



Another type of Personal Grievance Proposed:

What Employers need to know about the Employment Relations (Protection for KiwiSaver Members) Amendment Bill

Introduced on 8 June 2023, the Employment Relations (Protection for KiwiSaver Members) Amendment Bill has emerged as perhaps a quite controversial topic for debate. The bill intends to alter KiwiSaver contribution compliance requirements by introducing a new ground for raising a personal grievance to the Employment Relations Act 2000. This bill, if passed into law, could have significant implications for many employers across the country. The bill is now with the Select Committee and public submissions are now being called for. The closing date for submissions is Monday, 30 October 2023.

Understanding the Bill

The Employment Relations (Protection for KiwiSaver Members) Amendment Bill, introduced by MP Dr Tracey McLellan, seeks to provide increased protection and support for employees who are members of the KiwiSaver scheme.

Potential Implications for Employers

Here's what employers need to know about the potential implications of this bill if it passes into law:

- An employee who feels their employment has been adversely affected as a result of their KiwiSaver or other complying superannuation fund membership, could raise a personal grievance

The test for whether their employment is 'adversely affected' includes:

- the employee is a member of a KiwiSaver scheme or a complying superannuation fund; and
- the employee's employer refuses or omits to offer or afford to that employee the same terms of employment, conditions of work, fringe benefits, or opportunities for training, promotion, and transfer as are made available for other employees of the same or substantially similar qualifications, experience, or skills (comparable employees) employed in the same or substantially similar circumstances; and
- the reason (wholly or in part) for the employer doing any of those things is that the employee is a member of a KiwiSaver scheme or a complying superannuation fund.

In addition, the bill notes that an employee's employment is also adversely affected if:

- the employee's salary or wages are less than the salary or wages of other comparable employees employed by the employee's employer; and
- the reason (wholly or in part) for the situation described in paragraph (a) is that the employer has taken into account the compulsory contributions the employer is required to make in relation to the employee.

If the bill, as it currently stands, was to pass into law, section 101B of the KiwiSaver Act 2006 would also be repealed, and that section currently entitles employers and employees to agree that an employer's compulsory contributions do not need to be in addition to ordinary pay. Without it would employers could not then use a "salary sacrifice" or "total remuneration model" approach for their compulsory employer contributions and they would instead have to make KiwiSaver contributions in addition to ordinary pay. Of course, for these employers, it would increase costs.

Conclusion

This is another bill still in the legislative process that may be significantly impacted by the upcoming election. We know, for example, that previously,

National amended legislation, in 2008, to allow for total remuneration models. So, this will be another one we will need to keep watching.

If it becomes law, it will bring about significant changes that may affect how employers need to handle KiwiSaver-related matters in the workplace.