

21 May 2025

Committee Secretariat
Education and Workforce Committee
Parliament Buildings
Wellington
ew@parliament.govt.nz

Retail NZ submission: Employment Relations (Termination of Employment by Agreement) Amendment Bill

Overview

1. Retail NZ is a membership organisation that represents the views and interests of New Zealand's retail sector. We are the peak body representing retailers across Aotearoa, with our membership accounting for nearly 70% of all domestic retail turnover. New Zealand's retail sector comprises approximately 30,000 businesses and employs around 227,000 Kiwis.
2. Retail NZ consulted our membership in the preparation of this submission.
3. Retail NZ is supportive of the overall aim of this Bill, which would enable employers to conduct negotiations with employees to terminate the employee's contract without the risk of grievance for constructive dismissal. We recommend some further clarification to ensure that employers and employees understand their rights and obligations under this amendment.

Support for the Bill

4. Most retail employers strive to do the right thing by their employees. However, many small to medium-sized employers struggle to navigate the complexities of employment legislation when managing difficult situations with employees and face the risk of personal grievances even when they can prove substantive justification for dismissal or disciplinary action.
5. In 2025, approximately 15% of Retail NZ Advice Service queries were related to performance management, disciplinary issues, and personal grievances. Many Retail NZ members feel stuck in a loop of performance conversations, improvement plans, and warnings to employees who chronically underperform or engage in misconduct.
6. In a retail setting, a problematic employee can significantly impact on customer relationships and reputation, staff morale, and store operations. Retail NZ members feel that having the option to engage in frank, constructive conversations with such employees would reduce the risk to their business from ongoing issues caused by these employees, and save significant time and financial resources which would otherwise be dedicated to fruitless efforts to change the behaviour or performance of individuals who are not the right fit for the organisation, or refuse to act in good faith.
7. The risk of personal grievances due to procedural unfairness is particularly burdensome for small-to-medium businesses, which often lack the capacity to manage the associated legal and administrative challenges. These business owners typically do not have dedicated HR resources and must rely on publicly available information about employment legislation and processes--information that often requires extensive research and expert interpretation. Despite their best efforts to follow correct procedures and remain compliant, small-to-medium businesses face a higher risk of misinterpretation compared to larger companies with fully-resourced HR teams and legal services on retainer. Given that small-to-medium businesses constitute the majority of the business sector in New Zealand, it is crucial that

they receive the appropriate support and options to help them thrive within the broader economy.

8. Our members believe that this Bill would provide greater flexibility for both employers and employees in situations where it is evident that the employment relationship is not working. Currently, there is often no clear path to a mutually acceptable resolution. This legislation would help address that gap, facilitating more effective and amicable outcomes for both parties.

Further considerations and recommendations

9. The general policy statement indicates that an employer may negotiate an exit with an employee if "the demands of the business mean that it is imperative to dismiss the employee". This provision could potentially be misused to bypass fair consultation processes in cases of redundancy, to address personal conflicts, or to avoid genuinely called-for performance management, training, and development efforts that could improve performance and work relationships. Retail NZ members' feedback acknowledged a possible power imbalance in favour of employers, and included a suggestion of imposing a minimum settlement amount that may help offset this imbalance—for example, a minimum equivalent of the employee's contracted notice period.

We recommend that the amendment Bill emphasise employers' continued obligations to act in good faith in all employment matters, and include further clarification on the specific contexts or situations where it would be inappropriate for employers to use this option.

10. The Bill does not specify if employers would be required to include a clause in their employment agreements regarding protected exit negotiation. Many employers currently have language in employment agreements that specifically outlines the avenues for ways employment can terminate, which could conflict with the protections under this Bill. Additionally, it is unclear if the Bill would also be applicable to employees on collective agreements or who are part of a union. We recommend that the Bill include further clarification regarding:
 - Under what terms and conditions will this Bill be applicable?
 - Will employers be required to include a clause in employment agreements regarding protected negotiations for employee exits?
 - If so, does this mean the Bill would not be applicable to existing employees? In that case, would the Bill become applicable to existing employees after some period (e.g. 12 months)?
11. Currently, employers who undergo mediation with employees must have their record of settlement certified by MBIE for the agreement to be legally admissible. This Bill does not specify whether a similar requirement would apply under this amendment, where negotiations would presumably occur directly between the employer and employee and not as part of mediation procedures. We recommend further clarification on whether the same requirements for records of settlement will apply under this Bill. We also recommend further guidance regarding how this Bill would interact with other employment legislation to ensure a cohesive legal framework.
12. The Bill states in section 101B(1) that "Evidence of pre-termination negotiations under section 101A is inadmissible in any proceeding before the Authority". However, it is unclear whether these protections extend beyond the negotiation conversations if the employee declines an offer to settle an exit agreement. If an employee becomes aware that the employer wants them to leave, they may experience or perceive retaliation or constructive dismissal efforts after the protected negotiation occurs. This could expose employers to risk later on and may also increase pressure on employees to agree to an exit settlement to avoid perceived retaliation or unfair treatment in their employment. We recommend that the Bill provide further clarification on the scope of these protections to ensure fair treatment for both parties.

Conclusion

13. To summarise, Retail NZ supports the intent of the Bill, believing it will benefit employers in the retail sector. However, we recommend further clarification to minimise risks to employers and ensure continued fair treatment of employees.
14. Thank you for the opportunity to make a submission. Retail NZ would like the opportunity to make an oral submission to the committee.
15. No part of this submission should be withheld under the OIA.

Sincerely,



Ann-Marie Johnson
Manager, Advocacy, Advice & Communications
Retail NZ
advocacy@retail.kiwi