

Employment Relations (Breaks and Infant Feeding) Amendment Bill

Government Bill

As reported from the Transport and
Industrial Relations Committee

Commentary

Recommendation

The Transport and Industrial Relations Committee has examined the Employment Relations (Breaks and Infant Feeding) Amendment Bill and recommends that it be passed with the amendments shown.

Introduction

The purpose of this bill is to amend the Employment Relations Act 2000 to require employers to provide employees with meal and rest breaks, and with appropriate facilities and breaks for those who wish to breastfeed (or to express breast milk).

The bill supports Government policy by protecting and promoting breastfeeding. The provisions regarding breastfeeding will also be supported by a code of employment practice.

Amendments

Breastfeeding facilities and breaks

While new section 69Y requires the employer to provide facilities and breaks for employees who wish to breastfeed “so far as it is reasonable and practicable in the circumstances”, clause 4 omits these words. Some submitters believed that this creates an inconsistency.

We therefore recommend that the words “so far as is reasonable and practicable in the circumstances” be added to clause 4(a) so as to make it consistent with new section 69Y.

Entitlement to rest breaks and meal breaks

New section 69ZD(2), when read with new section 69ZD(5) and the definition of “work period” in section 69ZD, would entitle employees to a third 10-minute rest break in each working day if their work period (which includes breaks) were just over eight hours long. This is because no period of work is specified after which the entitlement would begin to apply. We therefore recommend that section 69ZD(2) be amended so that employees would become entitled to a 10-minute rest break after having worked for two hours or more, but not more than four hours. When read with section 69ZD(5), this would also mean that an employee would become entitled to a third 10-minute rest break if his or her work period were 10 hours or more.

Timing of rest breaks

Many submitters were concerned that the bill is too prescriptive about when rest and meal breaks are to be taken.

The intention of section 69ZE(5) is to provide employers and employees with the flexibility to agree when rest and meal breaks are to be taken during the work period. Only in the absence of an agreement by both parties does the bill prescribe the timing of those breaks in sections 69ZE (1) to (4).

Many submitters were concerned, however, that section 69ZE(5) does not make it clear that the timing of rest and meal breaks may be agreed between employers and employees.

We recommend that section 69ZE(5) be deleted and new section 69ZE(1AA) inserted, to make it clear that rest and meal breaks are

to be observed at times agreed between employers and employees or as specified by sections 69ZE(1) to (4) if no such agreement exists.

Relationship between Part and employment agreements

We recommend that the bill be amended to clarify that section 69ZG, which provides that an employment agreement may not exclude, restrict, or reduce an employee's statutory break entitlements, does not override the provisions of section 69ZE, which allows an employer and employee to agree about when during the work period the break entitlements are taken.

Appendix

Committee process

The Employment Relations (Breaks and Infant Feeding) Amendment Bill was referred to the committee on 9 April 2008. The closing date for submissions was 19 May 2008. We received and considered 46 submissions from interested groups and individuals. We heard 22 submissions, which included holding hearings in Auckland.

We received advice from the Department of Labour.

Committee membership

Hon Mark Gosche (Chairperson)

Hon Maurice Williamson (Deputy Chairperson)

David Bennett

Peter Brown

Russell Fairbrother

Darien Fenton

Lesley Soper

Hon Judith Tizard

Kate Wilkinson

Pansy Wong

Sue Moroney replaced Hon Judith Tizard for this item of business.

**Employment Relations (Breaks and Infant
Feeding) Amendment Bill**

Key to symbols used in reprinted bill

As reported from a select committee

text inserted unanimously

~~text deleted unanimously~~

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The Parliament of New Zealand enacts as follows:

1 Title
This Act is the Employment Relations (Breaks and Infant Feeding) Amendment Act **2008**.

2 Commencement 5
This Act comes into force 6 months after the date on which it receives the Royal assent.

Part 1
Preliminary provisions

3 Principal Act amended 10
This Act amends the Employment Relations Act 2000.

4 Purpose
The purpose of this Act is to insert new **Parts 6C and 6D** into the principal Act to—

(a) 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

(b) require employees to be provided with rest breaks and meal breaks. 20

Part 2 Amendments to principal Act

5 New Parts 6C and 6D inserted

The following Parts are inserted after Part 6B:

“Part 6C

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“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**.

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“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

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“(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.

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“(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

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“(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**.

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“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**. 5

“69ZB Penalty

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

“Part 6D

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“Rest breaks and meal breaks

“69ZC Interpretation

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

“(a) means the period— 15

“(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 20

“(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)**. 25

“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 ~~4 hours or less~~ 2 hours or more but not more than 4 hours, the employee is entitled to one 10-minute paid rest break. 30

“(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 35

- “(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
- “(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 (1) to (3)** as if the employee’s work period had started at the end of the 10 eighth hour.
- “69ZE When employer to provide rest breaks and meal breaks**
- “(1AA) 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** 15
- “(b) in the absence of such an agreement, as specified in subsections (1) to (4).**
- “(1) 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. 20
- “(2) Where **section 69ZD(3)** applies, an employer must, so far as is reasonable and practicable, provide the employee with—
- “(a) the rest period one-third of the way through the work period; and 25
- “(b) the meal break two-thirds of the way through the work period.
- “(3) 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 30
- “(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.
- “(4) Where **section 69ZD(5)** applies, an employer must, so far as is reasonable and practicable, provide the employee with the rest breaks and meal break in accordance with the applicable provision in **subsections (1) to (3)**. 35

~~“(5) This section applies subject to any agreement between the employee and employer that the rest breaks and meal breaks are to be observed at different times during the employee’s work period.”~~

“69ZF Penalty 5
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 ~~an~~ the employee. 10

“(2) An employment agreement that excludes, restricts, or reduces an employee’s entitlements under ~~this Part~~ **section 69ZD**—

“(a) has no effect to the extent that it does so; but 15

“(b) is not an illegal contract under the Illegal Contracts Act 1970.

“69ZH Relationship between Part and other enactments

Where an employee is provided with, or entitled to, rest breaks or meal breaks under another enactment,— 20

“(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.” 25

6 Power of Authority to order compliance

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

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Legislative history

2 April 2008

9 April 2008

Introduction (Bill 205–1)

First reading and referral to Transport and Industrial
Relations Committee
