

Reprint
as at 1 March 2017



Employment Relations Amendment Act 2016

Public Act 2016 No 9
Date of assent 17 March 2016
Commencement see section 2

Contents

		Page
1	Title	5
2	Commencement	5
3	Principal Act	5
4	Section 3 amended (Object of this Act)	5
5	New section 4B and cross-heading inserted	5
	<i>Records relating to minimum entitlement provisions</i>	
	4B Employer's general obligation to keep records relating to minimum entitlement provisions	5
6	Section 5 amended (Interpretation)	5
7	Section 64 amended (Employer must retain copy of individual employment agreement or individual terms and conditions of employment)	6
8	Section 65 amended (Form and content of individual employment agreement)	6
9	New sections 67C to 67H inserted	6
	67C Agreed hours of work	6
	67D Availability provision	6
	67E Employee may refuse to perform certain work	8

Note

Changes authorised by subpart 2 of Part 2 of the Legislation Act 2012 have been made in this official reprint.
Note 4 at the end of this reprint provides a list of the amendments incorporated.

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

	67F	Employee not to be treated adversely because of refusal to perform certain work	8
	67G	Cancellation of shifts	8
	67H	Secondary employment provisions	10
10		Section 103 amended (Personal grievance)	10
11		Section 130 amended (Wages and time record)	11
12		New section 133A inserted (Matters Authority and court to have regard to in determining amount of penalty)	11
	133A	Matters Authority and court to have regard to in determining amount of penalty	12
13		Section 135 amended (Recovery of penalties)	12
14		New section 135A inserted (Chief executive or Labour Inspector may enforce payment of penalty)	12
	135A	Chief executive or Labour Inspector may enforce payment of penalty	12
15		Section 139 amended (Power of court to order compliance)	13
16		New section 140AA inserted (Sanctions for breaches without compliance order)	13
	140AA	Sanctions for breaches without compliance order	13
17		Section 140 amended (Further provisions relating to compliance order by court)	13
18		Section 141 amended (Enforcement of order)	14
19		New Part 9A inserted	14
Part 9A			
Additional provisions relating to enforcement of employment standards			
	142A	Object of this Part	14
		<i>Declarations of breach</i>	
	142B	Court may make declarations of breach	15
	142C	Purpose and effect of declarations of breach	15
	142D	What declaration of breach must state	15
		<i>Pecuniary penalty orders</i>	
	142E	Pecuniary penalty orders	16
	142F	Matters court to have regard to in determining amount of pecuniary penalty	16
	142G	Maximum amount of pecuniary penalty	16
	142H	Chief executive or Labour Inspector may enforce payment of pecuniary penalty	17
	142I	Limitation period for actions for pecuniary penalty orders	17
		<i>Compensation orders</i>	
	142J	Court may make compensation orders	17

142K	Application of section 132 of this Act and section 83 of Holidays Act 2003	17
142L	Terms of compensation orders	18
	<i>Banning orders</i>	
142M	Banning orders	18
142N	Terms of banning order	18
142O	Duration of banning order	19
142P	Variation of banning order	19
142Q	General provisions for banning orders	19
142R	Offence to breach banning order	20
	<i>Standard of proof</i>	
142S	Standard of proof	20
	<i>Interrelationship of orders</i>	
142T	More than one kind of order may be made for same breach	20
142U	No pecuniary penalty and criminal sanction or other penalty for same conduct	20
	<i>Insurance against pecuniary penalties unlawful and of no effect</i>	
142V	Insurance against pecuniary penalties unlawful	20
	<i>Liability of persons involved in breach, bodies corporate, and principals</i>	
142W	Involvement in breaches	21
142X	Person involved in breach liable to penalty	21
142Y	When person involved in breach liable for default in payment of wages or other money due to employee	22
142Z	State of mind of directors, employees, or agents attributed to body corporate or other principal	22
142ZA	Conduct of directors, employees, or agents attributed to body corporate or other principal	23
	<i>Defences relating to breach of minimum entitlement provisions</i>	
142ZB	Proceedings in which defences apply	23
142ZC	Defences for person in breach	23
142ZD	Defences for person involved in breach	24
20	Section 148A amended (Minimum entitlements)	24
21	Section 159 amended (Duty of Authority to consider mediation)	25
22	New section 159AA inserted (When mediation in relation to breach of employment standards is appropriate)	25
159AA	When mediation in relation to breach of employment standards is appropriate	25

23	Section 187 amended (Jurisdiction of court)	25
24	Section 188 amended (Role in relation to jurisdiction)	25
25	New section 188A inserted (When mediation in relation to breach of employment standards is appropriate)	25
	188A When mediation in relation to breach of employment standards is appropriate	25
26	Section 212 amended (Court may make rules)	26
27	New section 214AA inserted (Appeals against decisions under Part 9A)	26
	214AA Appeals against decisions under Part 9A	26
28	Section 217 amended (Appeal to Court of Appeal against conviction or order or sentence in respect of contempt of court)	27
29	New section 223AAA and cross-heading inserted	27
	<i>Chief executive</i>	
	223AAA Functions of chief executive	27
30	Section 223A amended (Functions of Labour Inspector)	27
31	Section 228 amended (Actions by Labour Inspector)	27
32	Section 229 amended (Powers of Labour Inspectors)	28
33	Section 233 amended (Obligations of Labour Inspectors)	28
34	New sections 233A and 233B inserted	28
	233A Obligation of Labour Inspector and department not to disclose information	28
	233B Information sharing	28
35	Section 234 repealed (Circumstances in which officers, directors, or agents of company liable for minimum wages and holiday pay)	29
36	New sections 235A to 235G and cross-heading inserted	29
	<i>Infringement offences</i>	
	235A Interpretation	29
	235B Infringement offences	30
	235C Infringement notices	30
	235D Procedural requirements for infringement notices	30
	235E Infringement fees	31
	235F Payment of infringement fee	31
	235G Infringement fee and penalty not payable for the same conduct	31
37	Section 237 amended (Regulations)	31
38	Schedule 1AA amended	31
39	Consequential amendments	32
	Schedule	33
	Consequential amendments	

The Parliament of New Zealand enacts as follows:

1 Title

This Act is the Employment Relations Amendment Act 2016.

2 Commencement

This Act comes into force on 1 April 2016.

3 Principal Act

This Act amends the Employment Relations Act 2000 (the **principal Act**).

4 Section 3 amended (Object of this Act)

(1) Replace section 3(a)(v) with:

(v) by promoting mediation as the primary problem-solving mechanism other than for enforcing employment standards; and

(2) After section 3(a), insert:

(ab) to promote the effective enforcement of employment standards, in particular by conferring enforcement powers on Labour Inspectors, the Authority, and the court; and

5 New section 4B and cross-heading inserted

After section 4A, insert:

Records relating to minimum entitlement provisions

4B Employer's general obligation to keep records relating to minimum entitlement provisions

- (1) An employer must keep records in sufficient detail to demonstrate that the employer has complied with minimum entitlement provisions.
- (2) The obligation in subsection (1) is in addition to the requirements in the other provisions of this Act or any other enactment relating to the keeping of records.

6 Section 5 amended (Interpretation)

(1) In section 5, insert in its appropriate alphabetical order:

agreed hours of work means the hours of work specified in accordance with section 67C(1)

employment standards means any of the following:

- (a) the requirements of any of sections 64, 69Y, 69ZD, 69ZE, and 130;
- (b) the provisions of the Equal Pay Act 1972;
- (c) the minimum entitlements and payment for those under the Holidays Act 2003;
- (d) the requirements of sections 81 and 82 of the Holidays Act 2003;
- (e) the minimum entitlements under the Minimum Wage Act 1983:

(f) the provisions of the Wages Protection Act 1983

(2) In section 5, replace the definition of **minimum entitlements** with:

minimum entitlement provisions means—

- (a) the minimum entitlements and payment for those under the Holidays Act 2003; and
- (b) the minimum entitlements under the Minimum Wage Act 1983; and
- (c) the provisions of the Wages Protection Act 1983

7 Section 64 amended (Employer must retain copy of individual employment agreement or individual terms and conditions of employment)

In section 64(4), after “Labour Inspector”, insert “or the employee concerned”.

8 Section 65 amended (Form and content of individual employment agreement)

- (1) In section 65(2)(a)(iv), before “an indication”, insert “any agreed hours of work specified in accordance with section 67C or, if no hours of work are agreed,”.
- (2) In section 65(4), after “Labour Inspector”, insert “or the employee concerned”.

9 New sections 67C to 67H inserted

After section 67B, insert:

67C Agreed hours of work

- (1) Hours of work agreed by an employer and employee must be specified as follows:
 - (a) in the case of an employee covered by a collective agreement,—
 - (i) in the collective agreement; and
 - (ii) if section 61 applies, in the employee’s additional terms and conditions of employment included under that section; or
 - (b) in the case of an employee covered by an individual employment agreement, in the employee’s individual employment agreement.
- (2) In subsection (1), **hours of work** includes any or all of the following:
 - (a) the number of guaranteed hours of work;
 - (b) the days of the week on which work is to be performed;
 - (c) the start and finish times of work;
 - (d) any flexibility in the matters referred to in paragraph (b) or (c).

67D Availability provision

- (1) In this section and section 67E, an **availability provision** means a provision in an employment agreement under which—

- (a) the employee's performance of work is conditional on the employer making work available to the employee; and
 - (b) the employee is required to be available to accept any work that the employer makes available.
- (2) An availability provision may only—
 - (a) be included in an employment agreement that specifies agreed hours of work and that includes guaranteed hours of work among those agreed hours; and
 - (b) relate to a period for which an employee is required to be available that is in addition to those guaranteed hours of work.
- (3) An availability provision must not be included in an employment agreement unless—
 - (a) the employer has genuine reasons based on reasonable grounds for including the availability provision and the number of hours of work specified in that provision; and
 - (b) the availability provision provides for the payment of reasonable compensation to the employee for making himself or herself available to perform work under the provision.
- (4) An availability provision that is not included in an employment agreement in accordance with subsection (3) is not enforceable against the employee.
- (5) In considering whether there are genuine reasons based on reasonable grounds for including an availability provision, an employer must have regard to all relevant matters, including the following:
 - (a) whether it is practicable for the employer to meet business demands for the work to be performed by the employee without including an availability provision;
 - (b) the number of hours for which the employee would be required to be available;
 - (c) the proportion of the hours referred to in paragraph (b) to the agreed hours of work.
- (6) Compensation payable under an availability provision must be determined having regard to all relevant matters, including the following:
 - (a) the number of hours for which the employee is required to be available;
 - (b) the proportion of the hours referred to in paragraph (a) to the agreed hours of work;
 - (c) the nature of any restrictions resulting from the availability provision;
 - (d) the rate of payment under the employment agreement for the work for which the employee is available;

- (e) if the employee is remunerated by way of salary, the amount of the salary.
- (7) For the purposes of subsection (3)(b), an employer and an employee who is remunerated for agreed hours of work by way of salary may agree that the employee's remuneration includes compensation for the employee making himself or herself available for work under an availability provision.

67E Employee may refuse to perform certain work

An employee is entitled to refuse to perform work in addition to any guaranteed hours specified in the employee's employment agreement if the agreement does not contain an availability provision that provides for the payment of reasonable compensation to the employee for making himself or herself available to perform work under the availability provision.

67F Employee not to be treated adversely because of refusal to perform certain work

- (1) An employer must not treat adversely an employee who refuses to perform work under section 67E.
- (2) In this section, an employer **treats an employee adversely** if the employer—
 - (a) 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 the same qualifications, experience, or skills employed in the same or substantially similar circumstances; or
 - (b) dismisses that employee or subjects that employee to any detriment, in circumstances in which other employees employed by that employer on work of that description are not or would not be dismissed or subjected to such detriment; or
 - (c) retires that employee, or requires or causes that employee to retire or resign.
- (3) For the purposes of subsection (2)(b), **detriment** includes anything that has a detrimental effect on that employee's employment, job performance, or job satisfaction.

67G Cancellation of shifts

- (1) This section applies in relation to an employee who is required under the employee's employment agreement to undertake shift work.
- (2) The employer must not cancel a shift of the employee unless the employee's employment agreement specifies—
 - (a) a reasonable period of notice that must be given before the cancellation of a shift; and

- (b) reasonable compensation that must be paid to the employee if the employer cancels a shift of the employee without giving the specified notice.
- (3) In cancelling a shift of an employee, the employer must—
 - (a) give the employee the notice specified in the employee’s employment agreement under subsection (2)(a); or
 - (b) if that notice is not given, pay to the employee the compensation specified in the employee’s employment agreement under subsection (2)(b).
- (4) The period of notice specified under subsection (2)(a) must be determined having regard to all relevant factors, including—
 - (a) the nature of the employer’s business, including the employer’s ability to control or foresee the circumstances that have given rise to the proposed cancellation; and
 - (b) the nature of the employee’s work, including the likely effect of the cancellation on the employee; and
 - (c) the nature of the employee’s employment arrangements, including whether there are agreed hours of work in the employee’s employment agreement and, if so, the number of guaranteed hours of work (if any) included among those agreed hours.
- (5) Compensation specified under subsection (2)(b) must be determined having regard to all relevant matters, including the following:
 - (a) the period of notice specified in the employee’s employment agreement under subsection (2)(a);
 - (b) the remuneration that the employee would have received for working the shift;
 - (c) whether the nature of the work requires the employee to incur any costs in preparing for the shift.
- (6) Without limiting subsection (5), an employee is entitled to what he or she would have earned for working a shift if—
 - (a) the shift is cancelled and the employee’s employment agreement does not comply with this section; or
 - (b) the shift is cancelled, but the employee has not been notified of the cancellation until the commencement of the shift; or
 - (c) the remainder of a shift is cancelled after the shift has begun.
- (7) If an employee whose shift is cancelled is entitled, under his or her employment agreement or under subsection (6), to the remuneration that he or she would have earned for working the shift, that remuneration is a part of the employee’s ordinary weekly pay and relevant daily pay for the purposes of sections 8 and 9 of the Holidays Act 2003.

- (8) To avoid doubt, nothing in this section enables an employer to cancel an employee's shift if that cancellation would breach the employee's employment agreement.
- (9) In this section, **shift** means a period of work performed in a system of work in which periods of work—
 - (a) are continuous or effectively continuous; and
 - (b) may occur at different times on different days of the week.

67H Secondary employment provisions

- (1) In this section, a **secondary employment provision** is a provision in an employee's employment agreement that—
 - (a) prohibits or restricts the employee from performing work for another person; or
 - (b) prohibits or restricts the employee from performing work for another person without the employer's consent.
- (2) A secondary employment provision must not be included in an employee's employment agreement unless—
 - (a) the employer has genuine reasons based on reasonable grounds for including the provision; and
 - (b) the reasons are stated in the employee's employment agreement.
- (3) For the purposes of subsection (2)(a) and without limiting that provision, a **genuine reason** may relate to—
 - (a) protecting an employer's commercially sensitive information; or
 - (b) protecting an employer's intellectual property rights; or
 - (c) protecting an employer's commercial reputation; or
 - (d) preventing a real conflict of interest that cannot be managed without including a secondary employment provision.
- (4) A secondary employment provision in an employee's employment agreement must not—
 - (a) prohibit the employee from performing work for another person unless it is necessary having regard to the reasons for which the provision is included; or
 - (b) restrict the employee from performing work for another person to a greater extent than is necessary having regard to the reasons for which the provision is included.
- (5) This section does not limit or affect the law relating to restraint of trade provisions.

10 Section 103 amended (Personal grievance)

After section 103(1)(g), insert:

- (h) that the employee has been disadvantaged by the employee's employment agreement not being in accordance with section 67C, 67D, 67G, or 67H; or
- (i) that the employee's employer has contravened section 67F or 67G(4).

11 Section 130 amended (Wages and time record)

- (1) Replace section 130(1)(g) with:
 - (g) the number of hours worked each day in a pay period and the pay for those hours:
- (2) After section 130(1), insert:
 - (1A) The wages and time record must be kept—
 - (a) in written form; or
 - (b) in a form or in a manner that allows the information in the record to be easily accessed and converted into written form.
 - (1B) If an employee's number of hours worked each day in a pay period and the pay for those hours are agreed and the employee works those hours (the **usual hours**), it is sufficient compliance with subsection (1)(g) if those usual hours and pay are stated in—
 - (a) the wages and time record; or
 - (b) the employment agreement; or
 - (c) a roster or any other document or record used in the normal course of the employee's employment.
 - (1C) In subsection (1B), the **usual hours** of an employee who is remunerated by way of salary include any additional hours worked by the employee in accordance with the employee's employment agreement.
 - (1D) Despite subsection (1C), the employer must record any additional hours worked that need to be recorded to enable the employer to comply with the employer's general obligation under section 4B(1).
- (3) Repeal section 130(3).
- (4) After section 130(4), insert:
- (5) An action to recover a penalty under subsection (4) may also be brought by a Labour Inspector.

12 New section 133A inserted (Matters Authority and court to have regard to in determining amount of penalty)

After section 133, insert:

133A Matters Authority and court to have regard to in determining amount of penalty

In determining an appropriate penalty for a breach referred to in section 133, the Authority or court (as the case may be) must have regard to all relevant matters, including—

- (a) the object stated in section 3; and
- (b) the nature and extent of the breach or involvement in the breach; and
- (c) whether the breach was intentional, inadvertent, or negligent; and
- (d) the nature and extent of any loss or damage suffered by any person, or gains made or losses avoided by the person in breach or the person involved in the breach, because of the breach or involvement in the breach; and
- (e) whether the person in breach or the person involved in the breach has paid an amount of compensation, reparation, or restitution, or has taken other steps to avoid or mitigate any actual or potential adverse effects of the breach; and
- (f) the circumstances in which the breach, or involvement in the breach, took place, including the vulnerability of the employee; and
- (g) whether the person in breach or the person involved in the breach has previously been found by the Authority or the court in proceedings under this Act, or any other enactment, to have engaged in any similar conduct.

13 Section 135 amended (Recovery of penalties)

After section 135(5), insert:

- (6) Despite subsection (5), if a court refuses to make a pecuniary penalty order under section 142E, an action for the recovery of a penalty under this Act in relation to the same matter must be commenced within 3 months after the refusal.

14 New section 135A inserted (Chief executive or Labour Inspector may enforce payment of penalty)

After section 135, insert:

135A Chief executive or Labour Inspector may enforce payment of penalty

The chief executive or a Labour Inspector may recover in the District Court as a debt due to the Crown any penalty ordered by the Authority or the court under section 135 to be paid to the Crown.

New section 135A: amended, on 1 March 2017, by section 261 of the District Court Act 2016 (2016 No 49).

15 Section 139 amended (Power of court to order compliance)

- (1) After section 139(1), insert:
- (1A) This section also applies to a person in relation to whom the court has made a declaration of breach under section 142B.
- (2) In section 139(2), replace “or requirement” with “requirement, or (in the case of a declaration of breach) the provision that the declaration relates to”.

16 New section 140AA inserted (Sanctions for breaches without compliance order)

After section 140, insert:

140AA Sanctions for breaches without compliance order

- (1) This section applies in relation to an order, determination, direction, or requirement referred to in section 137(1)(b) or 139(1)(b).
- (2) If, after the order, determination, direction, or requirement is made or given, there has been non-observance of or non-compliance with the order, determination, direction, or requirement, the court may, on the application of a Labour Inspector, do 1 or more of the things specified in section 140(6)(a) to (e) without first making a compliance order.
- (3) However, the court must not do any of the things specified in section 140(6)(a) to (e) unless the court—
- (a) has provided the person in default with the opportunity to make submissions to the court; and
 - (b) is satisfied that—
 - (i) the matter arises from a breach of employment standards and relates to the payment of wages or other money owed, or penalties ordered, as a result of the breach; and
 - (ii) the matter involves a breach that was not minor or inadvertent; and
 - (iii) there was no reasonable excuse for the breach; and
 - (iv) there are reasonable grounds for believing that, if a compliance order were made, the person in default would not comply with it.

17 Section 140 amended (Further provisions relating to compliance order by court)

After section 140(6), insert:

- (7) An order under subsection (6)(d) may direct that the whole or any part of the fine must be paid to the employee concerned.

18 Section 141 amended (Enforcement of order)

- (1) In section 141, replace “this Act” with “any of the Acts referred to in section 223(1)”.
- (2) In section 141, insert as subsection (2):
- (2) To avoid doubt, an order imposing a fine is enforceable under Part 3 of the Summary Proceedings Act 1957.

19 New Part 9A inserted

After section 142, insert:

Part 9A

Additional provisions relating to enforcement of employment standards

142A Object of this Part

- (1) The object of this Part is to provide additional enforcement measures to promote the more effective enforcement of employment standards (especially minimum entitlement provisions) by—
 - (a) providing for a Labour Inspector to apply to the court for—
 - (i) declarations of breach in relation to breaches of minimum entitlement provisions that are serious;
 - (ii) pecuniary penalty orders for breaches of minimum entitlement provisions that are serious;
 - (iii) compensation orders for serious breaches of minimum entitlement provisions to compensate employees who have suffered or are likely to suffer loss or damage as a result;
 - (iv) banning orders based on certain grounds, including persistent breach of employment standards; and
 - (b) making insurance for pecuniary penalties unlawful; and
 - (c) providing for—
 - (i) what is meant by being involved in a breach of employment standards; and
 - (ii) when states of mind or conduct by certain persons are to be attributed to bodies corporate and principals; and
 - (d) providing certain defences to breaches of minimum entitlement provisions.
- (2) The provisions in this Part are in addition to the provisions in—
 - (a) sections 133 to 142; and
 - (b) sections 223 to 235.

Declarations of breach

142B Court may make declarations of breach

- (1) A Labour Inspector (but no other person) may apply to the court for a declaration of breach.
- (2) The court may make a declaration of breach if the court is satisfied that—
 - (a) a person has—
 - (i) breached a minimum entitlement provision; or
 - (ii) been involved in a breach of a minimum entitlement provision; and
 - (b) the breach of the minimum entitlement provision is serious.
- (3) Whether a breach of a minimum entitlement provision is serious is a question of fact.
- (4) In determining whether a breach of a minimum entitlement provision is serious, the court may take into account—
 - (a) the amount of money involved;
 - (b) whether the breach comprises a single instance or a series of instances;
 - (c) if the breach comprises a series of instances,—
 - (i) how many instances it comprises; and
 - (ii) the period over which they occurred;
 - (d) whether the breach was intentional or reckless;
 - (e) whether the employer concerned has complied with any relevant record-keeping obligations imposed by any Act;
 - (f) any other relevant matter.

142C Purpose and effect of declarations of breach

- (1) The purpose of a declaration of breach is to enable an applicant for an order against a person under this Part to rely on the declaration of breach made against the person in the proceedings for that order and not be required to prove the breach or involvement in the breach.
- (2) Accordingly, a declaration of breach made against a person is conclusive evidence in relation to the person of the matters that must be stated in it under section 142D.

142D What declaration of breach must state

A declaration of breach must state the following:

- (a) the minimum entitlement provision that the breach or involvement in the breach relates to; and
- (b) the person the declaration applies to; and

- (c) the conduct that constituted the breach or the involvement in the breach.

Pecuniary penalty orders

142E Pecuniary penalty orders

- (1) The court may make a pecuniary penalty order against a person in respect of whom the court has made a declaration of breach.
- (2) An application for a pecuniary penalty order may be made—
- (a) only by a Labour Inspector; and
 - (b) at the following times:
 - (i) when application is made for a declaration of breach; or
 - (ii) subsequently, whether before or after the application for a declaration of breach is determined.

142F Matters court to have regard to in determining amount of pecuniary penalty

In determining an appropriate pecuniary penalty under section 142E, the court must have regard to all relevant matters, including—

- (a) the object stated in section 3; and
- (b) the nature and extent of the breach or involvement in the breach; and
- (c) whether the breach was intentional, inadvertent, or negligent; and
- (d) the nature and extent of any loss or damage suffered by any person, or gains made or losses avoided by the person in breach or the person involved in the breach, because of the breach or involvement in the breach; and
- (e) whether the person in breach or the person involved in the breach has paid an amount of compensation, reparation, or restitution, or has taken other steps to avoid or mitigate any actual or potential adverse effects of the breach; and
- (f) the circumstances in which the breach, or involvement in the breach, took place, including the vulnerability of the employee; and
- (g) whether the person in breach or the person involved in the breach has previously been found by the Authority or the court in proceedings under this Act or any other enactment to have engaged in any similar conduct.

142G Maximum amount of pecuniary penalty

If the court determines that it should make a pecuniary penalty order, the maximum amount it may specify in the order is,—

- (a) in the case of an individual, \$50,000;
- (b) in the case of a body corporate, the greater of—

- (i) \$100,000; or
- (ii) 3 times the amount of the financial gain made by the body corporate from the breach.

142H Chief executive or Labour Inspector may enforce payment of pecuniary penalty

The chief executive or a Labour Inspector may recover in the District Court as a debt due to the Crown any pecuniary penalty ordered by the court under section 142E.

142I Limitation period for actions for pecuniary penalty orders

An application for a pecuniary penalty order under this Part must be made within 12 months after the earlier of—

- (a) the date when the breach first became known to a Labour Inspector; and
- (b) the date when the breach should reasonably have become known to a Labour Inspector.

Compensation orders

142J Court may make compensation orders

- (1) The court may make a compensation order against a person if—
 - (a) the court has made a declaration of breach in respect of the person; and
 - (b) the court is satisfied that the employee concerned (the **aggrieved employee**) has suffered, or is likely to suffer, loss or damage because of the breach.
- (2) The court may not make a compensation order against a person involved in a breach for wages or other money payable to an employee except to the extent that the employee's employer is unable to pay the wages or other money.
- (3) An application for a compensation order may be made—
 - (a) only by a Labour Inspector or the aggrieved employee; and
 - (b) at one of the following times:
 - (i) the same time as the application for a declaration of breach; or
 - (ii) subsequently, whether before or after the application for a declaration of breach is determined.

142K Application of section 132 of this Act and section 83 of Holidays Act 2003

Section 132 of this Act and section 83 of the Holidays Act 2003 apply for the purposes of section 142J to the extent that they are relevant to the breach in respect of which the compensation order is being sought.

142L Terms of compensation orders

- (1) If section 142J applies, the court may make any order it thinks just to compensate an aggrieved employee in whole or in part for the loss or damage, or to prevent or reduce the loss or damage, referred to in that section.
- (2) An order under this section may include an order to direct a relevant person to pay to the aggrieved employee the amount of the loss or damage (in whole or in part).
- (3) Subsection (2) does not limit subsection (1).
- (4) In this section, **relevant person** means—
 - (a) any person in breach; or
 - (b) any person involved in the breach.

*Banning orders***142M Banning orders**

- (1) The court may make a banning order against a person if—
 - (a) the court has made a declaration of breach in respect of the person; or
 - (b) the court is satisfied that the person has persistently breached, or persistently been involved in the breach of, 1 or more employment standards; or
 - (c) the person has been convicted of an offence under section 351 of the Immigration Act 2009.
- (2) The persons who may apply for a banning order are—
 - (a) a Labour Inspector;
 - (b) an immigration officer under the Immigration Act 2009.
- (3) For the purposes of subsection (1)(b), a past breach is not evidence that a person has persistently breached, or persistently been involved in the breach of, 1 or more employment standards if the person concerned established a defence under section 142ZC or 142ZD (as the case may be) in relation to that past breach.

142N Terms of banning order

- (1) If the court makes a banning order, the order must prohibit the person from doing 1 or more of the following:
 - (a) entering into an employment agreement as an employer;
 - (b) being an officer of an employer;
 - (c) being involved in the hiring or employment of employees.
- (2) A person who is subject to a banning order may do something prohibited by the order if the person first obtains the leave of the court to do so.

- (3) In this section, **officer** means—
- (a) a person occupying the position of a director of a company if the employer is a company:
 - (b) a partner if the employer is a partnership:
 - (c) a general partner if the employer is a limited partnership:
 - (d) a person occupying a position comparable with that of a director of a company if the employer is not a company, partnership, or limited partnership:
 - (e) any other person occupying a position in the employer if the person is in a position to exercise significant influence over the management or administration of the employer.

142O Duration of banning order

A banning order under section 142M has effect for—

- (a) 10 years; or
- (b) any shorter period specified in the order.

142P Variation of banning order

A banning order may be—

- (a) made subject to the terms and conditions that the court thinks fit; and
- (b) cancelled or varied at any time by the court.

142Q General provisions for banning orders

- (1) A Registrar of the court must, as soon as practicable after making a banning order,—
- (a) give notice to the chief executive that the order has been made; and
 - (b) publish a notice in the *Gazette* stating—
 - (i) the name of the person against whom the banning order has been made; and
 - (ii) the terms of the order; and
 - (iii) the period or dates for which the order applies.
- (2) A person intending to apply for the leave of the court under section 142N(2) must give the chief executive at least 10 working days' written notice of that intention.
- (3) The department, and any other person the court thinks fit, may attend and be heard at the hearing of an application for leave.

142R Offence to breach banning order

A person who breaches a banning order commits an offence and is liable on conviction by the District Court or the High Court to a fine not exceeding \$200,000, a term of imprisonment not exceeding 3 years, or both.

*Standard of proof***142S Standard of proof**

To avoid doubt, in proceedings under this Part for a declaration of breach, pecuniary penalty order, compensation order, or banning order, the standard of proof is the standard of proof that applies in civil proceedings.

*Interrelationship of orders***142T More than one kind of order may be made for same breach**

- (1) The court may make one kind of order under this Part against a person even though the court has made another kind of order, whether under this Part or another Part, against the person in relation to the same breach.
- (2) Without limiting subsection (1) and by way of example,—
 - (a) a pecuniary penalty order and a compliance order may be made against a person for the same breach:
 - (b) a compensation order and a banning order may be made against a person for the same breach.

142U No pecuniary penalty and criminal sanction or other penalty for same conduct

- (1) A person cannot be ordered to pay a pecuniary penalty and be liable to a fine or term of imprisonment under this Act or the Immigration Act 2009 for the same conduct.
- (2) A person cannot be ordered to pay a pecuniary penalty and be liable to another penalty under this Act for the same breach of employment standards.

*Insurance against pecuniary penalties unlawful and of no effect***142V Insurance against pecuniary penalties unlawful**

- (1) To the extent that an insurance policy or a contract of insurance indemnifies or purports to indemnify a person for the person's liability to pay a pecuniary penalty under this Act,—
 - (a) the policy or contract is of no effect; and
 - (b) no court or tribunal has jurisdiction to grant relief in respect of the policy or contract, whether under section 7 of the Illegal Contracts Act 1970 or otherwise.
- (2) A person must not—

- (a) enter into, or offer to enter into, a policy or contract described in subsection (1); or
- (b) indemnify, or offer to indemnify, another person for the other person's liability to pay a pecuniary penalty under this Act; or
- (c) be indemnified, or agree to be indemnified, by another person for that person's liability to pay a pecuniary penalty under this Act; or
- (d) pay to another person, or receive from another person, an indemnity for a pecuniary penalty under this Act.

Liability of persons involved in breach, bodies corporate, and principals

142W Involvement in breaches

- (1) In this Act, a person is **involved in a breach** if the breach is a breach of employment standards and the person—
 - (a) has aided, abetted, counselled, or procured the breach; or
 - (b) has induced, whether by threats or promises or otherwise, the breach; or
 - (c) has been in any way, directly or indirectly, knowingly concerned in, or party to, the breach; or
 - (d) has conspired with others to effect the breach.
- (2) However, if the person in breach is a company, partnership, limited partnership, or sole trader, a person holding a position in relation to the person in breach may be treated as a person involved in a breach only if the person is an officer of the person in breach.
- (3) For the purposes of subsection (2), the following persons are to be treated as officers of a person in breach:
 - (a) a person occupying the position of a director of a company if the person in breach is a company;
 - (b) a partner if the person in breach is a partnership;
 - (c) a general partner if the person in breach is a limited partnership;
 - (d) a person occupying a position comparable with that of a director of a company if the person in breach is not a company, partnership, or limited partnership;
 - (e) any other person occupying a position in relation to the person in breach if the person is in a position to exercise significant influence over the management or administration of the person in breach.
- (4) This section does not apply to proceedings for offences.

142X Person involved in breach liable to penalty

- (1) A person involved in a breach is liable to a penalty under this Act if—

- (a) the person is involved in the breach within the meaning of section 142W; and
 - (b) this Act provides a penalty for the breach.
- (2) An application for a penalty against a person involved in a breach may be made only by a Labour Inspector.

142Y When person involved in breach liable for default in payment of wages or other money due to employee

- (1) A Labour Inspector or an employee may recover from a person who is not the employee's employer any wages or other money payable to the employee if—
- (a) there has been a default in the payment of wages or other money payable to the employee; and
 - (b) the default is due to a breach of employment standards; and
 - (c) the person is a person involved in the breach within the meaning of section 142W.
- (2) However, arrears in wages or other money may be recovered under subsection (1) only,—
- (a) in the case of recovery by an employee, with the prior leave of the Authority or the court; and
 - (b) to the extent that the employee's employer is unable to pay the arrears in wages or other money.

142Z State of mind of directors, employees, or agents attributed to body corporate or other principal

- (1) If, in a proceeding under this Act in respect of any conduct engaged in by a body corporate, being conduct in relation to which any provision of this Act applies, it is necessary to establish the state of mind of the body corporate, it is sufficient to show that a director, an employee, or an agent of the body corporate, acting within the scope of his or her actual or apparent authority, had that state of mind.
- (2) If, in a proceeding (other than a proceeding for an offence) under this Act in respect of any conduct engaged in by a person other than a body corporate, being conduct in relation to which any provision of this Act applies, it is necessary to establish the state of mind of the person, it is sufficient to show that an employee or agent of the person, acting within the scope of his or her actual or apparent authority, had that state of mind.
- (3) In this Act, **state of mind**, in relation to a person, includes the knowledge, intention, opinion, belief, or purpose of the person and the person's reasons for that intention, opinion, belief, or purpose.

142ZA Conduct of directors, employees, or agents attributed to body corporate or other principal

- (1) Conduct engaged in on behalf of a body corporate by any of the following must be treated, for the purposes of this Act, as having been engaged in also by the body corporate:
 - (a) a director, an employee, or an agent of the body corporate who is acting within the scope of his, her, or its actual or apparent authority:
 - (b) any other person at the direction or with the consent or agreement (whether express or implied) of a director, an employee, or an agent of the body corporate, given within the scope of the actual or apparent authority of the director, employee, or agent.
- (2) Conduct engaged in on behalf of a person other than a body corporate (**A**) by any of the following must be treated, for the purposes of this Act, as having been engaged in also by A:
 - (a) an employee or an agent of A who is acting within the scope of his, her, or its actual or apparent authority:
 - (b) any other person who is acting at the direction or with the consent or agreement (whether express or implied) either of A or of an employee or an agent of A, given within the scope of the actual or apparent authority of the employee or agent.

Defences relating to breach of minimum entitlement provisions

142ZB Proceedings in which defences apply

The defences described in sections 142ZC and 142ZD apply to the following proceedings in relation to a breach of a minimum entitlement provision:

- (a) an action to recover wages or other money under section 142Y of this Act, section 77A of the Holidays Act 2003, section 11AA of the Minimum Wage Act 1983, or section 11A of the Wages Protection Act 1983:
- (b) an action to recover a penalty under section 135 of this Act, section 76 of the Holidays Act 2003, section 10 of the Minimum Wage Act 1983, or section 13 of the Wages Protection Act 1983:
- (c) an application under section 142E for a pecuniary penalty order:
- (d) an application under section 142J for a compensation order:
- (e) an application under section 142M(1)(a) for a banning order.

142ZC Defences for person in breach

- (1) In a proceeding referred to in section 142ZB against a person (**A**) for a breach of a minimum entitlement provision, it is a defence if A proves that—
 - (a) A's breach was due to reasonable reliance on information supplied by another person; or

- (b) both of the following apply:
 - (i) A's breach was due to the act or default of another person, or to an accident or to some other cause beyond A's control; and
 - (ii) A took reasonable precautions and exercised due diligence to avoid the breach.
- (2) In a proceeding referred to in section 142ZB(d), a defence under subsection (1) does not apply to the extent that the compensation is in relation to wages or other money owed as a result of a breach of a minimum entitlement provision.
- (3) For the purposes of subsection (1)(a) and (b), **another person** does not include a director, an employee, or an agent of A.

142ZD Defences for person involved in breach

- (1) This section applies if—
 - (a) a person (**A**) breaches a minimum entitlement provision; and
 - (b) another person (**B**) is involved in the breach.
- (2) In a proceeding referred to in section 142ZB against B for involvement in the breach of a minimum entitlement provision, it is a defence if B proves that—
 - (a) B's involvement in the breach was due to reasonable reliance on information supplied by another person; or
 - (b) B took all reasonable and proper steps to ensure that A complied with the provision.
- (3) For the purposes of subsection (2)(a), **another person** does not include a director, an employee, or an agent of B.

New section 142H: amended, on 1 March 2017, by section 261 of the District Court Act 2016 (2016 No 49).

New section 142R: amended, on 1 March 2017, by section 261 of the District Court Act 2016 (2016 No 49).

20 Section 148A amended (Minimum entitlements)

- (1) Replace the heading to section 148A with "**Certain entitlements may be subject to mediation and agreed terms of settlement**".
- (2) In section 148A(1), replace "Minimum entitlements" with "The entitlements specified in subsection (3)".
- (3) In section 148A(2), replace "minimum entitlements" with "entitlements specified in subsection (3)".
- (4) After section 148A(2), insert:
 - (3) This section applies to wages or holiday pay or other money payable by the employer to the employee under the Minimum Wage Act 1983, the Holidays Act 2003, or the Home and Community Support (Payment for Travel Between Clients) Settlement Act 2016.

21 Section 159 amended (Duty of Authority to consider mediation)

- (1) Repeal section 159(1A).
- (2) After section 159(2), insert:
- (3) This section applies subject to section 159AA.

22 New section 159AA inserted (When mediation in relation to breach of employment standards is appropriate)

After section 159, insert:

159AA When mediation in relation to breach of employment standards is appropriate

If a matter before the Authority relates principally to an alleged breach of employment standards relating to an employee, the Authority must not give a direction that the parties use mediation or further mediation unless—

- (a) the Authority is satisfied that mediation will be a cheaper and quicker way to clarify disputed facts or otherwise assist the Authority in considering the matter; or
- (b) the alleged breach appears to be minor and inadvertent; or
- (c) both parties agree; or
- (d) the Authority is satisfied that, in the circumstances and having regard to section 3(ab), mediation is appropriate.

23 Section 187 amended (Jurisdiction of court)

After section 187(1)(g), insert:

- (ga) to hear and determine proceedings for a declaration of breach, pecuniary penalty order, compensation order, or banning order under Part 9A:

24 Section 188 amended (Role in relation to jurisdiction)

After section 188(4), insert:

- (5) This section applies subject to section 188A.

25 New section 188A inserted (When mediation in relation to breach of employment standards is appropriate)

After section 188, insert:

188A When mediation in relation to breach of employment standards is appropriate

- (1) If an application is made for a declaration or an order under section 142B, 142E, 142J, or 142M, the court must not give a direction that the parties use mediation or further mediation.

- (2) However, if the matter relates principally to an alleged breach of employment standards relating to an employee (other than an application under section 142B, 142E, 142J, or 142M), the court may give a direction to use mediation or further mediation, but only if—
- (a) the court is satisfied that mediation will be a cheaper and quicker way to clarify disputed facts or otherwise assist the court in considering the application; or
 - (b) the alleged breach appears to be minor and inadvertent; or
 - (c) both parties agree; or
 - (d) the court is satisfied that, in the circumstances and having regard to section 3(ab), mediation is appropriate.

26 Section 212 amended (Court may make rules)

After section 212(2), insert:

- (3) To the extent that the court does not make rules under subsection (1) regulating the practice and procedure of the court under—
- (a) section 142B (declarations of breach); and
 - (b) section 142E (pecuniary penalty orders); and
 - (c) section 142J (compensation orders); and
 - (d) section 142M (banning orders),—
- proceedings in the court under those sections are to be regulated by the rules applicable to civil proceedings in the High Court, as far as they are applicable and with all necessary modifications.

27 New section 214AA inserted (Appeals against decisions under Part 9A)

After section 214, insert:

214AA Appeals against decisions under Part 9A

- (1) A party to a proceeding for a declaration of breach, pecuniary penalty order, compensation order, or banning order under Part 9A who is dissatisfied with the decision of the court may appeal to the Court of Appeal against the decision on a question of fact or law, or both.
- (2) An appeal under subsection (1) does not require the leave of the Court of Appeal.
- (3) Section 56 of the Senior Courts Act 2016 applies to an appeal under subsection (1).
- (4) In determining an appeal, the Court of Appeal may confirm, modify, or reverse the decision, or any part of the decision, appealed against.
- (5) An appeal under subsection (1) does not operate as a stay of proceedings to which the appeal relates unless the Court of Appeal orders otherwise.

New section 214AA(3): amended, on 1 March 2017, by section 183(b) of the Senior Courts Act 2016 (2016 No 48).

28 Section 217 amended (Appeal to Court of Appeal against conviction or order or sentence in respect of contempt of court)

- (1) In section 217, delete “of this Act or section 11A(7) of the Minimum Wage Act 1983”.
- (2) At the end of section 217, insert—
- (2) Subsection (1) does not apply to an offence under section 142R, but the Criminal Procedure Act 2011 applies to that offence.

29 New section 223AAA and cross-heading inserted

After the Part 11 heading, insert:

Chief executive

223AAA Functions of chief executive

The functions of the chief executive under this Act are—

- (a) to promote the objects of this Act by, among other things,—
 - (i) providing information and advice about employment relationships, including the rights and obligations of employees, employers, and other interested parties; and
 - (ii) promoting the effective resolution of employment relationship problems by providing problem and dispute resolution services; and
 - (iii) publishing information, reports, and guidelines about employment relationships; and
 - (iv) publishing comments about employment relationship matters in relation to particular persons; and
- (b) to maintain a strategy for promoting compliance with, and enforcement of, the Acts specified in section 223(1); and
- (c) to perform any other functions and duties conferred on the chief executive by or under the Acts specified in section 223(1).

30 Section 223A amended (Functions of Labour Inspector)

Replace section 223A(c) to (e) with:

- (c) monitoring and enforcing compliance with employment standards; and
- (d) performing any other functions conferred by or under the relevant Acts.

31 Section 228 amended (Actions by Labour Inspector)

In section 228(1), delete “in the name and”.

32 Section 229 amended (Powers of Labour Inspectors)

(1) After section 229(1)(c)(ii), insert:

- (iii) any other document that the Labour Inspector reasonably believes may assist in determining whether the requirements of the Acts referred to in section 223(1) have been complied with:

(2) After section 229(5), insert:

(5A) A person is not excused from answering a Labour Inspector's questions under subsection (1) on the grounds that doing so might expose the person to a pecuniary penalty under Part 9A, but any answers given are not admissible in criminal proceedings or in proceedings under that Part for pecuniary penalties.

33 Section 233 amended (Obligations of Labour Inspectors)

Repeal section 233(5).

34 New sections 233A and 233B inserted

After section 233, insert:

233A Obligation of Labour Inspector and department not to disclose information

- (1) Neither a Labour Inspector who inspects, or is supplied with a copy of, a document under section 229 nor the department may disclose to any person any information obtained as a result of the inspection of the document or the supply of the copy, unless the disclosure is for the purposes of an Act specified in section 223(1).
- (2) This section applies subject to section 233B.

233B Information sharing

- (1) A Labour Inspector and the department may provide to a regulatory agency any information, or a copy of any document, that the Labour Inspector or department—
- (a) holds in relation to the performance or exercise of its functions, duties, or powers under or in relation to the Acts specified in section 223(1); and
- (b) considers may assist the regulatory agency in the performance or exercise of the regulatory agency's functions, duties, or powers under or in relation to any enactment.
- (2) A regulatory agency may provide a Labour Inspector or the department with any information, or a copy of any document, that the regulatory agency—
- (a) holds in relation to the performance or exercise of its functions, duties, or powers under or in relation to any enactment; and

- (b) considers may assist the Labour Inspector or department in the performance or exercise of its functions, duties, or powers under or in relation to any of the Acts specified in section 223(1).
- (3) A Labour Inspector, the department, or a regulatory agency who provides information or a copy of a document under this section may impose conditions relating to the provision of the information, including conditions relating to—
 - (a) the storage and use of, or access to, anything provided:
 - (b) the copying, returning, or disposing of any documents provided.
- (4) This section applies subject to any other enactment, including the Privacy Act 1993.
- (5) This section overrides provisions in contracts, deeds, and other documents that are inconsistent with this section.
- (6) In this section, **regulatory agency** means—
 - (a) an immigration officer under the Immigration Act 2009:
 - (b) the Inland Revenue Department:
 - (c) the Ministry of Social Development:
 - (d) the Ministry for Primary Industries:
 - (e) the New Zealand Police:
 - (f) the Registrar of Companies:
 - (g) WorkSafe New Zealand and any agency designated under section 28B of the Health and Safety in Employment Act 1992:
 - (h) any other department of State, person, or organisation defined in regulations as a regulatory agency for the purposes of this section.

35 Section 234 repealed (Circumstances in which officers, directors, or agents of company liable for minimum wages and holiday pay)

Repeal section 234.

36 New sections 235A to 235G and cross-heading inserted

After section 235, insert:

Infringement offences

235A Interpretation

In sections 235B to 235F, **infringement offence** means—

- (a) a failure by an employer to comply with the requirements of section 64(1) or (2) or 130(1) of this Act or section 81(2) of the Holidays Act 2003:
- (b) breaches of this Act that are prescribed by regulations as infringement offences.

235B Infringement offences

- (1) If a person is alleged to have committed an infringement offence, the person may—
 - (a) be proceeded against by filing a charging document under section 14 of the Criminal Procedure Act 2011; or
 - (b) be served with an infringement notice as provided in section 235D.
- (2) Proceedings commenced in the way described in subsection (1)(a) require the leave of a District Court Judge or Registrar under section 21(1)(a) of the Summary Proceedings Act 1957.

235C Infringement notices

- (1) An infringement notice may be issued to a person if there are reasonable grounds for believing that the person is committing, or has committed, an infringement offence.
- (2) Only a Labour Inspector may issue an infringement notice.

235D Procedural requirements for infringement notices

- (1) An infringement notice may be served on a person who the Labour Inspector believes has committed the infringement offence—
 - (a) by delivering it, or a copy of it, personally to the person; or
 - (b) by sending it, or a copy of it, by post, addressed to the person at the person's last known place of residence or business.
- (2) An infringement notice sent under subsection (1)(b) must be treated as having been served on the person on the date it was posted.
- (3) An infringement notice must be in the prescribed form and must contain—
 - (a) details of the alleged infringement offence that are sufficient to fairly inform a person of the time, place, and nature of the alleged offence; and
 - (b) the amount of the infringement fee; and
 - (c) an address at which the infringement fee may be paid; and
 - (d) the time within which the infringement fee must be paid; and
 - (e) a summary of the provisions of section 21(10) of the Summary Proceedings Act 1957; and
 - (f) a statement that the person served with the notice has a right to request a hearing; and
 - (g) a statement of what will happen if the person served with the notice does not pay the fee and does not request a hearing; and
 - (h) any other prescribed matters.
- (4) If an infringement notice has been issued, proceedings in respect of the infringement offence to which the notice relates may be commenced in accord-

ance with section 21 of the Summary Proceedings Act 1957 and, in that case,—

- (a) reminder notices may be prescribed; and
 - (b) in all other respects, section 21 of the Summary Proceedings Act 1957 applies with all necessary modifications.
- (5) Reminder notices must contain the prescribed information.

235E Infringement fees

- (1) The infringement fee payable for an infringement offence is—
- (a) \$1,000 for an infringement offence specified in section 235A(a);
 - (b) the infringement fee specified in regulations for an infringement offence prescribed by regulations under section 235A(b).
- (2) However, the maximum aggregate infringement fees an employer is liable to pay in a 3-month period is \$20,000, whether for breaches of the same provision or breaches of different provisions.

235F Payment of infringement fee

All infringement fees received must be paid into a Crown Bank Account.

235G Infringement fee and penalty not payable for the same conduct

A person is not liable to pay an infringement fee and penalty under this Act for the same conduct.

37 Section 237 amended (Regulations)

After section 237(f), insert:

- (fa) prescribing regulatory agencies for the purposes of section 233B(6):
- (fb) prescribing infringement offences for the purposes of section 235A(b):
- (fc) prescribing infringement fees (not exceeding \$1,000) for the purposes of section 235E(1)(b):

38 Schedule 1AA amended

- (1) In Schedule 1AA, replace clause 1 with:

1 Interpretation

In this schedule,—

2014 Act means the Employment Relations Amendment Act 2014

2016 Act means the Employment Relations Amendment Act 2016.

- (2) In Schedule 1AA, after clause 2, insert:

3 Application, savings, and transitional provisions arising from 2016 Act

- (1) The amendments made by the 2016 Act do not apply to conduct that occurred before the commencement of that Act.
- (2) If a collective agreement (the **previous agreement**) is in force immediately before the commencement of the 2016 Act (whether or not bargaining has been initiated under section 41(3) or (4)), sections 67C to 67H (as inserted by section 9 of that Act) apply to—
 - (a) any collective agreement that replaces the previous agreement, on the commencement of the replacement agreement; and
 - (b) an individual employment agreement that comes into force under section 61(2)(a), based on the previous agreement and any additional terms and conditions agreed under section 61(1), on the commencement of the individual employment agreement.
- (3) If an individual employment agreement has been entered into, or has come into force under section 61(2)(a), before the commencement of the 2016 Act, sections 67C to 67H (as inserted by section 9 of that Act) apply to the agreement from 1 April 2017.
- (4) Subclause (1) applies subject to subclauses (5) to (7).
- (5) The amendment to section 140 (made by section 17 of the 2016 Act) (which relates to compliance orders made by the court) applies to an order imposing a fine whether the breach that the fine relates to occurred before, on, or after the commencement of the 2016 Act.
- (6) Sections 159AA (inserted by section 22 of the 2016 Act) and 188A (inserted by section 25 of the 2016 Act) (both relating to when mediation in relation to breaches of employment standards is appropriate)—
 - (a) apply only to proceedings filed after the commencement of the 2016 Act; but
 - (b) may apply to conduct whether it occurred before, on, or after the commencement of the 2016 Act.
- (7) Section 234 (which relates to the circumstances in which officers, directors, or agents of a company are liable for minimum wages and holiday pay) continues to apply (despite its repeal by section 35 of the 2016 Act) to proceedings brought in relation to conduct that occurred before the commencement of the 2016 Act, whether or not the proceedings were brought before that commencement.

39 Consequential amendments

Amend the enactments specified in the Schedule as set out in that schedule.

Schedule Consequential amendments

s 39

Companies Act 1993 (1993 No 105)

After section 151(2)(ea), insert:

(eab) in the case of a company that is an employer, a person who is prohibited from being an officer of an employer under sections 142M and 142N(1)(b) of the Employment Relations Act 2000:

Employment Relations Amendment Act 2015 (2015 No 73)

In section 5, replace “103(1)(g)” with “103(1)(i)”.

In section 5, new section 103(1)(h) of the Employment Relations Act 2000, replace “(h)” with “(j)”.

Sleepover Wages (Settlement) Act 2011 (2011 No 98)

In section 30(4), replace “has the same meaning as in section 5 of the Employment Relations Act 2000” with “means wages or holiday pay or other money payable by the employer to the employee under the Holidays Act 2003 or the Minimum Wage Act 1983”.

In section 32, insert as subsections (2) and (3):

- (2) To avoid doubt, an order imposing a fine is enforceable under Part 3 of the Summary Proceedings Act 1957.
- (3) In an order imposing a fine under section 140(6) of the Employment Relations Act 2000, the order may direct that the whole or any part of the fine must be paid to the employee concerned.

In section 33(2)(a), after “penalties”, insert “and section 135A (which relates to the Chief Executive or a Labour Inspector enforcing payment of a penalty)”.

Summary Proceedings Act 1957 (1957 No 87)

In section 2(1), definition of **infringement notice**, after paragraph (j), insert:

- (ja) section 235A of the Employment Relations Act 2000; or

Reprints notes

1 *General*

This is a reprint of the Employment Relations Amendment Act 2016 that incorporates all the amendments to that Act as at the date of the last amendment to it.

2 *Legal status*

Reprints are presumed to correctly state, as at the date of the reprint, the law enacted by the principal enactment and by any amendments to that enactment. Section 18 of the Legislation Act 2012 provides that this reprint, published in electronic form, has the status of an official version under section 17 of that Act. A printed version of the reprint produced directly from this official electronic version also has official status.

3 *Editorial and format changes*

Editorial and format changes to reprints are made using the powers under sections 24 to 26 of the Legislation Act 2012. See also <http://www.pco.parliament.govt.nz/editorial-conventions/>.

4 *Amendments incorporated in this reprint*

District Court Act 2016 (2016 No 49): section 261

Senior Courts Act 2016 (2016 No 48): section 183(b)