

Wages Protection Act 1983

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An Act to consolidate and amend the law relating to the payment of wages and salaries

1 Short Title and commencement

- (1) This Act may be cited as the Wages Protection Act 1983.
- (2) This Act shall come into force on the 1st day of February 1984.

Note

This Act is administered in the Department of Labour.

2 Interpretation

In this Act, unless the context otherwise requires,—

Employer means a person employing any worker or workers; and includes any manager, foreman, clerk, agent, or other person engaged on behalf of that person in the hiring, employment, or supervision of the service or work of any worker

Financial institution means a financial institution within the meaning of section 2 of the Reserve Bank of New Zealand Act 1989; and includes the Post Office Bank Limited and the Reserve Bank of New Zealand

Financial institution: this definition was amended by substituting “Reserve Bank of New Zealand Act 1989” and “Post Office Bank Limited” for the repealed “Reserve Bank of New Zealand Act 1964” and “Post Office Savings Bank”, respectively.

local authority means a local authority within the meaning of the Local Government Act 2002.

Local authority: this definition was substituted, as from 1 July 2003, by section 262 Local Government Act 2002 (2002 No 84). See sections 273 to 314 of that Act as to the savings and transitional provisions.

Money, in relation to any wages, means any New Zealand coin or New Zealand banknotes, or combination of both, the tender of which in respect of the payment of those wages is legal tender

Specified cheque, in relation to the payment of wages to any worker, means a cheque payable to, or to the order of, that worker

Wages means salary or wages; and includes time and piece wages, and overtime, bonus, or other special payments agreed to be paid to a worker for the performance of service or work; and also includes any part of any wages

Worker has the same meaning as that given to the term **employee** by section 6 of the Employment Relations Act 2000; and, in relation to any employer, means a worker employed by that employer.

Worker: this definition was substituted, as from 2 October 2000, by section 240 Employment Relations Act 2000 (2000 No 24).

Compare: 1964 No 58 ss 2, 4(4), 6(3)

3 Act to bind Crown

This Act shall bind the Crown.

Compare: 1964 No 58 s 3

4 No deductions from wages except in accordance with Act

Subject to sections 5(1) and 6(2) of this Act, an employer shall, when any wages become payable to a worker, pay the entire amount of those wages to that worker without deduction.

Compare: 1964 No 58 s 4(1)

5 Deductions with worker's consent

(1) An employer may, for any lawful purpose,—

(a) With the written consent of a worker; or

(b) On the written request of a worker—
make deductions from wages payable to that worker.

(2) A worker may vary or withdraw a consent given or request made by that worker for the making of deductions from that worker's wages, by giving the employer written notice to that effect; and in that case, that employer shall—

(a) Within 2 weeks of receiving that notice, if practicable; and

(b) As soon as is practicable, in every other case,—
cease making or vary, as the case requires, the deductions concerned.

Compare: 1964 No 58 ss 7(1), 9

6 Employer may recover overpayments in certain circumstances

(1) In this section,—

Next pay-day, in relation to any overpayment, means the day next following the day on which that overpayment was made upon which the worker to whom it was made would, in the normal course of events, be paid

Overpayment means any wages paid to a worker in respect of a recoverable period

Recoverable period, in respect of any employer and any worker, means a period in respect of which that employer is

not required by law to pay any wages to that worker, by virtue of that worker's having—

- (a) Been absent from work without that employer's authority; or
- (b) been on strike (within the meaning of section 81 of the Employment Relations Act 2000); or
- (c) Been locked out (within the meaning of that section); or
- (d) Been suspended.

Recoverable period: paragraph (b) of this definition was substituted, as from 15 May 1991, by section 2(1) Wages Protection Amendment Act 1991 (1991 No 33).

Recoverable period: paragraph (b) of this definition was substituted, as from 2 October 2000, by section 240 Employment Relations Act 2000 (2000 No 24).

- (2) Notwithstanding anything to the contrary in any collective agreement within the meaning of the Employment Relations Act 2000 but subject to subsection (3) of this section, an employer who has made an overpayment to any worker may recover the amount of that overpayment from any wages to the payment of which by that employer that worker subsequently becomes entitled.
- (3) No employer shall recover an overpayment under subsection (2) of this section unless—
 - (a) By virtue of the methods or equipment normally used by that employer in arranging the payment of, or paying, wages to the worker concerned, it was not reasonably practicable for that employer to avoid making that overpayment; and
 - (b) Before recovering that overpayment, that employer gives that worker notice of that employer's intention to recover it; and
 - (c) That notice is given—
 - (i) Not later than 10 days after the next pay-day, in the case of a worker who has no fixed workplace:
 - (ii) Not later than the first day upon which that worker attends that worker's workplace after the next pay-day during normal working hours, in the case of a worker with one fixed workplace who did not attend that workplace during normal working hours on the next pay-day:

- (iii) Not later than the first day upon which that worker attends one of that worker's workplaces after the next pay-day during normal working hours, in the case of a worker with 2 or more fixed workplaces who did not attend any of them during normal working hours on the next pay-day:
 - (iv) Not later than the next pay-day, in every other case; and
 - (d) That overpayment is recovered not later than 2 months after that notice is given.
- (4) The validity of a notice purportedly given under subsection (3)(b) of this section shall not be affected by the fact that—
 - (a) It does not specify the amount of the overpayment concerned but specifies only the day on which that overpayment was made and the actions that led to its being an overpayment:
 - (b) It is one of a number of identical notices given to a group of workers to only some of whom an overpayment has been made, and provides that it applies to the worker to whom it has been given only if an overpayment has been made to that worker.

Subsection (2) was substituted, as from 15 May 1991, by section 2(2) Wages Protection Amendment Act 1991 (1991 No 33).

Subsection (2) was amended, as from 2 October 2000, by section 240 Employment Relations Act 2000 (2000 No 24) by substituting the words "agreement within the meaning of the Employment Relations Act 2000" for the words "employment contract within the meaning of the Employment Contracts Act 1991".

7 Wages to be payable in money

Subject to sections 8 to 10 of this Act, an employer shall pay the wages of every worker in money only.

Compare: 1964 No 58 s 4(1)

8 Workers employed by the Crown or local authorities

The Crown, or a local authority, may pay to a worker by specified cheque any wages that have become payable to that worker.

Compare: 1964 No 58 s 4(3)

9 Agreement as to manner of payment of wages

- (1) An employer may,—
- (a) With the written consent of a worker; or
 - (b) On the written request of a worker,—
pay to that worker by postal order, money order, specified cheque, or lodgement at a financial institution to the credit of an account standing in the name of that worker or in the name of that worker and some other person or persons jointly, any wages that have become payable to that worker.
- (2) A worker may vary or withdraw a consent given or request made by that worker under subsection (1) of this section by giving the employer written notice to that effect; and in that case, that employer shall—
- (a) Within 2 weeks of receiving that notice, if practicable; and
 - (b) As soon as is practicable, in every other case,—
commence paying that worker in money, or in some other manner in accordance with subsection (1) of this section.

Compare: 1964 No 58 ss 6, 9

10 Payment where worker absent

Where any wages become payable to a worker who is for the time being absent from the proper or usual place for their payment, that worker's employer may pay them to that worker by postal order, money order, or specified cheque.

Compare: 1964 No 58 s 6(4)

11 Worker may recover wages

- (1) Subject to subsections (2) and (3) of this section, a worker may recover from that worker's employer, by action in the Employment Relations Authority, established by the Employment Relations Act 2000, in the prescribed manner—
- (a) Any deduction made (otherwise than pursuant to section 6 of this Act) by that employer from wages that have been paid, or but for that deduction would have been paid, by that employer to that worker, if—
 - (i) That deduction was not consented to, or requested by, that worker in writing; or

- (ii) The making of that deduction was consented to, or requested by, that worker in writing; but the consent or request concerned was obtained by threat of dismissal, or otherwise by duress:
 - (b) An amount equal to any wages required by section 7 of this Act to be paid to that worker in money, if that employer paid those wages to that worker otherwise than in money.
- (2) No action under subsection (1) of this section shall be brought after the expiration of 6 years from the date on which the cause of action concerned arose.
- (3) No such action shall be brought in respect of any cause of action that arose more than 2 years before the commencement of this Act.

Compare: 1964 No 58 ss 4(2), 7(2), 8

Subsection (1) was amended, as from 15 May 1991, by section 3 Wages Protection Amendment Act 1991 (1991 No 33) by substituting the words “the Employment Tribunal, established under the Employment Contracts Act 1991, in the prescribed manner,” for the words “a District Court,”.

Subsection (1) was amended, as from 2 October 2000, by section 240 Employment Relations Act 2000 (2000 No 24) by substituting the words “the Employment Relations Authority, established by the Employment Relations Act 2000, in the prescribed manner” for the words “the Employment Tribunal, established under the Employment Contracts Act 1991, in the prescribed manner”.

12 Employer not to stipulate as to mode of spending wages

No employer shall impose any requirement on any worker as to any place or manner in which or any person with whom that worker shall expend wages received by that worker, or dismiss any worker on account of any place or manner in which or any person with whom that worker expends those wages.

Compare: 1964 No 58 s 5

12A No premium to be charged for employment

- (1) No employer shall seek or receive any premium in respect of the employment of any person, whether the premium is sought or received from the person employed or proposed to be employed or from any other person.
- (2) Where an employer receives any amount of money in contravention of subsection (1) of this section, whether by

way of deduction from wages or otherwise, then, irrespective of any penalty to which the employer thereby becomes liable, the person by whom the money was paid or, as the case may be, from whose wages it was deducted, may recover that amount from the employer as a debt due to the person; and civil proceedings for the recovery of the amount may be instituted in the Employment Relations Authority by the person or, notwithstanding any disability to which the person is subject, by a Labour Inspector designated under section 223 of the Employment Relations Act 2000 on behalf of the person.

- (3) Any such proceedings instituted by any Labour Inspector may be continued or conducted by the same or any other Labour Inspector.

Section 12A was inserted, as from 1 April 1993, by section 62(2) Health and Safety in Employment Act 1992 (1992 No 96).

Subsection (2) was amended, as from 2 October 2000, by section 240 Employment Relations Act 2000 (2000 No 24) by substituting the words “Employment Relations Authority” for the words “Employment Tribunal”, and by substituting the words “section 223 of the Employment Relations Act 2000” for the words “section 143(1) of the Employment Contracts Act 1991”.

13 Penalties

Where—

- (a) any payment is made by or on behalf of any employer in contravention of this Act; or
- (b) any employer or any person on that employer’s behalf contravenes or fails to comply with any of the provisions of this Act,—

that employer is liable, at the suit of the worker or of a Labour Inspector designated under section 223 of the Employment Relations Act 2000, to a penalty imposed under that Act by the Employment Relations Authority.

Section 13 was substituted, as from 15 May 1991, by section 4 Wages Protection Amendment Act 1991 (1991 No 33), for the repealed sections 13 and 14.

Section 13 was further substituted, as from 2 October 2000, by section 240 Employment Relations Act 2000 (2000 No 24).

14 Employer may have actual offender charged

[Repealed]

Section 14 was repealed, as from 15 May 1991, by section 4 Wages Protection Amendment Act 1991 (1991 No 33).

15 Act subject to other enactments

Subject to sections 6(2) and 16 of this Act, this Act shall be read subject to the provisions of any other Act.

Compare: 1964 No 58 s 11

16 Provisions in collective agreements

Subject to section 6(2), nothing in this Act derogates from or makes it unlawful to comply with—

- (a) any provision of any collective agreement within the meaning of the Employment Relations Act 2000; or
- (b) any provision of any order of the Employment Court or the Employment Relations Authority established by the Employment Relations Act 2000.

This section was substituted, as from 15 May 1991, by section 5(1) Wages Protection Amendment Act 1991 (1991 No 33).

Section 16 was further substituted, as from 2 October 2000, by section 240 Employment Relations Act 2000 (2000 No 24).

17 Saving

Any contract for the payment of wages by cheque, draft, or order in writing for the payment of money to the bearer on demand drawn on any bank, made before the 17th day of November 1964 shall continue to have effect according to its tenor notwithstanding the provisions of this Act.

Compare: 1964 No 58 s 6(5)

18 Act to be administered in Department of Labour

(1) This Act shall be administered in the Department of Labour.

(2)

Compare: 1964 No 58 s 12

Subsection (2) was repealed, as from 16 October 1989, by section 2(2) Labour Department Act Repeal Act 1989 (1989 No 82).

19 Consequential repeals

The Wages Protection Act 1964 and the Wages Protection Amendment Act 1983 are hereby consequentially repealed.