



Epidemic Preparedness (Employment Relations Act 2000—Collective Bargaining) Immediate Modification Order 2020

Patsy Reddy, Governor-General

Order in Council

At Wellington this 14th day of April 2020

Present:

The Right Hon Jacinda Ardern presiding in Council

This order is made under section 15 of the Epidemic Preparedness Act 2006—

- (a) on the advice and with the consent of the Executive Council; and
- (b) on the recommendation of the Minister for Workplace Relations and Safety made after being satisfied of the matters required by section 15(2)(b) of that Act and after receiving from the chief executive of the Ministry of Business, Innovation, and Employment a written recommendation stating the matters required by section 15(2)(a) of that Act.

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Order

1 Title

This order is the Epidemic Preparedness (Employment Relations Act 2000—Collective Bargaining) Immediate Modification Order 2020.

2 Commencement

This order comes into force on 16 April 2020.

3 Enactment to which modifications made

This order modifies requirements imposed by the Employment Relations Act 2000 (the **Act**).

4 Requirement that employer draw employees' attention to initiation of bargaining is modified

- (1) This clause applies to an employer who initiates bargaining or receives a notice initiating bargaining for a collective agreement while the Epidemic Preparedness (COVID-19) Notice 2020 (the **Epidemic Notice**) is in force.
- (2) Section 43(2)(b)(i) of the Act has effect as if the 10-day period excludes any days during which the Epidemic Notice is in force.
- (3) Section 43(2)(b)(ii) of the Act has effect as if the 15-day period excludes any days during which the Epidemic Notice is in force.

5 Requirement that employer request consolidation of bargaining within 40 days of bargaining being initiated is modified

- (1) This clause applies to an employer who receives 2 or more notices under section 42 of the Act from different unions that relate, in whole or in part, to the same type of work if the period specified in section 50(2) of the Act expires—
 - (a) while the Epidemic Notice is in force; or
 - (b) within 40 days after the date on which the Epidemic Notice expires or is revoked.
- (2) Section 50(2) of the Act has effect as if the 40-day period excludes any days during which the Epidemic Notice is in force.

6 Requirement that union must agree to request to consolidate or withdraw notice initiating bargaining within 30 days after receiving request is modified

- (1) This clause applies to a union who receives a request under section 50(2) of the Act if the period specified in section 50(3) of the Act expires—
 - (a) while the Epidemic Notice is in force; or
 - (b) within 30 days after the date on which the Epidemic Notice expires or is revoked.
- (2) Section 50(3) of the Act has effect as if the 30-day period excludes any days during which the Epidemic Notice is in force.

7 Requirement that union must comply with ratification procedure notified under section 51(2) of Act is modified

- (1) This clause applies—
 - (a) while the Epidemic Notice is in force; and
 - (b) to the extent that a ratification procedure notified under section 51(2) of the Act requires a union to ratify a collective agreement or variation by post or in person.
- (2) Despite section 51 of the Act, a union may—
 - (a) notify the other intended party or parties to the agreement or variation of a new ratification procedure on or after the commencement of this order; and
 - (b) ratify the collective agreement or variation in accordance with the new ratification procedure.

8 Requirement that collective agreement may not continue for period exceeding 12 months after expiry is modified

- (1) This clause applies to a collective agreement if the period specified in section 53(3) of the Act expires—
 - (a) while the Epidemic Notice is in force; or
 - (b) within 3 months after the date on which the Epidemic Notice expires or is revoked.
- (2) Section 53(3) of the Act has effect as if the period excludes any days during which the Epidemic Notice is in force.

9 Revocation

This order is revoked immediately after the expiry of the 3-month period that starts on the date on which the Epidemic Notice expires or is revoked.

Michael Webster,
Clerk of the Executive Council.

Explanatory note

This note is not part of the order, but is intended to indicate its general effect.

This order is made under section 15 of the Epidemic Preparedness Act 2006 and its effect is temporary. It comes into force on 16 April 2020 and is revoked 3 months after the Epidemic Preparedness (COVID-19) Notice 2020 (the **Epidemic Notice**) expires or is revoked. It modifies restrictions and requirements imposed by the Employment Relations Act 2000 (the **Act**) that may be impossible or impracticable to comply with during an epidemic.

Clause 1 states the Title of the order.

Clause 2 states that the order comes into force on 16 April 2020.

Clause 3 states that the order modifies requirements imposed by the Act.

Clause 4 modifies a requirement of section 43 of the Act, which provides that an employer that initiates bargaining or that receives a notice initiating bargaining for a collective agreement must draw the existence and coverage of the bargaining, and the intended parties, to the attention of all employees whose work would be covered by the intended coverage clause. It must do so as soon as possible and no later than—

- 10 days after bargaining is initiated, if only 1 employer is identified as an intended party to the bargaining; or
- 15 days after bargaining is initiated, if 2 or more employers are identified as intended parties to the bargaining.

Clause 4 modifies this requirement so that the period within which an employer must comply with section 43(1) is extended by the number of days during which the Epidemic Notice is in force.

Clause 5 modifies a requirement of section 50(2) of the Act, which provides that an employer who receives 2 or more notices under section 42 from different unions that relate to the same type of work may, within 40 days after receiving the first notice, request each union concerned to consolidate the bargaining initiated by each notice into bargaining for a single collective agreement.

Clause 5 modifies this requirement so that the period within which an employer may make the request is extended by the number of days during which the Epidemic Notice is in force.

Clause 6 modifies a requirement of section 50(3) of the Act, which provides that a union that receives a request under section 50(2) of the Act must, within 30 days after receiving the request—

- agree to the request; or
- withdraw the notice given under section 42.

Clause 6 modifies this requirement so that the period within which the union must agree to the request or withdraw the notice is extended by the number of days during which the Epidemic Notice is in force.

Clause 7 modifies a requirement of section 51 of the Act, which provides that a union must not sign a collective agreement or a variation of the collective agreement unless the agreement or variation has been ratified in accordance with a ratification procedure notified by the union at the beginning of bargaining for the collective agreement or the variation.

Clause 7 modifies this requirement by allowing a union to ratify a collective agreement or variation in accordance with a new ratification procedure notified by the union to the other intended party or parties to the agreement or variation on or after the commencement of this order—

- while the Epidemic Notice is in force; and
- if the ratification procedure notified at the beginning of bargaining required the union to ratify the collective agreement by post or in person.

Clause 8 modifies a requirement of section 53 of the Act, which provides that a collective agreement that would otherwise expire as provided in section 52(3) of the Act continues in force for a period not exceeding 12 months if—

- the union or the employer initiated collective bargaining before the collective agreement expired and for the purpose of replacing the collective agreement; and
- bargaining continues for a collective agreement to replace the collective agreement that has expired.

Clause 8 modifies this requirement so that the maximum 12-month period during which the collective agreement may continue in force is extended by the number of days during which the Epidemic Notice is in force.

Clause 9 provides that the order is revoked 3 months after the Epidemic Notice expires or is revoked.

Statement of reasons

The Minister of Workplace Relations and Safety is satisfied of the matters required by section 15(2)(b) of the Epidemic Preparedness Act 2006 for the reasons that follow.

It is impracticable to comply with some collective bargaining time frame and process obligations

When collective bargaining has been initiated, the Employment Relations Act 2000 requires parties to that bargaining to take certain actions within specific time frames. Some of those time frames are impracticable while the Epidemic Notice is in place, as both employers and unions face significant disruption due to the closure of some workplaces and the requirements to work from home.

The Employment Relations Act 2000 requires that where an employer receives 2 or more notices of initiation of bargaining from different unions for work of the same type within its workplace, the employer may request that bargaining is consolidated within a 40-day period. The union has a corresponding obligation to respond within 30 days to the consolidation request. During the period in which the Epidemic Notice is in place, parties may not be able to carry out normal processes and may find it hard to get in contact with their members due to inability via technological means, or inability to contact those people due to sickness.

The Employment Relations Act 2000 also requires that a union must ratify a collective agreement in accordance with procedures notified to the other party at the beginning of bargaining. This may be impracticable because many unions hold an in-person meeting to vote on ratification of the collective agreement. Such meetings are impossible during lockdown and inadvisable for public health reasons during the epidemic.

The Employment Relations Act 2000 enables expired collective agreements to continue in force, where bargaining has been initiated, for up to 12 months to enable parties to bargain and ratify a new collective agreement to replace the expired agreement. Due to the restrictions in place unions are unable to arrange meetings with their members in person, and not all members may have access to electronic means in which to communicate. In some cases, employers and unions will be focused on immediate priorities relating to the COVID-19 response, meaning resources are unavailable for bargaining during this period. It will be impractical or impossible for some employers or unions to conclude collective bargaining and ratify a collective agreement while the Epidemic Notice is in place. This may mean that some collective agreements expire, despite a willingness to conclude negotiations and ratify an agreement.

Immediate modifications are required to address these concerns

Immediate modifications are required to the Employment Relations Act 2000 to enable parties to comply with their obligations and not disadvantage parties by the inability to bargain during this time. Specifically, the changes—

- modify the maximum time frames by which an employer must notify their employees who are in work and covered by collective bargaining that bargaining has been initiated, to exclude the duration of the Epidemic Notice; and
- modify the maximum time frames by which an employer must seek to consolidate collective bargaining (40 days), and for unions to respond to an attempted consolidation (30 days), to exclude the duration of the Epidemic Notice; and
- in the case of collective agreements which would otherwise have expired, but are still in force for 12 months after expiry, modify the 12-month period to exclude any period covered by the Epidemic Notice if the 12-month period would otherwise end while the Epidemic Notice is in force or up to 3 months after it expires or is revoked; and
- allow the union to notify the other intended party or parties to a collective agreement of a new ratification procedure to ratify the collective agreement

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(eg, online balloting, videoconferencing or teleconferencing) if a union has committed at the outset of collective bargaining to a ratification procedure that is no longer practicable (eg, in-person ratification meetings).

Issued under the authority of the Legislation Act 2012.

Date of notification in *Gazette*: 15 April 2020.

This order is administered by the Ministry of Business, Innovation, and Employment.