

Employment Relations (Triangular Employment) Amendment Bill

Member's Bill

As reported from the committee of the whole House

**Employment Relations (Triangular Employment)
Amendment Bill**

Key to symbols used in reprinted bill

As reported from the committee of the whole House

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Kieran McAnulty

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Schedule

Transitional, savings, and related provisions

The Parliament of New Zealand enacts as follows:

1 Title

This Act is the Employment Relations (Triangular Employment) Amendment Act **2018**.

2 Commencement

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(1) This Act comes into force on the earlier of the following dates:

- (a) a date appointed by the Governor-General by Order in Council;
- (b) the date immediately after the expiry of the 12-month period.

(2) In this section, the **12-month period** is the period of 12 months that commences on the date on which this Act receives the Royal assent.

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3 Principal Act

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

Part 1

Amendments relating to triangular employment

4 Section 5 amended (Interpretation)

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In section 5, insert in its appropriate alphabetical order:

controlling third party means a person—

- (a) who has a contract or other arrangement with an employer under which an employee of the employer performs work for the benefit of the person; and
- (b) who exercises, or is entitled to exercise, control or direction over the employee that is similar or substantially similar to the control or direction that an employer exercises, or is entitled to exercise, in relation to the employee

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5 Section 103 amended (Personal grievance)

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After section 103(3), insert:

(4) For the purposes of **sections 103B, 115A, and 123A**, the provisions of this Act that describe, define terms relating to, and provide for the application of the grounds for a personal grievance under subsection (1) apply with all necessary modifications as if—

- (a) references to the employer were references to the controlling third party; and
- (b) references to the employee's employment included work the employee has performed under the control or direction of a controlling third party.

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6 New section 103B inserted (Joining controlling third party to personal grievance)

After section 103A, insert:

103B Joining controlling third party to personal grievance

(1) This section applies if— 5

- (a) an employee has—
 - (i) raised a personal grievance in accordance with section 114; and
 - (ii) applied to the Authority to resolve a personal grievance with the employee's employer; and
- (b) the personal grievance relates to an action that is alleged to have occurred while the employee was working under the control or direction of a controlling third party. 10

(2) The employee or the employer, or both, may apply to the Authority or the court to join the controlling third party to the proceedings to resolve the personal grievance. 15

(3) The Authority or the court must grant the application to join a controlling third party if the Authority or the court is satisfied—

- (a) that the requirement to notify the controlling third party in accordance with **section 115A** has been complied with; and
- (b) that an arguable case has been made out—
 - (i) that the party to be joined to the proceedings is a controlling third party; and
 - (ii) that the party's actions caused or contributed to the personal grievance. 20

(4) The Authority or the court may, at any stage of the proceedings, of its own motion join a controlling third party to the proceedings by order. 25

(5) If the Authority or the court joins the controlling third party to the proceedings, the Authority or the court must consider whether to direct the employer, the employee, and the controlling third party to use mediation services to seek to resolve the personal grievance. 30

7 New section 115A inserted (Notifying controlling third party of personal grievance)

After section 115, insert:

115A Notifying controlling third party of personal grievance

(1) For the purposes of **section 103B**, this section is **complied with**— 35

- (a) when an employee—

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<ul style="list-style-type: none"> (i) considers that the actions of a controlling third party caused or contributed to the personal grievance; and (ii) notifies the controlling third party of that fact within the 90-day employee notification period; or <p>(b) when an employer—</p> <ul style="list-style-type: none"> (i) considers that the actions of a controlling third party caused or contributed to the personal grievance; and (ii) notifies the controlling third party of that fact within the 90-day employer notification period; or <p>(c) if the controlling third party has consented to being notified under subsection (2); or</p> <p>(d) if the Authority has granted leave to notify the controlling third party under subsection (4).</p>	5
<p>(2) Subsection (1)(a) or (b) does not apply if the controlling third party consents to being notified after the expiration of the relevant 90-day notification period.</p> <p>(3) If the controlling third party does not consent to being notified after the relevant 90-day notification period, the employee or the employer may apply to the Authority for leave to notify the controlling third party after the expiration of that period.</p> <p>(4) On an application under subsection (3), the Authority, after giving the controlling third party an opportunity to be heard, may grant leave accordingly, subject to any conditions that it thinks fit, if the Authority considers it just to do so.</p> <p>(5) In any case where the Authority grants leave under subsection (4), the Authority must direct the employee, the employer, and the controlling third party to use mediation to seek to resolve the personal grievance.</p> <p>(6) In this section,—</p> <p>90-day employee notification period means the period of 90 days beginning with the date on which the action alleged to amount to a personal grievance occurred or came to the notice of the employee, whichever is later</p> <p>90-day employer notification period means the period of 90 days beginning with the date on which the employer's employee raised the personal grievance with the employer</p> <p>relevant 90-day notification period means the 90-day employee notification period or the 90-day employer notification period.</p>	10 15 20 25 30 35
<p>8 New section 123A inserted (Remedies where controlling third party caused or contributed to personal grievance)</p> <p>After section 123, insert:</p>	

123A Remedies where controlling third party caused or contributed to personal grievance

(1) This section applies if the Authority or the court—

- (a) determines that an employee has a personal grievance; and
- (b) has, under **section 103B**, joined a controlling third party to the proceedings to resolve the personal grievance; and
- (c) determines that the actions of the controlling third party caused or contributed to the situation that gave rise to the personal grievance.

(2) The Authority or the court may, if satisfied that it is just to do so, order the controlling third party to provide to the employee either or both of the remedies in section 123(1)(b) and (c). 5

(3) The Authority or the court must consider the extent to which the actions of the controlling third party caused or contributed to the situation that gave rise to the personal grievance.

(4) The Authority or the court must award any remedies against the employer under section 123 and against the controlling third party under **subsection (2)** in a way that reflects the extent to which the actions of each contributed to the situation that gave rise to the personal grievance. 15

(5) The Authority or the court may, if making an order under **subsection (2)**, order payment to the employee by instalments, but only if the financial position of the controlling third party requires it. 20

(6) **Subsection (2)** applies subject to **subsections (3) to (5)**.

9 Section 144 amended (Mediation services)

After section 144(1), insert:

(1A) For the purposes of this section, **employment relationships** include those between an employer and an employee employed by the employer where the work performed is under the control or direction of a controlling third party. 25

10 Section 161 amended (Jurisdiction)

After section 161(1)(e), insert:

(ea) joining a controlling third party to a personal grievance under **section 103B**. 30

Part 2

Further amendment to principal Act

11 Schedule 1AA amended

In Schedule 1AA, insert the **Part 3** set out in the **Schedule** of this Act in its appropriate numerical order according to the date of enactment of the provision of that schedule. 35

Schedule

Transitional, savings, and related provisions

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New Part 3 inserted into Schedule 1AA

Part 3

Provision relating to Employment Relations (Triangular Employment) Amendment Act 2018

16 Application of sections 103(4)-and-(5), 103B, 115A, and 123A

Sections 103(4)-and-(5), 103B, 115A, and 123A apply if the date on which the action alleged to amount to a personal grievance occurred or came to the notice of the employee, whichever is later, after the commencement of the Employment Relations (Triangular Employment) Amendment Act **2018**.

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Legislative history

1 February 2018

Introduction (Bill 17-1)

21 March 2018

First reading and referral to Education and Workforce Committee

17 December 2018

Reported from Education and Workforce Committee (Bill 17-2)

3 April 2019

Second reading

22 May 2019

Committee of the whole House (Bill 17-3)