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Education and Workforce Committee
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Retail NZ submission: Employment Relations 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 supports the overall intent of the Employment Relations Amendment Bill, and its objectives to enhance labour market flexibility, reduce compliance costs, and rebalance the personal grievance setting. Our members believe these are positive steps towards fostering business confidence to drive investment, create sustainable employment opportunities for New Zealanders, and support the Government's wider 'Going for Growth' agenda.

Subpart 1—Amendments relating to specified contractors

4. Retail NZ supports the introduction of a contractor gateway. This test provides much-needed clarity around the distinction between employees and independent contractors, which is especially important for retail businesses that rely on flexible staffing models to meet seasonal and operational demands.
5. By clearly defining the criteria for 'specified contractors', the gateway test helps retailers ensure compliance with employment law while maintaining the agility needed to operate efficiently. It reduces the risk of misclassification and provides both businesses and contractors with greater certainty about their rights and responsibilities.
6. Importantly, the test also protects genuine contractors by ensuring they have the freedom to work for multiple clients, set their own schedules, and seek independent advice before entering into agreements. These safeguards strike a fair balance between flexibility and accountability.

Subpart 2—Amendments relating to remedies for personal grievance if contributing behaviour by employee

7. Retail NZ supports the proposed amendments that ensure that remedies cannot be awarded against an employer or third parties when an employee's own serious misconduct contributed to a personal grievance. This change provides greater fairness and clarity for retailers who engage third-party labour agencies, helping to protect them from undue liability in situations where the employee's actions were a significant factor. It reinforces shared accountability and supports a more balanced approach to resolving employment disputes.

8. Retail NZ also supports the proposed amendments that limit or remove remedies in cases where an employee's own serious misconduct or inappropriate behaviour contributed to a personal grievance. For small and medium-sized retailers, these changes provide essential protection against having to pay large sums in compensation to individuals whose actions were clearly at fault. It is not reasonable for an employer to be required to reinstate an employee where there is clear evidence of serious misconduct, solely due to a minor procedural oversight during the disciplinary process. In addition, reinstatement of an employee after such contentious relations is likely to create or perpetuate further issues down the line. The ability to reduce or deny remedies in such cases promotes fairness, encourages accountability, and helps safeguard the financial sustainability of businesses operating on tight margins.
9. Retailers acknowledge the importance of requiring a fair process when determining misconduct or serious misconduct, to ensure employees are not unjustly accused or disadvantaged. We support the continued expectation that employers act in good faith and follow fair procedures. However, where minor procedural errors occur that do not materially disadvantage the employee, and the employer has conducted a genuine investigation that substantiates misconduct or serious misconduct, the employer should not be penalised for those minor flaws—especially given the serious consequences of failing to address such behaviour promptly and appropriately.
10. To strengthen the effectiveness of these amendments, and to further support employers, we recommend that the Bill includes a clearer definition of what constitutes 'serious misconduct'. We also recommend that the Bill further clarify what other claims and remedies may be made available in cases where serious misconduct is substantiated—for example, claims of discrimination, hurt and humiliation, etc.

Subpart 3—Amendments relating to specified wages and salary threshold

11. Retail NZ supports the intent behind introducing a wage threshold for personal grievances, recognising the Government's aim to streamline employment relations for high-income earners. However, members have raised concerns regarding the drafting and potential implications of this provision.
12. The inclusion of a provision allowing employers and employees to contract out of the personal grievance exemption has the risk of overcomplicating the negotiation process between employers and prospective, high-salaried workers. Some retailers and legal experts have cautioned that removing the ability to file a personal grievance for unjustified dismissal may inadvertently lead to an increase in private litigation over contractual disputes. Feedback to Retail NZ suggests that existing legislative frameworks already offer sufficient mechanisms for resolving employment issues involving high-income earners. Moreover, this issue does not appear to be a widespread concern among the majority of retailers in New Zealand.
13. Retail NZ members have also expressed concern about the threshold being based solely on base salary. This approach could lead to several unintended outcomes, including:
 - employees negotiating lower base salaries in exchange for higher bonuses or allowances to remain below the threshold
 - disparities in employment protections between employees performing similar roles but receiving different remuneration due to seniority or experience.
14. To ensure fairness and avoid loopholes, Retail NZ recommends the following considerations if a threshold is to be implemented:
 - raise the threshold to align with the 95th percentile of New Zealand earners, ensuring that only those with genuine bargaining power are excluded from personal grievance protections

- include guaranteed bonuses and allowances in the wage calculation to prevent manipulation of remuneration structures aimed at circumventing the threshold
 - introduce a clause in the Employment Relations Act to exclude employees earning above the proposed wage threshold from coverage under collective employment agreements. If the policy assumption is that high-income earners possess sufficient individual bargaining power to negotiate their own terms, then it logically follows that they do not require the protections afforded by union membership or collective bargaining. This change would ensure consistency in the application of the law and reinforce the principle that collective agreements are designed to support employees with limited negotiating power.

Subpart 4—Amendments relating to collective agreements and new or prospective employees

15. Retail NZ supports the proposed amendments to collective coverage requirements in the Employment Relations Act.
16. Under the current legislation, new employees who are not union members must be employed on the terms of a collective agreement for the first 30 days if their role is covered by one. This requirement can be administratively burdensome and confusing for both employers and employees. Retail NZ supports the proposed change that would allow employers to simply provide prospective employees with copies of the individual and collective agreements, and reasonable time to review both documents and seek independent advice, before the employee's commencement date.
17. This approach ensures employees retain the freedom to choose their preferred terms and conditions before commencing work, while removing the administrative burden associated with the current 30-day rule. It also reflects the reality of modern retail employment, where flexibility and clarity are essential during recruitment.
18. The current requirement for new employees to be automatically covered by a collective agreement for the first 30 days effectively prevents employers from using a valid 90-day trial period. Since the trial provision requires that an individual employment agreement be signed before the employee begins work, the 30-day rule creates a legal and practical barrier to accessing this important flexibility tool. Removing this restriction will help retailers manage staffing risks and improve hiring confidence.
19. Further to the above, Retail NZ supports the other proposed changes to collective coverage requirements in the Act. In organisations where unions are present, union delegates are typically available within the workforce and are best placed to provide new employees with information about union membership. There is no compelling reason for employers to act as intermediaries in this process, particularly when unions have their own communication channels and mechanisms for engagement.
20. Retail NZ also agrees that employers should not be required to collect or transmit union opt-in or opt-out forms, nor notify unions of new eligible employees without the employee's explicit written consent. Employers are responsible for offering fair, lawful, and transparent employment terms. If an employee chooses to explore union membership or collective agreement coverage, this should not impose additional compliance burdens on the employer—especially in retail environments where high staff turnover and casual employment are common. These changes will help protect employee privacy and reduce the risk of inadvertent breaches of confidentiality.

Subpart 5—Other amendments

21. Retail NZ supports the proposed amendments in Subpart 5 of the Employment Relations Amendment Bill, which clarify the application of trial periods and refine the test of justification for dismissals. These changes are particularly important for retailers, who

often operate in dynamic environments with high staff turnover, variable staffing needs, and limited HR resources.

22. The clarification that employees dismissed under a valid 90-day trial period cannot bring a personal grievance for unjustified dismissal reinforces the original intent of the trial provision. Retailers rely on trial periods to assess suitability for roles in fast-paced, customer-facing environments. The current ambiguity around grievance rights during trial periods has created legal uncertainty and discouraged some employers from using this tool. The proposed amendment to section 67B provides much-needed clarity and confidence for retailers to engage new staff while managing risk appropriately.
23. Retail NZ also supports the amendment to section 103A, which strengthens the fairness test by requiring the Employment Relations Authority and Employment Court to consider whether an employee's behaviour obstructed the employer's ability to act fairly and reasonably. This is a practical and balanced addition that reflects the realities of managing staff in retail settings, where employers must often make decisions quickly and with limited information. It ensures that employers are not penalised for procedural imperfections that did not result in unfair treatment, especially in cases where employees may have contributed to the breakdown of the employment relationship.
24. Together, these amendments help restore balance to the employment relationship and provide retailers with clearer, more workable legal standards. They support fair outcomes while recognising the operational constraints and staffing challenges faced by retail businesses across New Zealand.

Conclusion

25. Thank you for the opportunity to make a submission. Retail NZ appreciates the opportunity to provide feedback on the Employment Relations Amendment Bill. We support the Bill's overarching goals of improving flexibility, reducing compliance burdens, and ensuring fair and balanced employment relationships.
26. To further enhance the effectiveness of this Bill, we believe that several provisions require refinement to ensure they are practical, equitable, and effective for businesses operating in the dynamic retail environment. In summary, we recommend the following:
 - refine the wage threshold by aligning it with the 95th percentile of earners and including guaranteed bonuses and allowances in the calculation to prevent manipulation
 - clarify and strengthen protections for employers in personal grievance cases involving serious misconduct, ensuring remedies are proportionate and do not penalise minor procedural errors.
27. Retail NZ would like the opportunity to make an oral submission to the committee.
28. No part of this submission should be withheld under the OIA.

Sincerely,



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