

Module	<b>EMPLOYMENT LAW</b>
Jurisdictions	<b>NEW ZEALAND</b>
Legal Expert	<b>TANIA GOATLEY</b> Partner at Bell Gully <a href="https://www.bellgully.com/our-people/tania-goatley/">https://www.bellgully.com/our-people/tania-goatley/</a> <a href="https://www.linkedin.com/in/tania-goatley-0310119a/">https://www.linkedin.com/in/tania-goatley-0310119a/</a>

## Module Scope

Does the organisation deal with its employees in good faith and ensure that every employee has a written employment agreement?

Does the organisation ensure that all employees are provided with all of their employment entitlements, at a minimum?

Does the organisation deal with unions in good faith and also negotiate fair pay agreements in good faith, when required?

Does the organisation ensure that all employees are treated fairly in the workplace in relation to all employment matters?

Does the organisation keep all of the required employment records for its employees and take into consideration privacy requirements?

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## Module Application

The NEW ZEALAND EMPLOYMENT module outlines the obligations New Zealand employers must comply with in relation to their employment relationships with their employees. The module outlines the laws as they apply to an employer with detailed steps to be taken to ensure compliance.

The module covers the obligations of employers where they must provide employees with their legislated entitlements, and employers must ensure that all dealings with employees and unions are conducted in good faith.

The core obligations for New Zealand employers are covered by the module and include:

- › Good faith principle — all parties to an employment relationship are required to deal with each other in a fair and transparent way
- › Union matters — unions are entitled to access workplaces and employees have the right to union membership without fear of reprisals
- › Collective bargaining — the employer must undertake collective bargaining when required and must bargain in good faith

- › Fair pay agreements — when required, employers must bargain in good faith when negotiating fair pay agreements
- › Individual employment agreements — all employees not bound by a collective agreement must have a written individual employment agreement that meets all of the legislated requirements
- › Employee entitlements — the organisation must provide employees with all legislated entitlements, such as at least the relevant minimum wage, rest and meal breaks, breastfeeding facilities, flexible working arrangements, KiwiSaver and requirements for apprentices
- › Foreign workers — employers must comply with all immigration and visa requirements when hiring foreign workers
- › Holidays and leave — the organisation must provide employees with all leave entitlements, such as public holidays, annual holidays, sick and bereavement leave, family violence leave, and entitlements in relation to the armed forces
- › Accrediting industry training organisations — governing the special entitlements of apprentices
- › Parental leave — the organisation must provide eligible employees with their parental leave entitlements
- › Fair treatment in the workplace — employees are entitled to fair treatment in the workplace and the module covers areas such as discrimination, sexual and racial harassment, workplace bullying, equal pay and pay equity claims, working with young people and triangular employment relationships
- › Ending employment — employers can only dismiss employees for a justifiable reason and if they follow a fair process
- › Grievances and authorities — resolution of disagreements between employers and employees, and the module covers areas such as personal grievances, Employment Relations Authority (ERA) determinations, and other enforcement actions
- › Business restructures — the organisation must facilitate the transfer of protected workers between employers and comply with the requirements in relation to redundancy payments, required disclosures and liability for costs
- › Strikes and lockouts — the performance of a strike or a lockout executed in accordance with the legislation
- › Record keeping and privacy — employers must manage information about their employees in accordance with legislation and they must keep the required records in relation to minimum entitlement records, wage and time records, and holiday and leave records

To assist employers with their obligations, the module provides a series of questions addressed to the employer including:

- › Are we applying the principle of good faith?
- › Are we communicating effectively?
- › Are our actions discriminatory?
- › Are we ensuring that employees are treated fairly in the workplace?
- › Are we providing all employees with their entitlements?
- › Are we meeting the conditions of employment agreements?
- › Are we keeping appropriate records?
- › Are we protecting our employees' privacy?
- › Have we performed the necessary notifications?

- › Have we checked that all foreign workers are eligible to work in New Zealand?
- › Are we negotiating fair pay agreements in good faith and meeting our obligations in relation to unions and collective bargaining?

To answer these questions, the module expands on the relevant obligations and provides guidance, instructions and advice to employers to ensure obligations are met.

The NEW ZEALAND EMPLOYMENT module is derived from various pieces of legislation, such as:

- › Child Support Act 1991
- › Contract and Commercial Law Act 2017
- › Contract and Commercial Law (Electronic Transactions) Regulations 2017
- › Employment Relations Act 2000
- › Employment Relation (Prescribed Matters) Regulations 2000
- › Employment Relations Authority Regulations 2000
- › Employment Relations (Infringement Offences) Regulations 2019
- › Education and Training Act 2020
- › Equal Pay Act 1972
- › Fair Pay Agreements Act 2022
- › Fair Pay Agreements Regulations 2022
- › Holidays Act 2003
- › Human Rights Act 1993
- › Industry Training and Apprenticeships Act 1992
- › Immigration Act 2009
- › Immigration (Visa, Entry Permission, and Related Matters) Regulations 2010
- › Income Tax Act 2007
- › KiwiSaver Act 2006
- › Minimum Wage Act 1983
- › Minimum Wage Order 2023
- › New Zealand Bill of Rights Act 1990
- › New Zealand Superannuation and Retirement Income Act 2001
- › Parental Leave and Employment Protection Act 1987
- › Parental Leave and Employment Protection Regulations 2016
- › Privacy Act 1993
- › Protected Disclosures (Protection of Whistleblowers) Act 2022
- › Student Loan Scheme Act 2011
- › Tax Administration Act 1994
- › Te Ture mō te Hararei Tūmatanui o te Kāhui o Matariki 2022 Te Kāhui o Matariki Public Holiday Act 2022
- › Volunteers Employment Protection Act 1973
- › Wages Protection Act 1983
- › Worker Protection (Migrant and Other Employees) Act 2023

The Employment Relations Act 2000 (the Act) is the primary piece of legislation used in employment law in New Zealand. The NEW ZEALAND EMPLOYMENT module covers how the Act provides an overall framework for establishing and maintaining mutually beneficial relationships between employers and employees by:

- › Establishing a requirement for the details of every employment relationship to be formalised in a written agreement
- › Granting the powers of employment authorities
- › Creating a process for employees to raise personal grievances
- › Requiring all parties to deal with each other in good faith

The Act also establishes the ERA, which is an independent investigative body that assists the dispute resolution process for employers and employees by:

- › Providing mediation and facilitation services
- › Concluding bargaining and fixing terms of agreements
- › Investigating personal disputes raised by aggrieved parties
- › Interpreting employment agreements
- › Healing disputes involving specified pay deductions, minimum wage entitlements, and parental leave
- › Reviewing applications for the reinstatement of dismissed employees

In addition to the ERA, the module also covers the role and responsibilities of the other authorities overseeing employment matters in New Zealand, which include the:

- › Employment Court — hears challenges to determinations made by the Employment Relations Authority
- › Labour Inspectorate — is a function of the Ministry of Business, Innovation and Employment. The role of inspectors is to visit workplaces and check that employees are receiving their legislated entitlements
- › Human Rights Review Tribunal — hears and determines matters relating to privacy and human rights legislation

If an organisation has failed to meet its obligations to employees or unions, then it is obligated to communicate this failure and take reasonable steps to rectify the situation. The NEW ZEALAND EMPLOYMENT module covers actions designed to mitigate the consequences of specific failures and also the potential consequences to an employer that breaches its obligations, including:

- › Orders to reinstate dismissed employees
- › Orders to compensate employees for lost wages
- › Remedial actions designed to prevent further breaches
- › Payment of penalties for breaches
- › Compliance and banning orders
- › Improvement and demand notices
- › Enforceable undertakings

The NEW ZEALAND EMPLOYMENT module covers the role of the employer. The module does not cover the role or actions to be taken by employees, either individually or as a group, in the event of a breach of regulations or obligations by an employer.

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