

The Fair Pay Agreement Act – the highlights

How will it work?

An eligible Union can initiate bargaining if the proposed coverage area is clearly defined and it meets the Representation Test or the Public Interest test.

Coverage

There are two options:

- the industry or type of industry (for example, an FPA that would cover butchers and bakers in the supermarket and grocery industry); OR
- the occupation, including the work or type of work (for example, covering all commercial cleaners).

An industry-based agreement will apply to all employees employed in the occupation and industry covered by the Agreement. An occupation-based agreement will apply to all employees who are employed in the occupation covered by the Agreement.

The Representation Test

1,000 covered employees support initiating bargaining OR 10% of all covered employees support initiating bargaining. Employees do not need to be Union members to support bargaining.

The Public Interest Test

An alternative to the Representation Test. One or more of the following factors must apply:

- receive low pay for work;
- have little bargaining power in employment;
- have a lack of pay progression;
- are not adequately paid, taking into account working conditions (long or unsocial hours or contractual uncertainty);

Union evidence for the Public Interest Test

- the coverage of the proposed Agreement includes a **high proportion of migrant workers**;
- **systemic exploitation of migrant workers**;
- most of the covered employees are **employed on a temporary basis**;
- there is a **systemic failure** to comply with **minimum employment standards** for the covered employees;
- a high proportion of the covered employees are employed by (**small to medium-sized employers**) (less than 20 employees);
- there are **systemic health and safety issues** for the covered employees.

Employer bargaining side

- one or more **employer associations**;
- an 'employer association' is essentially an incorporated society created specifically for bargaining for a Fair Pay Agreement. There has to be a demonstrable democratic, reasonable and lawful framework;
- must include at least one employer member within the coverage of the proposed agreement.

Employee bargaining side

Made up of the Union that initiated the bargaining and an unlimited number of eligible Unions.

Obligations on bargaining sides

Employer

- use best endeavors to represent the collective interests of all covered employers;
- provide regular updates about bargaining;
- provide all covered employers with an opportunity to provide feedback;
- consider all feedback received;

The Fair Pay Agreement Act – the highlights (Continued)

- use its best endeavors to ensure Maori employers are effectively represented.

Employee

- consider all feedback received;
- provide regular updates about the progress of the bargaining process;
- use best endeavors to ensure Maori employees are represented effectively.

Obligations on both bargaining sides

- agree an inter-party side agreement (setting out the details of how the bargaining side will make decisions).
- appoint a bargaining side lead advocate who will chair the bargaining parties and be the primary spokesperson.

Content

Compulsory

- date on which agreement comes into force;
- coverage of the agreement;
- normal hours required of each class of employee covered by the agreement;
- details of wages to be paid, including:
 - minimum base wage rates and when rates apply;
 - whether the minimum base wage rates include or exclude employer's contribution for superannuation;
 - the rates of payment for any overtime worked, and when they apply;
 - penalty rates and when the rates apply;
 - in relation to minimum base wage rates, overtime rates and penalty rates –
 - the specified amount by which they must be adjusted; or

- the calculation that must be used to adjust them.

- governance arrangements that will apply;
- the process for each bargaining side;
- the date on which the agreement expires.

A fair pay agreement must apply for a period that is not less than three years but not more than five years.

Compulsory content for discussion

- bargaining sides must discuss whether the proposed agreement will specify the following topics:
 - a) the objectives of the proposed FPA;
 - b) health and safety requirements;
 - c) arrangements relating to training and development;
 - d) arrangements relating to flexible working;
 - e) leave entitlements;
 - f) arrangements relating to any redundancy.

What agreements may include?

- anything that is not contrary to law or inconsistent with the Act;
- may include district variation for some provisions;
- may include differentiation for different classes of cover employees;
- no differentiation for size of employer businesses.

Good faith obligations applying to bargaining parties

- meet each other from time to time for the purpose of bargaining;
- consider and respond to each proposal made by the other bargaining side;
- continue to bargain even if a deadlock is reached;

The Fair Pay Agreement Act – the highlights (Continued)

- use best endeavors to agree terms in an orderly, timely and efficient manner;
- not to undermine bargaining;
- provide the other bargaining side with any information that:
 - the other side requests in accordance with section 92; and
 - is reasonably necessary to support or substantiate claims, or responses to claims.

Finalisation of agreement

- employment Relations Authority must complete a compliance assessment of agreement;
- no right of appeal from the Authority's decision;
- once approved by the Authority, each covered employer must advise its covered employees that a ratification vote will be held, provide them with the agreement and a plain language summary;
- an agreement is ratified if more than half the votes are in favour of ratification.

What if the parties cannot reach agreement?

- a bargaining side can apply to the Employment Relation Authority (panel of three ERA members) for a determination to fix the terms of the proposed agreement;
- this option is only available after bargaining sides have exhausted all other reasonable alternatives, such as mediation and the ratification process has failed twice;
- the Employment Relations Authority has broad scope to fix terms (can fix mandatory terms, terms relating to the mandatory topics of discussion or any other terms that the parties have agreed to include).

Coverage overlap

- the Employment Relations Authority must review the terms of the proposed agreements which overlap and determine which agreement provides the better terms overall for the employees within the coverage of both agreements. Those terms will then apply.

Penalties and enforcement

- penalty for non-compliance with obligation when bargaining:
 - individual - \$20,000 maximum
 - businesses - \$40,000 maximum
- penalty for non-compliance with obligation when fair payment agreement in force:
 - individual – not exceeding \$10,000.
 - businesses – not exceeding \$20,000.

Want to know more?

If you have any questions about this article, please contact our specialist [Employment Team](#).