

- (a) mutually agreed to by the employee and the employer, whether before, on, or after the date on which the employee became bound by the collective agreement; and
 - (b) not inconsistent with the terms and conditions in the collective agreement.
- (2) If the applicable collective agreement expires or the employee resigns from the union that is bound by the agreement,—
- (a) the employee is employed under an individual employment agreement based on the collective agreement and any additional terms and conditions agreed under subsection (1); and
 - (b) the employee and employer may, by mutual agreement, vary that individual employment agreement as they think fit.

62 Terms and conditions for first 30 days of employment of new employee who is not member of union

- (1) This section—
- (a) applies to a new employee who—
 - (i) is not a member of a union that is a party to a collective agreement that covers the work to be done by the employee; and
 - (ii) enters into an individual employment agreement with an employer that is a party to a collective agreement that covers the work to be done by the employee; but
 - (b) does not apply to an employee who—
 - (i) resigns as a member of a union and enters into an individual employment agreement with the same employer; or
 - (ii) enters into a new individual employment agreement with the same employer.
- (2) For the purposes of subsection (1)(a), a collective agreement that includes a coverage clause referring to named employees, or the work done by named employees, to whom the collective agreement applies must be treated as covering the work or type of work done by the named employees (whether done by those employees or any other employees).
- (3) For the first 30 days after the new employee commences employment with the employer, the employee's terms and conditions of employment comprise—
- (a) the terms and conditions in the collective agreement that would bind the employee if the employee were a member of the union (other than any bargaining fee payable under Part 6B); and
 - (b) any additional terms and conditions mutually agreed to by the employee and employer that are no less favourable to the employee than the terms and conditions in the collective agreement.

- (4) If the work to be done by the new employee is covered by more than 1 collective agreement, subsection (3)(a) applies to the collective agreement that binds the greatest number of the employer's employees in relation to the work the employee will be performing.
- (5) **No term or condition of employment may be expressed to alter automatically after the 30-day period in a way that makes it less favourable to the employee than the collective agreement.**
- (6) For an employee who holds a minimum wage exemption permit under section 8 of the Minimum Wage Act 1983, the terms and conditions under subsection (3) are subject to the terms of the permit relating to the wages to be paid.

Section 62: replaced, on 6 May 2019, by section 22 of the Employment Relations Amendment Act 2018 (2018 No 53).

62A Employer must share new employee information with union unless employee objects

- (1) This section applies to an employer who enters into an individual employment agreement with a new employee under section 62.
- (2) The employer must, within 10 days after the employee commences employment with the employer, provide the employee with a form approved by the chief executive under section 237AA that the employee may complete and return in accordance with subsection (4) for the purposes of—
 - (a) notifying the employer whether the employee intends to join a union (or a particular union):
 - (b) objecting to the employer providing information about the employee to,—
 - (i) if the employee does not intend to join a union, any union; or
 - (ii) if the employee intends to join a particular union, any other union.
- (3) The form must be accompanied by a notice that—
 - (a) specifies the period during which the employee may complete and return the form, which is the period described in subsection (4); and
 - (b) explains that, unless the employee objects in accordance with this section, the employer will provide the following information to each union that is a party to a collective agreement that covers the work to be done by the employee:
 - (i) the name of the employee:
 - (ii) whether the employee has, during the period,—
 - (A) notified the employer that the employee intends to join the union; or
 - (B) notified the employer that the employee does not intend to join the union; or

- (C) not completed and returned the form.
- (4) The employee may complete and return the form during the period that—
- (a) starts when the employee receives the form; and
 - (b) ends 30 days after the employee commences employment with the employer.
- (5) The employer must, within 10 working days of the expiry of the period described in subsection (4), provide the following to each union that is a party to a collective agreement that covers the work to be done by the employee (unless the employee has objected in accordance with this section):
- (a) the name of the employee;
 - (b) if the employee completes and returns a form in accordance with this section, the completed form;
 - (c) if the employee does not complete and return the form in accordance with this section, notice that the employee did not complete and return the form.
- (6) **Nothing in this section limits or affects the right of an employee to become, or not to become, a member of a union or a particular union at any time.**
- (7) An employer who fails to comply with this section is liable to a penalty imposed by the Authority.

Section 62A: inserted, on 6 May 2019, by section 22 of the Employment Relations Amendment Act 2018 (2018 No 53).

63 Terms and conditions of employment of employee who is not member of union after expiry of 30-day period

- (1) **This section applies after the expiry of the 30-day period described in section 62(3) to an employee who is not a member of a union that is a party to a collective agreement that covers the work done by the employee.**
- (2) **The employee and the employee’s employer may, by mutual agreement, vary the individual employment agreement entered into under section 62 as they think fit.**

Section 63: inserted, on 6 May 2019, by section 22 of the Employment Relations Amendment Act 2018 (2018 No 53).

63 Terms and conditions of employment of new employee who is not member of union

[Repealed]

Section 63: repealed, on 6 March 2015, by section 18 of the Employment Relations Amendment Act 2014 (2014 No 61).

Bargaining

Heading: inserted, on 6 May 2019, by section 22 of the Employment Relations Amendment Act 2018 (2018 No 53).

63A Bargaining for individual employment agreement or individual terms and conditions in employment agreement

- (1) This section applies when bargaining for terms and conditions of employment in the following situations:
 - (a) under section 61(1), in relation to additional terms and conditions to the applicable collective agreement:
 - (b) under section 61(2), in relation to—
 - (i) additional terms and conditions to the collective agreement on which the individual employment agreement is based; and
 - (ii) variations to the individual employment agreement in subparagraph (i):
 - (c) under section 62(3), in relation to additional terms and conditions for the first 30 days of an employee's employment:
 - (c) *[Repealed]*
 - (d) under section 63(2), in relation to variations to terms and conditions of an individual employment agreement after the 30-day period:
 - (d) *[Repealed]*
 - (e) in relation to the terms and conditions of an individual employment agreement (including any variations to that agreement) for an employee if no collective agreement covers the work done, or to be done, by the employee:
 - (f) where a fixed term of employment, or probationary or trial period of employment, is proposed:
 - (g) under section 69OJ in relation to employee protection provisions in individual employment agreements:
 - (h) under section 69N in relation to redundancy entitlements with a new employer.
- (2) **The employer must do at least the following things:**
 - (a) provide to the employee a copy of the intended agreement under discussion; and
 - (b) **advise the employee that he or she is entitled to seek independent advice about the intended agreement; and**
 - (c) give the employee a reasonable opportunity to seek that advice; and
 - (d) consider any issues that the employee raises and respond to them.

- (3) Every employer who fails to comply with this section is liable to a penalty imposed by the Authority.
- (4) Failure to comply with this section does not affect the validity of the employment agreement between the employee and the employer.
- (5) The requirements imposed by this section are in addition to any requirements that may be imposed under any provision in this Act.
- (6) For the purpose of subsection (1)(e), a collective agreement that includes a coverage clause referring to named employees, or the work done by named employees, to whom the collective agreement applies must be treated as covering the work or type of work done by the named employees (whether done by those employees or any other employees).
- (6) *[Repealed]*
- (7) In this section, **employee** includes a prospective employee.

Section 63A: inserted, on 1 December 2004, by section 23 of the Employment Relations Amendment Act (No 2) 2004 (2004 No 86).

Section 63A(1)(c): inserted, on 6 May 2019, by section 23(1) of the Employment Relations Amendment Act 2018 (2018 No 53).

Section 63A(1)(c): repealed, on 6 March 2015, by section 19(1) of the Employment Relations Amendment Act 2014 (2014 No 61).

Section 63A(1)(d): inserted, on 6 May 2019, by section 23(1) of the Employment Relations Amendment Act 2018 (2018 No 53).

Section 63A(1)(d): repealed, on 6 March 2015, by section 19(1) of the Employment Relations Amendment Act 2014 (2014 No 61).

Section 63A(1)(e): replaced, on 6 May 2019, by section 23(2) of the Employment Relations Amendment Act 2018 (2018 No 53).

Section 63A(1)(g): amended, on 6 March 2015, by section 19(3) of the Employment Relations Amendment Act 2014 (2014 No 61).

Section 63A(1)(h): amended, on 6 March 2015, by section 19(4) of the Employment Relations Amendment Act 2014 (2014 No 61).

Section 63A(2)(a): amended, on 1 April 2011, by section 10(1) of the Employment Relations Amendment Act 2010 (2010 No 125).

Section 63A(2)(b): amended, on 1 April 2011, by section 10(2) of the Employment Relations Amendment Act 2010 (2010 No 125).

Section 63A(6): inserted, on 6 May 2019, by section 23(3) of the Employment Relations Amendment Act 2018 (2018 No 53).

Section 63A(6): repealed, on 6 March 2015, by section 19(5) of the Employment Relations Amendment Act 2014 (2014 No 61).

63B Additional employer obligations when bargaining for terms and conditions of employment under section 62

- (1) This section applies to an employer who is bargaining with a prospective employee for terms and conditions of employment for the first 30 days of an individual employment agreement under section 62(3).

- (2) The employer must, in addition to doing the things described in section 63A(2), inform the prospective employee—
- (a) that a collective agreement exists and covers work to be done by the prospective employee; and
 - (b) that the prospective employee may join a union that is a party to the collective agreement; and
 - (c) how to contact the union; and
 - (d) that, if the prospective employee joins the union, the prospective employee will be bound by the collective agreement; and
 - (e) **that, if the prospective employee enters into an individual employment agreement with the employer, the prospective employee's terms and conditions of employment will, during the first 30 days of the prospective employee's employment, comprise—**
 - (i) **the terms and conditions in the collective agreement that would bind the prospective employee if the prospective employee were a member of the union; and**
 - (ii) **any additional terms and conditions mutually agreed to by the prospective employee and employer that are no less favourable to the employee than the terms and conditions in the collective agreement.**
- (3) The employer must also provide to the prospective employee—
- (a) a copy of the collective agreement; and
 - (b) any information about the role and functions of the union that the employer is required to provide to prospective employees in accordance with a request by a union under section 30A.
- (4) An employer who fails to comply with this section is liable to a penalty imposed by the Authority.

Section 63B: inserted, on 6 May 2019, by section 24 of the Employment Relations Amendment Act 2018 (2018 No 53).

Individual employment agreements

Heading: inserted, on 6 May 2019, by section 24 of the Employment Relations Amendment Act 2018 (2018 No 53).

64 Employer must retain copy of individual employment agreement or individual terms and conditions of employment

- (1) When section 63A applies, the employer must retain a signed copy of the employee's individual employment agreement or the current terms and conditions of employment that make up the employee's individual terms and conditions of employment (as the case may be).