

Wage theft is now a crime

The Crimes (Theft by Employer) Amendment Bill has now received royal assent and become law – so what does this actually mean?

The Bill was initially introduced into parliament by Labour MP Ibrahim Omer in the previous Parliamentary term, however it did not progress. Labour MP Camilla Belich took on sponsoring the Bill, and with the support of New Zealand First, it narrowly passed its third reading 63 votes to 60 (National and Act opposed it).

The new legislation inserts a section into the Crimes Act to state that an employer commits theft if it *intentionally fails, without reasonable excuse*, to pay money owed to an employee (that is money owed under an employment agreement or an Act, such as the Holidays Act 2003, Minimum Wage Act 1983, or Wages Protection Act 1983).

The Bill originally set out a specific punishment for wage theft, however this was removed so that this will now be dealt with in accordance with general 'theft' as already provided for in the Crimes Act.

What is 'without reasonable excuse'?

The wording 'without reasonable excuse' was not originally included in the Bill, and was introduced by New Zealand First's Casey Costello in an amendment paper. Hon Casey Costello wanted to ensure that there were not only intentional actions captured, but that there was also no reasonable excuse as to what had occurred.

The aim of the legislation is to deal with those who maliciously and intentionally seek to use their power and control of vulnerable workers and not pay them, and so Hon Casey Costello considered this additional wording was important to ensure the legislation did not unintentionally target the hard-working Kiwi battlers who do not fit in this category.

So what may be considered a reasonable excuse? Hon Casey Costello gave the examples of if there was a payroll glitch, a delayed time sheet, a dispute over a time sheet, or a cash-flow issue. All of those scenarios could result in an employer intentionally not paying an employee money that they are owed, however, as there would be a reasonable excuse, the action would not fall foul of the new legislation.

Camilla Belich was supportive of the amendment, and agreed that the legislation was not aimed at covering mistakes in payroll, or errors (such as when someone forgets to make payment).

National MP Carl Bates expressed some concern about the wording "without reasonable excuse" and expects some litigation through the courts as to exactly what it means. We agree that is likely to be the most contentious argument, and expect to see some case law develop over time. We can also imagine scenarios where arguments could arise as to whether money is actually *owed* to an employee, such as discretionary payments provided for in employment agreements.

What next?

Time will tell with how this legislation plays out in practice. Concerns have been raised that it is going to clog up an already overstretched criminal justice system.

Camilla Belich accepted that as it is a prosecution provision in the Crimes Act, it must reach a very high threshold under the prosecution guidelines, and she has confidence in prosecutors and police to only take cases that are likely to succeed. It will be interesting to see the appetite to prosecute under the legislation, and whether the sum of money owed plays part in any decision of whether to prosecute.

Want to know more?

If you have any questions about the new legislation, please contact our specialist [employment team](#).