

Employment Court Amendment Regulations 2004

Pursuant to section 237 of the Employment Relations Act 2000, Her Excellency the Governor-General, acting on the advice and with the consent of the Executive Council, makes the following regulations.

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1 Title

- (1) These regulations are the Employment Court Amendment Regulations 2004.
- (2) In these regulations, the Employment Court Regulations 2000¹ are called “the principal regulations”.

2 Commencement

These regulations come into force on 10 December 2004.

3 Interpretation

Regulation 3(1) of the principal regulations is amended by inserting, in their appropriate alphabetical order, the following definitions:

“**overseas company** has the meaning given to it by section 2 of the Companies Act 1993

“**overseas party** means a party—

- “(a) who is to be served out of New Zealand; or
- “(b) who has been served out of New Zealand”.

4 Other proceedings

Regulation 8 of the principal regulations is amended by revoking subclause (3), and substituting the following subclauses:

- “(3) The amount of the prescribed fee for filing a statement of claim is reduced by the amount of any fee paid by the plaintiff under regulation 13A for filing an application for leave to serve a statement of claim on an overseas party in the same proceedings.

¹ SR 2000/250

“(4) The prescribed fee, or the reduced prescribed fee, must be paid at or before the time at which the statement of claim is filed.”

5 New regulation 13A inserted

The principal regulations are amended by inserting, after regulation 13, the following regulation:

“13A Application for leave

“(1) An application for leave in any proceedings must be made in form 2A.

“(2) The application must—

- “(a) state the grounds on which the application is made; and
- “(b) be accompanied by an affidavit verifying the grounds on which the application is made.

“(3) The prescribed fee for filing an application for leave to serve a statement of claim on an overseas party is not payable by a plaintiff who has paid a fee under regulation 8 for filing a statement of claim in the same proceedings.

“(4) The prescribed fee, if payable, must be paid at or before the time at which the application is filed.”

6 Obligation to file statement of defence

Regulation 19 of the principal regulations is amended by revoking subclause (2), and substituting the following subclause:

“(2) The statement of defence must be filed,—

- “(a) for a defendant served in New Zealand, within 30 clear days after the date of the service of the statement of claim on the defendant; or
- “(b) for an overseas party, within the time specified in regulation 31E.”

7 Place for filing other originating documents

Regulation 24(1)(a) of the principal regulations is amended by omitting the word “lodging”, and substituting the word “filing”.

8 New regulation 29A inserted

The principal regulations are amended by inserting, after regulation 29, the following regulation:

“29A Service in New Zealand on overseas companies

A document that must be served in legal proceedings under the Act on an overseas company may be served in New Zealand only under section 389 of the Companies Act 1993.”

9 New regulations 31A to 31G inserted

The principal regulations are amended by inserting, after regulation 31, the following regulations:

“31A Leave to serve statement of claim on overseas party

- “(1) This regulation applies when a plaintiff seeks the leave of the Court under clause 5A(a) of Schedule 3 of the Act to serve a statement of claim on an overseas party.
- “(2) An application for leave must be made on notice to every party to the proceedings other than the overseas party.
- “(3) An application for leave must be supported by an affidavit providing the Court with information for the purposes of subclause (5) or subclause (6).
- “(4) The Court may give leave—
- “(a) in the cases described in subclause (5); or
 - “(b) in any case in which the Court considers that it should give leave, having regard to the factors in subclause (6).
- “(5) For the purposes of subclause (4)(a), the cases are as follows:
- “(a) the overseas party has submitted to the jurisdiction of the Court; or
 - “(b) the employment agreement that is the subject of the proceedings—
 - “(i) was made in New Zealand; or
 - “(ii) was made by or through an agent trading or residing in New Zealand; or
 - “(iii) was to be wholly or partly performed in New Zealand; or
 - “(iv) was expressly or impliedly to be governed by New Zealand law; or
 - “(v) is said in the statement of claim to have been breached in New Zealand, wherever it was made; or

- “(c) the overseas party is a necessary and proper party to the proceedings brought by the plaintiff against a person who is to be, or has been, served in New Zealand.
- “(6) For the purposes of subclause (4)(b), the factors are as follows:
 - “(a) where the overseas party is or may be found; and
 - “(b) whether the overseas party is a New Zealand citizen; and
 - “(c) the amount or value of the matter in dispute; and
 - “(d) the importance of the matter; and
 - “(e) the existence of a court with jurisdiction in the matter in the place where the overseas party is; and
 - “(f) the comparative cost and convenience of having the matter dealt with in New Zealand or in the place where the overseas party is.
- “(7) The Court gives leave by making an order.

“31B Service on overseas party in convention country

- “(1) This regulation applies when—
 - “(a) the Court gives a plaintiff leave under regulation 31A; and
 - “(b) a convention on the service of documents in proceedings in the courts is in force between—
 - “(i) the sovereign of New Zealand and the head of state of another country; or
 - “(ii) the New Zealand government and the Government of another country; and
 - “(c) the convention provides for the service of documents by official means in the other country; and
 - “(d) the plaintiff wants to use the convention’s provisions; and
 - “(e) there is nothing in the convention’s provisions that prevents the plaintiff from using them.
- “(2) The plaintiff may file a request for the service of the plaintiff’s statement of claim on an overseas party.
- “(3) The request must be made in form 2B.
- “(4) The request must be accompanied by the following for each overseas party:
 - “(a) the statement of claim; and
 - “(b) a copy of the order made under regulation 31A(7); and

- “(c) a copy of the statement of claim for the purpose of using it as an exhibit to the evidence verifying service; and
- “(d) a notice in form 2C; and
- “(e) if any overseas party’s language is not English,—
 - “(i) a translation of the statement of claim into the party’s language for service with the statement of claim; and
 - “(ii) a statement that satisfies the Registrar verifying the translation as correct; and
 - “(iii) a copy of the translation for the purpose of using it as an exhibit to the evidence verifying service.
- “(5) The Registrar must—
 - “(a) seal the documents described in subclause (4)(a), (b), (c), (e)(i), and (e)(iii) with the seal of the Court; and
 - “(b) send the request for service and the documents described in subclause (4) to the chief executive of the Ministry of Justice for transmission through the appropriate channels to the other country for service.
- “(6) Sufficient proof of service is provided by a certificate that—
 - “(a) describes the documents served; and
 - “(b) states the fact and date of service; and
 - “(c) is given by—
 - “(i) the competent authority of the other country; or
 - “(ii) a New Zealand consular officer; or
 - “(iii) a British consular officer; and
 - “(d) is sent by the chief executive of the Ministry of Justice to the Registrar.
- “(7) If the Registrar files the certificate, it is equivalent to an affidavit of service of the documents described in the certificate.
- “(8) This regulation does not render invalid or insufficient any mode of service in a country referred to in subclause (1) if the mode of service—
 - “(a) is otherwise valid or sufficient under these regulations; and
 - “(b) is not—
 - “(i) expressly excluded by the convention; or
 - “(ii) contrary to the law of the country.

“31C Service on overseas party in other circumstances

- “(1) This regulation applies when—
- “(a) the Court gives a plaintiff leave under regulation 31A; and
 - “(b) regulation 31B does not apply.
- “(2) The following must be served on each overseas party:
- “(a) the statement of claim; and
 - “(b) a copy of the order made under regulation 31A(7); and
 - “(c) a notice in form 2C; and
 - “(d) if any overseas party’s language is not English,—
 - “(i) a translation of the statement of claim into the party’s language for service with the statement of claim; and
 - “(ii) a statement that satisfies the Registrar verifying the translation as correct.
- “(3) The Registrar must seal the following documents with the seal of the Court before they are sent overseas:
- “(a) the statement of claim; and
 - “(b) a copy of the order made under regulation 31A(7); and
 - “(c) a copy of the statement of claim for the purpose of using it as an exhibit to the evidence verifying service; and
 - “(d) if any overseas party’s language is not English,—
 - “(i) a translation of the statement of claim into the party’s language for service with the statement of claim; and
 - “(ii) a copy of the translation for the purpose of using it as an exhibit to the evidence verifying service.

“31D Overseas party may file objection to jurisdiction

- “(1) An overseas party served under regulation 31B or regulation 31C may file an objection to the Court’s jurisdiction in the proceedings.
- “(2) The objection must be made in form 2D.

“31E Time within which overseas party to file objection to jurisdiction or statement of defence

- “(1) This regulation applies to an overseas party filing an objection to the Court’s jurisdiction or a statement of defence.
- “(2) The overseas party must file within 1 of the following times:

- “(a) for a party served within the Commonwealth of Australia, 30 clear days after the date of service on the party; or
 - “(b) for a party served elsewhere, 50 clear days after the date of service on the party; or
 - “(c) wherever the party is served, the time specified by the Court in an order made under subclause (3).
- “(3) The Court may make an order extending the time for an overseas party to file an objection or a statement.

“31F Application of regulations 27 to 31 to service on overseas party

Regulations 27 to 31 apply to service on an overseas party, with any necessary modifications.

“31G Court may decline jurisdiction

- “(1) The Court may decline to hear and determine proceedings in which there is an overseas party if it is satisfied that—
- “(a) it is more appropriate for the matter to be resolved in a place outside New Zealand; and
 - “(b) the plaintiff will have a fair opportunity in the place to make the plaintiff’s case; and
 - “(c) the plaintiff will receive proper justice in the place; and
 - “(d) the defendant will suffer unfair disadvantage if the proceedings are heard in New Zealand.
- “(2) This regulation does not limit any rule of law.”

10 Service of application for stay of proceedings

Regulation 66 of the principal regulations is amended by inserting, after the words “an application”, the words “for an order”.

11 New regulations 74A and 74B inserted

The principal regulations are amended by inserting, after regulation 74, the following regulations:

“74A What happens to timing when Court is closed

- “(1) This regulation applies when—

- “(a) the time for doing an act at an office of the Court ends on a day on which the office is closed; and
- “(b) the act cannot be done because the office is closed.
- “(2) The act is treated as being in time if it is done on the next day on which the office is open.

“74B What happens to timing in Christmas period

- “(1) This regulation applies when the period of time within which an act must be done is calculated.
- “(2) The 12 days starting with 25 December in 1 year and ending with the close of 5 January in the next year are not counted.
- “(3) Subclause (2) is subject to—
 - “(a) an express provision in any Act; or
 - “(b) an express provision in these regulations; or
 - “(c) a direction of the Court.”

12 Schedule 1 amended

- (1) The list of forms at the start of Schedule 1 of the principal regulations is amended by inserting, after the reference to form 2, the following references:

Form 2A	Application for leave
Form 2B	Request for service overseas
Form 2C	Notice accompanying statement of claim served outside New Zealand
Form 2D	Objection to Court’s jurisdiction

- (2) Form 1 in Schedule 1 of the principal regulations is amended by revoking paragraph (1)(a) under the heading “Notice to the defendant”, and substituting the following paragraph:

- “(a) file a statement of defence with the Registrar of the Employment Court at [place] within—
 - “(i) 30 (or the appropriate number if the Court has given an extension for an overseas party) clear days after the date of the service of this statement of claim on you, if you were served in New Zealand or the Commonwealth of Australia; or

- “(ii) 50 (or the appropriate number if the Court has given an extension for an overseas party) clear days after the date of the service of this statement of claim on you, if you were served out of New Zealand and the Commonwealth of Australia; and”.
- (3) Form 2 in Schedule 1 of the principal regulations is amended by revoking paragraph (1)(a) under the heading “Notice to the defendant”, and substituting the following paragraph:
- “(a) file a statement of defence with the Registrar of the Employment Court at [*place*] within—
- “(i) 30 (or the appropriate number if the Court has given an extension for an overseas party) clear days after the date of the service of this statement of claim on you, if you were served in New Zealand or the Commonwealth of Australia; or
- “(ii) 50 (or the appropriate number if the Court has given an extension for an overseas party) clear days after the date of the service of this statement of claim on you, if you were served out of New Zealand and the Commonwealth of Australia; and”
- (4) Schedule 1 of the principal regulations is amended by inserting, in their appropriate numerical order, the forms in the Schedule.

13 Schedule 3 amended

Schedule 3 of the principal regulations is amended by inserting, after item 2, the following item:

2A	Filing application for leave to serve statement of claim on overseas party	200
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Schedule

r 12

New forms 2A to 2D inserted in Schedule 1 of principal regulations

“Form 2A

r 13A

“Application for leave

“

Form 2A—continued

Employment Relations Act 2000

In the Employment Court
.....Registry

No: /
Application for leave
Between [full name] of [address]
Applicant
And [full name] of [address]
Respondent

To the Registrar
Employment Court
at [place]

and

To the respondent

Application for leave

I am applying to the Employment Court at [place] for leave to [specify leave sought].

Grounds

The application is based on the following grounds: [specify grounds].

Prescribed fee

The prescribed fee accompanies this application (or has already been paid or is not payable).

.....
Signature of applicant

.....
Date

Form 2A—continued

Notice to the respondent to application for leave

- (1) If you intend to oppose the application for leave, you must,—
 - (a) within 14 clear days after the date of the service on you of this notice, file with the Registrar of the Employment Court at *[place]* a written notice stating that you oppose the application for leave; and
 - (b) without delay, serve 1 copy of the written notice on the applicant.
- (2) If you fail to file a written notice stating that you oppose the application for leave, you may oppose the application for leave only with the leave of the Court.
- (3) You will be notified of the place, date, and time of the hearing of the application for leave and of any management meeting about the hearing of the application.

.....
 Registrar

 Date

*This application is filed by *[full name]*, whose—
 full postal address for service is *[address]*
 document exchange box number for service is *[number]*
 e-mail address for service is *[address]*
 fax number for service is *[number]*
 telephone number is *[number]*.¹

or
 *This application is filed, on behalf of the applicant named above,
 by *[full name]*, whose—
 full postal address for service is *[address]*
 document exchange box number for service is *[number]*
 e-mail address for service is *[address]*
 fax number for service is *[number]*
 telephone number is *[number]*.¹

*Delete if inapplicable.
¹A full postal address must always be supplied. The supply of any of the following is optional:
 document exchange box number, email address, fax number, and telephone number.

“Form 2B
 “Request for service overseas

r 31B

“

Form 2B—*continued**Schedule 3, clause 5A, Employment Relations Act 2000*In the Employment Court
.....RegistryNo: /
Request for service overseas
Between [full name] of [address]
Plaintiff
And [full name] of [address]
DefendantTo the Registrar
Employment Court
at [place]**Request for service overseas**

I request that the statement of claim in these proceedings be transmitted through the proper channel to [name of country] for service (or substituted service) on [name of defendant] at [place] or elsewhere in [name of country]. The service is to be effected by the competent authority of the country (or through a New Zealand consular officer or through a British consular officer).

I personally undertake to be responsible for all the expenses of effecting or trying to effect service incurred by the New Zealand Government or the British Government. When I receive the appropriate notification of the amount of the expenses, I personally undertake to—

- (a) pay the amount immediately to the Crown bank account; and
 - (b) provide the Registrar with evidence of the payment.
- This request is accompanied by the following for each overseas party:
- (a) the statement of claim; and
 - (b) a copy of the order made under regulation 31A(7) of the Employment Court Regulations 2000; and
 - (c) a copy of the statement of claim for the purpose of using it as an exhibit to the evidence verifying service; and
 - (d) a notice in form 2C of the Employment Court Regulations 2000; and
 - (e) if any overseas party's language is not English,—
 - (i) a translation of the statement of claim into the party's language for service with the statement of claim; and
 - (ii) a statement that satisfies the Registrar verifying the translation as correct; and
 - (iii) a copy of the translation for the purpose of using it as an exhibit to the evidence verifying service.

Form 2B—*continued*

.....
Signature of (solicitor for) plaintiff

.....
Date

“Form 2C rr 31B, 31C
“Notice accompanying statement of claim
served outside New Zealand

“

Schedule 3, clause 5A, Employment Relations Act 2000

- 1 The plaintiff named in the attached statement of claim has commenced proceedings against you by filing a statement of claim in the Employment Court.
- 2 Even though you are outside New Zealand, the Court may hear and determine these proceedings. It may do so if the proceedings come within its jurisdiction. The grounds on which the plaintiff says that the proceedings come within the Court's jurisdiction are set out in the statement of claim.
- 3 Even if the proceedings come within the Court's jurisdiction, it may decide not to hear and determine them. It may do so if it is satisfied that it is more appropriate for the matter to be resolved in a place outside New Zealand, that the plaintiff will have a fair opportunity in the place to make the plaintiff's case, that the plaintiff will receive proper justice in the place, and that the defendant will suffer unfair disadvantage if the proceedings are heard in New Zealand.
- 4 The notice to you on the statement of claim tells you that, if you intend to defend the proceedings, you must file your statement of defence within 30 (or 50 or the appropriate number if the Court has given an extension) days after the date of the service of the statement on you.
- 5 However, you may want to say that these proceedings do not come within the Court's jurisdiction or that, even if they do, the Court should decide not to hear and determine them. If so, you do not file a statement of defence. Instead, you file an objection to the Court's jurisdiction within 30 (or 50 or the appropriate number if the Court has given an extension) days after the date of service on you.

“Form 2D r 31D
“Objection to Court's jurisdiction”

“

Form 2D—*continued*

Employment Relations Act 2000

In the Employment Court
.....Registry

No: /

Objection to Court's jurisdiction
Between *[full name]* of *[address]*
Plaintiff
And *[full name]* of *[address]*
Defendant

To the Registrar
Employment Court
at *[place]*

and

To the plaintiff

Objection to Court's jurisdiction

- 1 The defendant, *[full name]*, objects to the jurisdiction of the Court to hear and determine these proceedings.
- 2 The defendant's objection is based on the following grounds:
[specify grounds].

.....
Signature of defendant

.....
Date

Diane Morcom,
Clerk of the Executive Council.

Explanatory note

This note is not part of the regulations, but is intended to indicate their general effect.

**Employment Court Amendment
Regulations 2004**

2004/422

These regulations, which come into force on 10 December 2004, provide the procedural rules for the service overseas of documents in proceedings before the Employment Court.

Issued under the authority of the Acts and Regulations Publication Act 1989.
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