

WE KNOW

# HUMAN RESOURCES

## Unions and the Employment Relationship

This Guide provides information for employers bound by one or more collective agreements or in the process of negotiating a collective agreement. Specifically it will cover obligations an employer has in relation to:

- new employees; their terms of employment (the so called '30-day rule');
- sharing new employee information with the union;
- providing employees with information about unions;
- unions' right of entry to the workplace without the need to obtain the employer's prior consent; and
- allowing reasonable paid time within normal working hours to union delegates undertaking union activities.

The matters referred to in this Guide arise from wider-ranging law introduced with the Employment Relations Amendment Act 2018, which **will take effect from 6 May 2019 (except for the union right of entry provisions which took effect from 12 December 2018)**.

Much of the Amendment Act's provisions were directed at restoring the law to the position it was in prior to amendments made during the term of the former National government. Some provisions, including the requirement to provide information about unions to new employees and payment for union delegates undertaking activities relating to representing other employees during normal working hours, are new.

### The '30-day rule'

Where the work to be performed by a new, non-union employee falls within the coverage of an applicable collective agreement, for the first 30 days of employment their terms and conditions under an individual employment agreement must comprise the terms of the collective agreement that would bind the employee if that employee were a union member (excluding any bargaining fee that would otherwise be payable) and any additional, agreed terms that are no less favourable to the employee than the terms of the collective agreement.

After the 30-day period, the employer and the employee are free to agree to any alternative terms and conditions, including where they may be less favourable. However, if the employee becomes a union member, then the employee's terms and conditions of employment may not be less favourable to the employee than the terms of the applicable collective agreement.

In the case of an employee who is not a union member, the employee's individual employment agreement continues to comprise the terms of the collective agreement unless and until such time as the parties agree to vary those terms. It is not possible to enter into an agreement in advance of or during the first 30 days of employment which includes less favourable terms than those of the applicable collective agreement and which automatically takes effect after the 30-day period.

Where there is more than one collective agreement covering the work to be performed by the new employee, the employee's terms of employment for the first 30 days shall be those of the collective agreement applicable to the greatest number of employees performing that work.

Only union members can be bound by a collective agreement.

### **Other legal obligations, including providing information about unions to prospective employees**

When bargaining for an individual employment agreement for prospective employees in the above circumstances, the law requires an employer to do several things. An employer must inform the employee:

- that a collective agreement exists and covers the work to be performed by the employee;
- that the employee may join a union that is a party to the collective agreement;
- how to contact the union;
- that if the employee joins the union the prospective employee will be bound by the collective agreement; and
- that if the employee enters into an individual employment agreement, their terms and conditions of employment during the first 30 days of employment will comprise the terms and conditions of the collective agreement and any additional terms and conditions mutually agreed that are no less favourable to the employee than the terms of the collective agreement.

The employer must also provide the prospective employee with –

- a copy of the collective agreement; and
- information about the role and functions of the union that the employer has agreed to provide after receiving a request from the union.
  - Where the union requests that hard copies of the information be provided, this must be supplied by the union and the employer must notify the union in writing the employer requires further hard copies in order to comply with the request.

It is important to note that consent to such a request will be deemed to have been given if the employer does not respond to the request within 15 working days. Employers may refuse a request only in certain circumstances relating to the nature of the information (for further advice contact our Employment Relations Advisers).

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## Sharing information about new employees with unions

When an employee commences employment under the '30-day rule' the employer must, within 10 days of commencing employment, provide the employee, in hardcopy or in a digital format, with an [active choice form](#)\* that the employee may complete (it is optional) and return to the employer within 30 days of commencing employment, for the purposes of -

- notifying the employer whether the employee intends to join a union (or a particular union);
- objecting to the employer providing information about the employee to –
  - if the employee does not intend to join a union, any union
  - if the employee intends to join a particular union, any other union.

The form must be accompanied by a notice that –

- specifies the period during which the employee may complete and return the form (30 days after commencing employment);
- explains that, unless the employee objects, the employer will provide the following information to each union that is a party to a collective agreement that covers the work to be done by the employee.

The specified information is –

- the name of the employee;
- whether the employee has notified the employer that the employee intends or does not intend to join the union; or
- has not completed and returned the form during the required period.

*Unless the employee has objected to the release of information (by ticking the relevant box on the form), the employer must provide either the completed form or the notice that the employee did not complete and return the form, to each union that is party to a collective agreement covering the work to be done by the employee, within 10 working days of the expiry of the period stated in the notice.*

If an employer fails to comply with these requirements, it will be liable to a penalty imposed by the Employment Relations Authority (maximum penalty \$20,000).

## Union rights of entry without first obtaining employer's consent

Union representatives are normally required to request and obtain the employer's consent (which may not be unreasonably withheld) before entering a workplace at which their members are employed or where employees covered by the union's membership rules are reasonably believed to be employed. These rights must be exercised in a reasonable manner and at reasonable times and having regard to the employer's existing reasonable procedures and requirements in relation to safety or health and security.

However, the requirement for prior consent does not apply if, at the time of the representative's entry, there is a collective agreement in force between the employer and the union and the coverage clause of the collective agreement covers the work done by employees at the workplace. It also does

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not apply if bargaining for a collective agreement has been formally initiated in accordance with the requirements of the Employment Relations Act and the intended coverage covers the work performed by employees at the workplace.

Right of entry must relate to one or more of the following purposes –

- relating to the employment of the union’s members;
- relating to the union’s business; or
- relating to the health and safety of any employee on the premises who is not a union member if the employee request’s the unions assistance on those matters.

### **Allowing ‘reasonable’ paid time to union delegates to undertake union activities**

An employee who has been appointed or elected as a union delegate in accordance with the union’s rules, to represent other employees of the employer who are union members, is entitled to spend reasonable paid time during the employee’s normal hours of work on matters relating to their employment provided:

- activities relate to representation of employees of the employer; and
- activities would not unreasonably disrupt the employer’s business or the union delegate’s performance of employment duties.

Before undertaking such activities, the delegate must either agree with the employer that they may undertake such activities from time to time without notice, or they must notify the employer when and for how long the delegate intends to undertake these activities on each occasion.

An employer may refuse to allow the delegate to undertake these activities if on reasonable grounds the employer is satisfied that the activities would unreasonably disrupt the employer’s business or the delegate’s performance of employment duties.

Time spent on activities under this provision must be paid at the rate of pay the employee would otherwise have received if the delegate were performing their ordinary duties during that time.

An employer is free to agree to provide enhanced arrangements.

For further information in relation to these or any other employment matters please contact an Employment Relations Adviser at The Chamber.

\* <https://www.employment.govt.nz/assets/Uploads/c3173a524a/form-to-indicate-intention-to-join-union.pdf>

Further guidance for employers here –

<https://www.employment.govt.nz/assets/Uploads/13d74dbe3a/guidance-for-employers-in-providing-the-form.pdf>

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