more than 8 hours, the employee is entitled to—
  - (a) the same breaks as specified in subsection (4); and
  - (b) the breaks as specified in subsections (2) and (3) as if the employee's work period had started at the end of the eighth hour.

**69ZE When employer to provide rest breaks and meal breaks**

- (1) Rest breaks and meal breaks are to be observed during an employee's work period—
  - (a) at the times agreed between the employee and his or her employer; but
  - (b) in the absence of such an agreement, as specified in subsections (2) to (5).
- (2) Where section 69ZD(2) applies, an employer must, so far as is reasonable and practicable, provide the employee with the rest break in the middle of the work period.
- (3) Where section 69ZD(3) applies, an employer must, so far as is reasonable and practicable, provide the employee with—
  - (a) the rest break one-third of the way through the work period; and
  - (b) the meal break two-thirds of the way through the work period.
- (4) Where section 69ZD(4) applies, an employer must, so far as is reasonable and practicable, provide the employee with—
  - (a) the meal break in the middle of the work period; and
  - (b) a rest break halfway between—
    - (i) the start of work and the meal break; and
    - (ii) the meal break and the finish of work.
- (5) Where section 69ZD(5) applies, an employer must, so far as is reasonable and practicable, provide the employee with the rest breaks and meal breaks in accordance with the applicable provision in subsections (2) to (4).

**69ZF Penalty**

An employer who does not comply with sections 69ZD and 69ZE is liable to a penalty imposed by the Authority.

**69ZG Relationship between Part and employment agreements**

- (1) This Part does not prevent an employer providing an employee with enhanced or additional entitlements to rest breaks and meal breaks (whether specified in an employment agreement or otherwise) on a basis agreed with the employee.
- (2) An employment agreement that excludes, restricts, or reduces an employee's entitlements under section 69ZD—
  - (a) has no effect to the extent that it does so; but
  - (b) is not an illegal contract under the Illegal Contracts Act 1970.

**69ZH Relationship between Part and other enactments**

- (1) Where an employee is provided with, or entitled to, rest breaks or meal breaks under another enactment,—
  - (a) this Part prevails if the breaks provided under this Part are additional or enhanced breaks;
  - (b) the other enactment prevails if the breaks provided under the other enactment are additional or enhanced breaks.
- (2) Despite subsection (1), where an employee is a person who is required to take a rest break by, or under, another enactment, the requirement for a rest break defined by, or under, the other enactment applies instead of the provisions or entitlements for rest breaks or meal breaks provided under this Part.

**7 Personal grievance**

- (1) Section 103(1)(g) is amended by adding “; or”.
- (2) Section 103(1) is amended by adding the following paragraph:
  - (h) that the employee's employment has been adversely affected because the employee is a member of a KiwiSaver scheme within the meaning of section 4 of the KiwiSaver Act 2006 or a complying superannuation fund within the meaning of section YA 1 of the Income Tax Act 2007.

**8 New section 110A inserted**

The following section is inserted after section 110:

**110A Membership of KiwiSaver scheme or complying superannuation fund**

- (1) For the purposes of section 103(1)(h), an employee's employment is adversely affected if—
  - (a) the employee is a member of a KiwiSaver scheme within the meaning of section 4 of the KiwiSaver Act 2006 or a complying superannuation

- fund within the meaning of section YA 1 of the Income Tax Act 2007; and
- (b) the employee's employer refuses or omits to offer or afford to that employee the same terms of employment, conditions of work, fringe benefits, or opportunities for training, promotion, and transfer as are made available for other employees of the same or substantially similar qualifications, experience, or skills (**comparable employees**) employed in the same or substantially similar circumstances; and
  - (c) the reason (wholly or in part) for the employer doing any of those things is that the employee is a member of a KiwiSaver scheme or a complying superannuation fund.
- (2) Without limiting subsection (1), an employee's employment is adversely affected if—
- (a) the employee's salary or wages are less than the salary or wages of other comparable employees employed by the employee's employer; and
  - (b) the reason (wholly or in part) for the situation described in paragraph (a) is that the employer has taken into account the compulsory contributions (within the meaning of section 101B(6) of the KiwiSaver Act 2006) the employer is required to make in relation to the employee.
- (3) To avoid doubt, for the purposes of subsection (2)(a), an employee's salary or wages—
- (a) do not include any amount that recognises (wholly or in part) compulsory contributions (within the meaning of section 101B(6) of the KiwiSaver Act 2006) made by the employer in relation to the employee; but
  - (b) do include deductions made by an employer on behalf of the employee, being the employee's contributions to a KiwiSaver scheme or a complying superannuation fund.

## 9 Power of Authority to order compliance

Section 137(1)(a)(ii) is amended by inserting "6C, 6D," after "6B,".

## 10 Consequential amendment to KiwiSaver Act 2006

Section 101B of the KiwiSaver Act 2006 is amended by repealing subsection (5) and substituting the following subsection:

- (5) For the avoidance of doubt,—
- (a) the duty of good faith described in section 4 of the Employment Relations Act 2000 always applies when parties to an employment relationship bargain for terms and conditions relating to compulsory contributions and associated matters; and
  - (b) sections 103(1)(h) and 110A of the Employment Relations Act 2000 apply in relation to the contractual terms and conditions of the parties

to an employment relationship, subject to section 5 of the Employment Relations (Breaks, Infant Feeding, and Other Matters) Amendment Act 2008.

### **Legislative history**

|                  |  |
|------------------|--|
| 2 April 2008     | Introduction (Bill 205–1)  |
| 9 April 2008     | First reading and referral to Transport and Industrial Relations Committee |
| 21 July 2008     | Reported from Transport and Industrial Relations Committee (Bill 205–2)    |
| 7 August 2008    | Second reading   |
| 2 September 2008 | Reported from committee of the whole House                                 |
| 2 September 2008 | Third reading  |
| 9 September 2008 | Royal assent   |

This Act is administered by the Ministry of Business, Innovation, and Employment.