



ANALYSIS

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1983, No. 143

An Act to consolidate and amend the law relating to the payment of wages and salaries *[16 December 1983]*

BE IT ENACTED by the General Assembly of New Zealand in Parliament assembled, and by the authority of the same, as follows:

1. Short Title and commencement—(1) This Act may be cited as the Wages Protection Act 1983.

(2) This Act shall come into force on the 1st day of February 1984.

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

“Employer” means a person employing any worker or workers; and includes any manager, foreman, clerk, agent, or other person engaged on behalf of that person in the hiring, employment, or supervision of the service or work of any worker:

“Financial institution” means a financial institution within the meaning of section 2 of the Reserve Bank of New Zealand Act 1964; and includes the Post Office Savings Bank and the Reserve Bank of New Zealand:

“Local authority” means a local authority within the meaning of the Local Authorities Loans Act 1956; and includes a local authority within the meaning of paragraphs (a) and (b) of the definition of that term in section 2 of that Act:

“Money”, in relation to any wages, means any New Zealand coin or New Zealand banknotes, or combination of both, the tender of which in respect of the payment of those wages is legal tender:

“Specified cheque”, in relation to the payment of wages to any worker, means a cheque payable to, or to the order of, that worker:

“Wages” means salary or wages; and includes time and piece wages, and overtime, bonus, or other special payments agreed to be paid to a worker for the performance of service or work; and also includes any part of any wages:

“Worker” means any person in any manner employed in any service or work for wages; and, in relation to any employer, means a worker employed by that employer.

Cf. 1964, No. 58, ss. 2, 4 (4), 6 (3)

3. Act to bind the Crown—This Act shall bind the Crown.

Cf. 1964, No. 58, s. 3

4. No deductions from wages except in accordance with Act—Subject to sections 5 (1) and 6 (2) of this Act, an employer shall, when any wages become payable to a worker, pay the entire amount of those wages to that worker without deduction.

Cf. 1964, No. 58, s. 4 (1)

5. Deductions with worker’s consent—(1) An employer may, for any lawful purpose,—

(a) With the written consent of a worker; or

(b) On the written request of a worker—
make deductions from wages payable to that worker.

(2) A worker may vary or withdraw a consent given or request made by that worker for the making of deductions from that worker’s wages, by giving the employer written notice to that effect; and in that case, that employer shall—

- (a) Within 2 weeks of receiving that notice, if practicable; and
- (b) As soon as is practicable, in every other case,—
cease making or vary, as the case requires, the deductions concerned.

Cf. 1964, No. 58, ss. 7 (1), 9

6. Employer may recover overpayments in certain circumstances—(1) In this section,—

“Next pay-day”, in relation to any overpayment, means the day next following the day on which that overpayment was made upon which the worker to whom it was made would, in the normal course of events, be paid:

“Overpayment” means any wages paid to a worker in respect of a recoverable period:

“Recoverable period”, in respect of any employer and any worker, means a period in respect of which that employer is not required by law to pay any wages to that worker, by virtue of that worker’s having—

- (a) Been absent from work without that employer’s authority; or
- (b) Struck (within the meaning of subsection (1) of section 2 of the Industrial Relations Act 1973); or
- (c) Been locked out (within the meaning of that subsection); or
- (d) Been suspended.

(2) Notwithstanding anything to the contrary in any award, determination, collective agreement, or like agreement, but subject to subsection (3) of this section, an employer who has made an overpayment to any worker may recover the amount of that overpayment from any wages to the payment of which by that employer that worker subsequently becomes entitled.

(3) No employer shall recover an overpayment under subsection (2) of this section unless—

- (a) By virtue of the methods or equipment normally used by that employer in arranging the payment of, or paying, wages to the worker concerned, it was not reasonably practicable for that employer to avoid making that overpayment; and
- (b) Before recovering that overpayment, that employer gives that worker notice of that employer’s intention to recover it; and
- (c) That notice is given—
 - (i) Not later than 10 days after the next pay-day, in the case of a worker who has no fixed workplace:

(ii) Not later than the first day upon which that worker attends that worker's workplace after the next pay-day during normal working hours, in the case of a worker with one fixed workplace who did not attend that workplace during normal working hours on the next pay-day:

(iii) Not later than the first day upon which that worker attends one of that worker's workplaces after the next pay-day during normal working hours, in the case of a worker with 2 or more fixed workplaces who did not attend any of them during normal working hours on the next pay-day:

(iv) Not later than the next pay-day, in every other case; and

(d) That overpayment is recovered not later than 2 months after that notice is given.

(4) The validity of a notice purportedly given under subsection (3) (b) of this section shall not be affected by the fact that—

(a) It does not specify the amount of the overpayment concerned but specifies only the day on which that overpayment was made and the actions that led to its being an overpayment:

(b) It is one of a number of identical notices given to a group of workers to only some of whom an overpayment has been made, and provides that it applies to the worker to whom it has been given only if an overpayment has been made to that worker.

7. Wages to be payable in money—Subject to sections 8 to 10 of this Act, an employer shall pay the wages of every worker in money only.

Cf. 1964, No. 58, s. 4 (1)

8. Workers employed by the Crown or local authorities—The Crown, or a local authority, may pay to a worker by specified cheque any wages that have become payable to that worker.

Cf. 1964, No. 58, s. 4 (3)

9. Agreement as to manner of payment of wages—(1) An employer may,—

(a) With the written consent of a worker; or
 (b) On the written request of a worker,—
 pay to that worker by postal order, money order, specified cheque, or lodgment at a financial institution to the credit of an account standing in the name of that worker or in the name of that worker and some other person or persons jointly, any wages that have become payable to that worker.

(2) A worker may vary or withdraw a consent given or request made by that worker under subsection (1) of this section by giving the employer written notice to that effect; and in that case, that employer shall—

(a) Within 2 weeks of receiving that notice, if practicable; and
 (b) As soon as is practicable, in every other case,—
 commence paying that worker in money, or in some other manner in accordance with subsection (1) of this section.

Cf. 1964, No. 58, ss. 6, 9

10. Payment where worker absent—Where any wages become payable to a worker who is for the time being absent from the proper or usual place for their payment, that worker's employer may pay them to that worker by postal order, money order, or specified cheque.

Cf. 1964, No. 58, s. 6 (4)

11. Worker may recover wages—(1) Subject to subsections (2) and (3) of this section, a worker may recover from that worker's employer, by action in a District Court,—

(a) Any deduction made (otherwise than pursuant to section 6 of this Act) by that employer from wages that have been paid, or but for that deduction would have been paid, by that employer to that worker, if—

(i) That deduction was not consented to, or requested by, that worker in writing; or

(ii) The making of that deduction was consented to, or requested by, that worker in writing; but the consent or request concerned was obtained by threat of dismissal, or otherwise by duress:

(b) An amount equal to any wages required by section 7 of this Act to be paid to that worker in money, if that employer paid those wages to that worker otherwise than in money.

(2) No action under subsection (1) of this section shall be brought after the expiration of 6 years from the date on which the cause of action concerned arose.

(3) No such action shall be brought in respect of any cause of action that arose more than 2 years before the commencement of this Act.

Cf. 1964, No. 58, ss. 4 (2), 7 (2), 8

12. Employer not to stipulate as to mode of spending wages—No employer shall impose any requirement on any worker as to any place or manner in which or any person with whom that worker shall expend wages received by that worker, or dismiss any worker on account of any place or manner in which or any person with whom that worker expends those wages.

Cf. 1964, No. 58, s. 5

13. Offences—Where any payment is made by or on behalf of any employer in contravention of this Act, or where any employer or any person on that employer's behalf contravenes or fails to comply with any of the provisions of this Act, that employer commits an offence against this Act and shall be liable on summary conviction to a fine not exceeding \$500.

Cf. 1964, No. 58, s. 10

14. Employer may have actual offender charged—
(1) Where an employer is charged with an offence under this Act, that employer shall be entitled upon information duly laid by that employer to have any other person whom that employer alleges to be the actual offender brought before the District Court Judge on the same charge; and to enable both charges to be heard together, the charge against that employer may be adjourned for such time as the District Court Judge thinks reasonable.

(2) If any charges are heard together under subsection (1) of this section and the offence concerned is proved, but the District Court Judge finds that—

- (a) That offence was committed in fact by the other person concerned, without the consent or connivance of the employer concerned; and
 - (b) That employer had done all that could reasonably be expected of that employer to prevent the offence,—
- that other person shall be convicted of that offence, and that employer shall not be guilty of that offence.

Cf. 1981, No. 25, s. 64

15. Act subject to other enactments—Subject to sections 6 (2) and 16 of this Act, this Act shall be read subject to the provisions of any other Act.

Cf. 1964, No. 58, s. 11

16. Provisions in awards, determinations, etc.—(1) Subject to subsections (2) to (4) of this section and section 6 (2) of this Act, nothing in this Act derogates from or makes it unlawful to comply with—

(a) Any provision of any award, determination, collective agreement, or like agreement; or

(b) Any provision of any order of any Court or tribunal.

(2) Notwithstanding anything in any award, determination, collective agreement, or like agreement, after the 1st day of June 1984, no employer shall, without the written authority of a worker, deduct any amount from the wages of the worker and pay it (whether directly or indirectly)—

(a) To any union of workers or other society of workers; or

(b) To any other person for, or for the use of, or to be held on behalf of or subject to the directions or control of, any such union or society.

(3) Where, before or after the 1st day of June 1984, any worker gives to his employer notice in writing informing him that any authority that the employer has, by reason of the written authority of the worker, to make deductions and payments of the kind specified in subsection (2) of this section is withdrawn, the employer shall cease to make, in respect of that worker, deductions and payments of that kind within a period of 2 weeks from the date on which that notice is given to him or as soon as practicable after the expiration of that period.

(4) Where, before the 1st day of June 1984, any worker gives to his employer notice in writing informing the employer that the worker has ceased to be a member of a union of workers or society of workers, the employer shall, within a period of 2 weeks from the date on which that notice is given to him or as soon as practicable after the expiration of that period, cease to make, in respect of that worker, deductions and payments of the kind specified in subsection (2) of this section.

Cf. 1964, No. 58, s. 11

17. Saving—Any contract for the payment of wages by cheque, draft, or order in writing for the payment of money to the bearer on demand drawn on any bank, made before

the 17th day of November 1964 shall continue to have effect according to its tenor notwithstanding the provisions of this Act.

Cf. 1964, No. 58, s. 6 (5)

18. Act to be administered in Department of Labour—

(1) This Act shall be administered in the Department of Labour.

(2) The First Schedule to the Labour Department Act 1954 (as substituted by section 2 (2) of the Labour Department Amendment Act 1979 and from time to time thereafter amended) is hereby amended by omitting from the item “The Wages Protection Act 1964.” the expression “1964”, and substituting the expression “1983”.

Cf. 1964, No. 58, s. 12

19. Consequential repeals—The Wages Protection Act 1964 and the Wages Protection Amendment Act 1983 are hereby consequentially repealed.

This Act is administered in the Department of Labour.
