



ANALYSIS

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1987, No. 83

An Act to amend the Minimum Wage Act 1983

[28 May 1987]

BE IT ENACTED by the Parliament of New Zealand as follows:

1. Short Title and commencement—(1) This Act may be cited as the Minimum Wage Amendment Act 1987, and shall be read together with and deemed part of the Minimum Wage Act 1983 (hereinafter referred to as the principal Act).

(2) This Act shall come into force on the 1st day of August 1987.

2. Interpretation—The principal Act is hereby amended by repealing section 2, and substituting the following section:

“2. In this Act, unless the context otherwise requires,—

“‘Employer’ means a person employing any worker or workers; and includes a person employing a homemaker:

“‘Inspector’ has the meaning given to it by section 2 (1) of the Factories and Commercial Premises Act 1981:

“‘Worker’—

“(a) Means any person of any age employed by an employer to do any work for hire or reward; and

“(b) Includes a homemaker.”

3. Annual review of minimum wages—The principal Act is hereby amended by repealing section 5, and substituting the following section:

“5. (1) The Minister of Labour shall, in each year ending on the 31st day of December, review any minimum rate prescribed pursuant to section 4 of this Act.

“(2) Following a review under subsection (1) of this section, the Minister may, whether in that year or subsequently, make recommendations to the Governor-General regarding the adjustments that should be made to that minimum rate.”

4. Under-rate workers' permits—Section 8 (1) of the principal Act is hereby amended by omitting the words “of Awards”.

5. New sections inserted—The principal Act is hereby amended by inserting, after section 8, the following sections:

“8A. **Wages and time records**—(1) Every employer who employs any worker whose wages or rates of wages are prescribed or paid pursuant to this Act shall keep a record (called the wages and time record) showing, in the case of each such worker,—

“(a) The name of the worker:

“(b) The worker's age, if under 20 years of age:

“(c) The worker's postal address:

“(d) The kind of work on which the worker is usually employed:

“(e) The award or agreement (if any) under which the worker is employed:

“(f) The classification or designation of the worker under the award or agreement (if any) according to which the worker is paid:

“(g) The hours between which the worker is employed on each day, and the days of the worker's employment during each week:

“(h) The wages paid to the worker each week and the method of calculation:

“(i) Such other particulars as are prescribed.

“(2) Every employer shall, upon request made at any reasonable time by an Inspector, produce forthwith for inspection by that Inspector every wages and time record that is, or at any time during the preceding 6 years was, in use under this Act in respect of any worker employed by that employer at any time in those 6 years.

“(3) Where an employer keeps a wages and time record in accordance with the Labour Relations Act 1987 or the Factories and Commercial Premises Act 1981 or the Agricultural Workers Act 1977 or the Bush Workers Act 1945, that employer shall not be required to keep a wages and time record under this Act in respect of the same matters.

“8B. **Offence of failing to keep records**—Every employer commits an offence and is liable on summary conviction to a fine not exceeding \$2,000 who fails to comply with section 8A (1) of this Act or with any request made under section 8A (2) of this Act.

“8C. **Right of entry for enforcement purposes**—(1) Where an Inspector has reasonable grounds to believe, in respect of any premises (other than a dwellinghouse) that a worker whose wages or rates of wages are prescribed or paid pursuant to this Act is or has been employed on those premises and that those premises are under the control of that worker’s employer or former employer, that Inspector may for the purpose of enforcing the requirements of this Act, at any reasonable time during any period when workers are employed to work on the premises, enter those premises to do one or more of the following things:

“(a) Interview any worker:

“(b) Inspect under section 8A of this Act any part of any wages and time record relating to any worker who is or has been employed in the preceding 6 years by the employer:

“(c) Either—

“(i) Obtain from the employer a satisfactory copy of such part of a wages and time record as the Inspector may request; or

“(ii) If the employer prefers, obtain such part of a wages and time record as the Inspector may request so that the Inspector may obtain a copy of it:

“(d) Question the employer about compliance with the provisions of this Act:

“(e) Make such inspections, examinations, and inquiries as are necessary to ascertain whether the provisions of this Act have been or are being complied with.

“(2) Any Inspector who enters any premises under the authority of subsection (1) of this section shall on first entering those premises and, if requested, at any subsequent time produce to the employer evidence of the Inspector’s identity and status.

“(3) Where any Inspector enters any premises under the authority of subsection (1) of this section and is unable, despite reasonable efforts, to find on those premises the employer or any representative of the employer, that Inspector shall, after the entry and inspection and before leaving the premises, leave on those premises a written notice addressed to the employer, which shall inform the employer of—

“(a) The identity and status of the Inspector who entered the premises; and

“(b) The date and time of the entry; and

“(c) The reasons for the entry.

“(4) Every person commits an offence and is liable on summary conviction to a fine not exceeding \$1,000 who—

“(a) Refuses to allow any Inspector to exercise the powers conferred on that Inspector by this section; or

“(b) Obstructs any Inspector in the exercise or attempted exercise of any of that Inspector’s powers under this section.

“8D. **Provisions as to summary proceedings**—Sections 65 to 68 of the Factories and Commercial Premises Act 1981 shall apply in respect of the procedure to be followed in all proceedings taken under this Act (except proceedings in respect of a recovery action commenced under section 11 of this Act).”

6. Penalty for default in payment of wages—The principal Act is hereby amended by repealing section 10, and substituting the following section:

“10. Every person commits an offence and is liable on summary conviction to a fine not exceeding \$1,000 who, being an employer, makes default in the full payment of any wages payable by that person under this Act.”

7. Recovery of wages—The principal Act is hereby amended by repealing section 11, and substituting the following section:

“11. (1) Without affecting any other remedies for the recovery of wages or other money payable by an employer to any worker whose wages are prescribed under this Act, where there has been any default in payment of any such wages or other money or where any payment of any such wages or other money has been made at a rate lower than that prescribed under this Act or otherwise legally payable to the worker, the whole or any part, as the case may require, of any such wages

or other money may be recovered to the use of the worker in the same manner as arrears of wages under section 198 of the Labour Relations Act 1987, notwithstanding the acceptance by the worker of any payment at a lower rate or any express or implied agreement to the contrary.

“(2) An action under this section may be brought by an Inspector.

“(3) Notwithstanding section 203 of the Labour Relations Act 1987, an action under this section may be commenced within 6 years after the date on which the money became due and payable.”

8. Compliance order—The principal Act is hereby amended by inserting, after section 11, the following section:

“11A. (1) Where any employer has not observed or not complied with any provision of or requirement under this Act, the Labour Court or the District Court, as the case may be, may, in addition to any other power it may exercise, by order require, in or in conjunction with any proceedings under this Act to which the employer is a party, that employer to do any specified thing, or to cease any specified activity, for the purpose of preventing further non-observance of or non-compliance with that provision or requirement, and shall specify a time within which that order is to be obeyed.

“(2) Where any person (being a union or an employers organisation or an association or a worker or an employer) alleges that that person has been prejudicially affected by a non-observance or non-compliance of the kind described in subsection (1) of this section, that person may commence proceedings against any employer in respect of the non-observance or non-compliance by applying to the Labour Court or a District Court for an order of the kind described in subsection (1) of this section.

“(3) The power given to the Labour Court (or to the District Court, as the case may be) by subsection (1) of this section may be exercised by that Court—

“(a) On the application of any party to the proceedings; or

“(b) Except where the proceedings are commenced under subsection (2) of this section, of its own motion.

“(4) Any time specified by the Court under subsection (1) of this section may from time to time be extended by the Court on the application of the person who is required to obey the order.

“(5) Where the Labour Court or the District Court makes an order of the kind described in subsection (1) of this section, that order—

“(a) May be subject to such terms and conditions as the Court thinks fit (including conditions as to the actions of the applicant); and

“(b) May be expressed to continue in force until a specified time or the happening of a specified event.

“(6) Where the Labour Court or the District Court makes an order of the kind described in subsection (1) of this section in any proceedings, it may then adjourn the proceedings, without imposing any penalty or fine or making a final determination in the proceedings, to enable the order of the Court to be complied with while the proceedings are adjourned.

“(7) Where any person fails to comply with a compliance order made under this section, the Labour Court or the District Court, as the case may be, may do one or more of the following things:

“(a) If the person in default is a plaintiff, order that the proceedings be stayed or dismissed as to the whole or any part of the relief claimed by the plaintiff in the proceedings:

“(b) If the person in default is a defendant, order that the defendant’s defence be struck out and that judgment be sealed accordingly:

“(c) Order that the person in default be sentenced to imprisonment for a term not exceeding 3 months:

“(d) Order that the person in default be fined a sum not exceeding \$5,000:

“(e) Order that the property of the person in default be sequestered.

“(8) The jurisdiction conferred on the Labour Court by this section shall be exercised by a Judge sitting alone, whether or not the application for a compliance order is made in conjunction with any other proceedings.”