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Change on the Horizon: What the Coalition Agreements and 100-day plan means for Employment in Aotearoa New Zealand

by: Amanda Douglas - Partner, and Kathryn Evans - Senior Associate

The new three-party Coalition Government was formally sworn in on Monday, and has now released its Coalition Agreements, setting out the priority policies that National, ACT and New Zealand First (NZF) have agreed to "support" and "progress" over the next three years. It has also released its 100- day plan.

Many of these priority policies take aim at the employment world and indicate that we can expect a considerable shift in the employment law landscape during this National-Act-NZF Government term.

Outlined below, are the key changes - and implications - on the horizon for employment law should these policies eventuate over the next three years.

Repeal Fair Pay Agreements Act 2022

This is included in the 100-day plan. The Fair Pay Agreements Act 2022 (**FPAA**), which came into force under the Labour-led Government in late 2022, sets out a process for unions to engage employers in collective bargaining, to establish conditions for all employees in a specific industry or occupation. Under the Coalition Agreement, the new Government has proposed to repeal the FPAA by December 2023.

At this stage, it is not clear what repealing the FPAA would mean for those groups currently engaged in FPAA bargaining; although it is suspected that they would not be able to advance further. Those groups currently engaged in the FPAA bargaining process include employees in varied industries, including the hospitality industry, bus transport, security officers and guards and early childhood education. Whether the new Government will provide for any carves outs for these groups remains to be seen.

However, it is important to note that, even if the FPAA is repealed, collective bargaining will still continue as it always has but without the formal process set out in the FPAA.

Expand 90-day trials to apply to all businesses

There is, perhaps, no aspect of employment law that has been subject to political ping-pong more so than the 90-day trial period. It appears that the incoming Government will honour this tradition, and quickly, as it is also included in the 100-day plan.

Valid 90-day trial periods permit an employer to dismiss an employee within the first 90 day of their employment without the employer having to provide any reasons for the dismissal and so long as legislative requirements are met. If correctly set out, they also prevent the employee from being able to raise a personal grievance for unjustified dismissal.

As it currently stands, employers with 19 or fewer employees can include 90-day trial periods in its employment agreements. However, the Coalition Agreement would see the law on 90-day trial periods amended, so that they apply to all businesses - as was the case under the previous National Government. In other words, this reform would extend the protection of 90-day trial periods to all employers, no matter how many employees they have. It is intended that this proposed change will increase economic activity and make employers more likely to "take a chance" on workers they may not otherwise consider employing.

Changes to personal grievance claims

The Coalition Agreement also sets out the new Government's intention to progress several key changes purposed to "simplify" personal grievances.

The first key change is to remove an employee's eligibility for remedies (which would include financial compensation) where the employee is at fault. It is not yet clear how this proposed change would fit in with the existing legal position which allows Employers to seek a reduction to any awards made in the employee's favour, where the employee's behaviour has contributed to the circumstances giving rise to their personal grievance.

The second key change would be the setting of an income threshold for personal grievances; meaning that, if an employee earns above a certain amount, they will be barred from being able to raise a personal grievance. This change is, perhaps, unsurprising given that National introduced the Employment Relations (Allowing Higher Earners to Contract Out of Personal Grievance Provisions) Amendment Bill in 2017. If passed, that Bill would have allowed employment agreements to contain a provision preventing an employee from raising a personal grievance claim for unjustified dismissal, if the employee earnt above the set threshold. It is, therefore, possible that a new Bill, under the new Coalition Government, could take a similar shape. If this does come into play it will mirror a similar approach to countries such as Australia, where income thresholds relating to personal grievances are already in place.

Independent Contractors

Currently, independent contractors are free to challenge their employment status and may be deemed to be an employee, where the real nature of the relationship is actually one of employment. However, the Coalition Agreement seeks to change this by ensuring that "... contractors who have explicitly signed up for a contracting arrangement can't challenge their employment status...". There may be advantages to this, including an ability for Principals to confer benefits, such as sick or parental leave, on contractors, without jeopardising the certainty of the relationship.

Practically speaking, this will mean that contractors without a written contract for services (**Contractor Agreement**) may still be able to claim that they are an employee, but those with a Contractor Agreement may not.

Greater Protections against Migrant Worker Exploitation

The Coalition Agreement records the new Government's commitment to "enforcement and action to ensure that those found responsible for the abuse of migrant workers face appropriate consequences". Although it is not clear what specific measures will be put in place, this commitment does come amidst, what seems to be, a general crackdown on those who exploit migrant workers.

In recent years, employers who have been found guilty of worker exploitation have been subject to increasingly severe consequences. For instance, an employer was recently ordered to pay more than $1.5 million in penalties for breaches in relation to migrant workers.[1] Additionally, the new Worker Protection (Migrant and Other Employees) Act 2023, which is due to come into effect in January 2024, will confer further protections for migrant workers, by introducing a fit-for-purpose penalty regime to deter employers of temporary migrant workers from non-compliance with their obligations.

Other Key Changes

Some of the other key changes that have been touted under the Coalition Agreements and 100-day plan include:

- Moderate annual increases to the minimum wage
- Stopping work on the Income Insurance Scheme – the scheme which, if continued, would support workers if they lose their job through no fault of their own, for instance, in redundancy situations
- Reforming health and safety laws. Although it is not yet clear what, exactly, these reforms would entail, they may include amendments to the Health and Safety at Work Act 2015
- Improving the Accredited Employer Work Visa (**AEWV**) to focus on attracting in-demand workers and skills. Again, it is not clear, at this stage, what specific changes the new Government would bring to the AEWV scheme
- The removal of median wage requirements for the Skilled Migrant Category Resident Visa
- Increasing the annual cap on workers under the Recognised Seasonal Employer scheme

Only time will tell what changes do come in, and what the practical effects on Employers will be. Wynn Williams' Employment Team will continue to keep you updated on those changes, so watch this space. In the meantime, if you have any questions about the proposed changes please contact our specialist team.

[1] *Labour Inspector v Samra Holdings Ltd t/a Te Puna Liquor Centre* [2022] NZEmpC 234

Wynn Williams Auckland
Level 25, Vero Centre, 48 Shortland Street, Auckland 1010, New Zealand. PO Box 2401, Shortland Street, Auckland 1140.
+64 9 300 2600
email@wynnwilliams.co.nz

Wynn Williams Christchurch
Level 5, Wynn Williams House, 47 Hereford Street, Christchurch 8013, New Zealand. PO Box 4341, DX WX11179, Christchurch 8140.
+64 3 379 7622
email@wynnwilliams.co.nz

Wynn Williams Queenstown
Level 2, Te Nuku Building, 43 Ballarat Street, Queenstown 9300, New Zealand. PO Box 323, Queenstown 9348.
+64 3 379 7622
email@wynnwilliams.co.nz