

Fair Pay Agreements Bill – bargaining process explained

The Fair Pay Agreements (FPA) Bill has been introduced into Parliament, and will now go through a full Select Committee process. The government are hoping to pass it through all stages this year.

The purpose of the Fair Pay Agreement (FPA) system is to provide a framework for collective bargaining for industry-wide or occupation-wide minimum employment terms.

How will it work?

Initiating bargaining

An eligible union can initiate bargaining for an FPA if it:

- Has support from 10% of members, or 1,000 workers in the proposed coverage area; or
- A "public interest" test is met.

If the coverage were to substantially expand over the course of bargaining, the above would be re-tested. A union may not initiate bargaining if the proposed FPA has the exact same coverage as an existing FPA.

Coverage

Unions will decide what work is covered. The proposed FPA must be described as either industry-based or occupation-based. Where there is overlap between two FPAs, the Employment Relations Authority (Authority) must determine which FPA provides better terms overall for the employees covered by both agreements.

All employers and employees within the proposed coverage will be covered by the FPA. The Bill does however allow for an FPA to differentiate between employees located in different regions.

The parties can also agree to delayed commencement of some or all of an FPA for businesses suffering financial hardship.

The Government has indicated that FPAs will cover contractors in the future, however the Bill currently does not do so. Penalties will apply to employers who seek to avoid the coverage of FPAs by engaging employees as contractors.

Minimum requirements

Each fair pay agreement must specify when it comes into force and when it expires, its coverage (with sufficient clarity), the normal hours of work, minimum base wage rates (including when and how they are adjusted), overtime, penalty rates, any superannuation, the governance arrangements that will apply to the bargaining sides, and the process for each bargaining side to engage with the other bargaining side, if they are bargaining to vary the agreement.

The Bill also sets out several other topics that bargaining parties must consider whether to include, for example, health and safety requirements and leave entitlements. However, those do not need to be included in the fair pay agreement.

Unsuccessful bargaining

If the parties are unable to come to an agreement, they can access mediation, or a recommendation from the Authority. If this is unsuccessful, a party may seek a determination from the Authority to fix the terms of FPAs, and to resolve disputes during bargaining. There must be a panel of three Authority members when fixing the terms of an FPA.

Due to COVID-19, the Authority is already experiencing significant backlog. This additional role of the Authority, and requiring three members as opposed to one for fixing FPAs, is likely to require additional resourcing.

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Finalising an FPA

When bargaining for a proposed agreement is complete, it must be submitted to the Authority for a compliance assessment. The Authority will assess whether it complies with the Bill, employment standards, and any other relevant employment law requirements. The Authority must also check for coverage overlap.

Once the agreement has been approved and checked for coverage overlap, the proposed agreement must be ratified. The bargaining sides are to notify covered employees and covered employers that a ratification vote will soon be held. Covered employees are entitled to one vote each and covered employers are entitled to a number of votes determined by the number of covered employees they employ.

If the first ratification vote is against ratification, the bargaining sides must restart bargaining. If the second ratification vote is against ratification, either bargaining side may apply to the Authority to fix the terms of the proposed agreement.

Cost

Bargaining sides will be supported by training and a government provided bargaining support person. The government will also contribute up to \$50,000 per bargaining side, with additional funds if the side has low rates of membership of a union or industry group. The New Zealand Council of Trade Unions and Business New Zealand will each be offered \$250,000 per year to support their coordination roles in the FPA system. Business New Zealand has said it will not be involved given its opposition to the Bill.

Employers must allow (and pay for) employees to attend one meeting in relation to a proposed variation, and two meetings in relation to a proposed renewal or proposed replacement on ordinary pay. Meetings must last no longer than two hours.

What next?

The Bill will now go through the full parliamentary process before being finalised and passed into law. The public will have an opportunity to have their say during the Select Committee process.

The FPA system has been met with some criticism. Kirk Hope, Chief Executive of BusinessNZ has suggested "a better approach would be to introduce a limited set of sector-based minimum standards where a labour market problem has been established."

There are concerns that the Bill causes rigidity amongst a modern workforce that enjoys flexibility.

See our previous article [here](#) for more information on the FPA system. See our previous articles [here](#) and [here](#) for how we expect this will affect small businesses, and spark industrial action.

Want to know more?

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