

NUPE delegate Booklet



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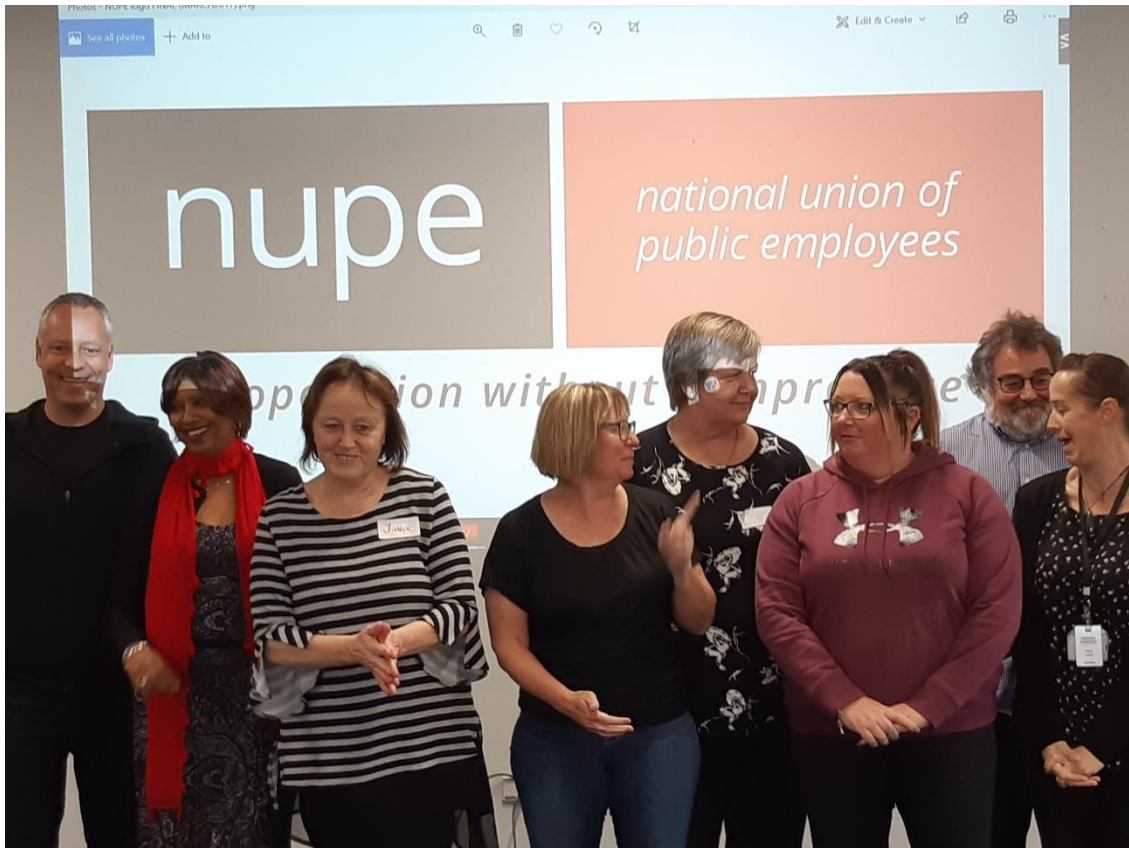
*national union of
public employees*

co-operation without compromise

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Introduction

The intention of this booklet is to provide a basic and quick overview of Trade Unions, NUPE, the role of the delegate and some legislation which could be useful in overcoming basic issues and problems at work.

Organising Collectively – Solidarity and Strength

When you get organised collectively you are acknowledging that within your workplace, sector or the “global economy” there are groups and agendas whose interests and power are working against your interests.

No-one understands this better than employers. Employers are some of the most organised and well-resourced groups in the country. They belong to Federated Farmers, Employers Federation, Chambers of Commerce, the Business Round Table, Business New Zealand etc and their membership of ‘unions’ proportionately far exceeds that of workers who belong to trade unions.

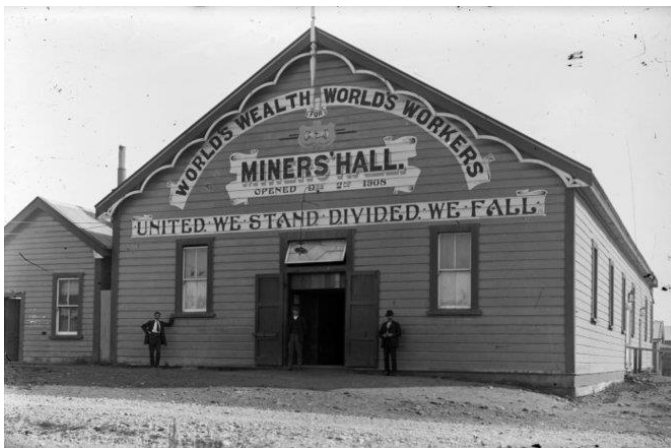
Despite the partnership rhetoric and dominant view within business, workers interests do not directly overlap with those of their employers. Even the issues that are of mutual interest are not common interests for the same aim or purpose. For example, workers want pay systems so as to improve their

wages and conditions. Employers want pay systems to have predictability and to buy labour at the cheapest price so as to maximise profit.

Workers in real terms have more in common with each other than they do with the employer, yet they are constantly asked to see their circumstances predominantly from the perspective of their employer as though a worker's viewpoint and interests are not a legitimate aspect of our social and economic framework.

Paid employment is one of the most significant aspects of the majority of our lives, yet in real terms very few workers understand the dynamics of their employment relationships and their rights, or how to make the most of their interests and a share of what they generate within the employment relationship, whether that be profits or community services or support.

What are Trade Unions?



A trade union is an organization of workers who have united together to achieve common goals such as protecting the integrity of their trade, achieving higher pay and benefits such as health care and retirement, safety standards, and better working conditions.

The trade union, through its leadership, bargains with the employer on behalf of union members (rank and file members) and negotiates labour contracts

(collective bargaining) with employers. The most common purpose of these associations or unions "maintaining or improving the conditions of their employment". This may include the negotiation of wages, work rules, complaint procedures, rules governing hiring, firing and promotion of workers, benefits, workplace safety and policies.

The agreements negotiated by a union are binding on the rank-and-file members and the employer and in some cases on other non-member workers. Trade unions traditionally have a constitution which details the governance of their bargaining unit and have governance at various levels of government depending on the industry that binds them legally to their negotiations and functioning.



NUPE – The History and Philosophy of our Union



NUPE Philosophy, Expertise and Democratic Structure

- NUPE was formed in 1992 as an alternative public sector union, initially in the Health Sector. Since then NUPE has grown substantially with members in public sector agencies, ministries and departments from Auckland to Invercargill. We also represent members across the country in a variety of health and community agencies, including DHBs and Non-Governmental Organisations (NGOs).

Social Justice and a Commitment to Collectivism and Fair Representation of all members

- NUPE has a commitment to social justice and a belief in the principles of collectivism to ensure the fair and reasonable treatment of all our members in their employment. NUPE believes that only by standing together will workers be able to protect and improve their rights and conditions.

Valuing the ongoing Employment Relationship and focusing time, energy and resources to members needs

- NUPE seeks to ensure that organisers use their expertise and experience to support members on employment matters with their employer. Organisers are available to advise and represent NUPE members to achieve the best possible outcomes, while recognising the significance of an ongoing employment relationship.

- NUPE will ensure we represent the members issue to their employer. NUPE will cooperate with the employer to progress the concern/issue.

Co-operation without Compromise

- NUPE will not compromise the advocacy of the issue being presented. NUPE's philosophy can be summed up by the phrase '**Cooperation without Compromise**' – Your issue will get presented to be heard we will not compromise on advocating your issue. NUPE will work very hard to get the best resolution for you.

NUPE Organisation and Structure

The NUPE Executive

The NUPE Executive are elected by members at the AGM and oversees the activities of Union staff and Policy Development.

The activities of the Union Secretary and Organisers are overseen by the



National Executive whose function is to uphold the Constitution of the Union and oversee the affairs of the union between the Annual General Meetings. The Executive Committee meetings are held quarterly or as required. The Secretary is responsible for implementing the policy decisions of the Executive and running the day to day affairs of the Union.

The office bearers of the Union include the Secretary (an appointed position) and The Convenor, Deputy Convenor and Treasurer which are all elected positions of the Executive. If you are interested in being on the Executive or would like to know more, please contact the Union Office.

Joining NUPE

A worker in NUPE's coverage can apply to join NUPE. As soon as NUPE receives a membership form from a new member, we will represent them. Membership forms are available from the NUPE office.

If a new member has joined but already has an employment problem, then please contact the Organiser to discuss this.

NUPE Organisers/Staff

NUPE Organisers



Janice Gemmell
Secretary and Organiser

- Janice has been an organiser at NUPE since 1998.
- Prior to her employment with NUPE, she completed a BA in Social Policy with Industrial Relations being a major component of the degree.



Luke Stenton
Organiser

- Luke joined NUPE in January 2022.
- Luke has always had a passion for advocacy and ensuring workers voices are heard and respected in the workplace. Luke has been active in the Union movement for most of his adult life.



Quentin Findlay
Organiser

- Quentin was employed by NUPE in its Wellington Regional Organiser from 2002 – 2004. He has been employed in Christchurch since June 2013.
- He has been previously employed by the Department of Courts, Parliament, NZEI and as the Education Coordinator for the Lincoln University Students' Association.

NUPE's Organisers are paid employees of the Union.

The Organiser's role is to be:

- Accessible and responsive to the NUPE members.
- Available to Represent Members in their employment matters with their employer.
- Available to advise and support membership in individual employment matters
- Provide support and advice when there is organisational change.
- Advocate Collective Employment Agreements.
- Advocate at Mediation and the Employment Relations Authority.
- To able to recruit New Members

It is expected that the Organiser will have a good working relationship with all the delegates in their portfolio groups.

NUPE Advisor Support



Mathew Glanville
NUPE Advisor Support

- Mathew has been involved with NUPE since 2009 and he was NUPE Convenor in 2014. He has been working in the office as an Advisor Support person since 2017. Matt has a history of social and youth advocacy for a number of organisations and was a former CYF's employee.
- Matt provides support and advice to NUPE staff and members on Oranga Tamariki.

NUPE Office Admin



Vic Blair
NUPE Office Admin

- Vic is responsible for Office Administration at NUPE. She works for NUPE on a part-time basis and has been undertaking this role since 2018.
- The Admin Officer undertakes general administration duties, processes memberships, ensures that the NUPE data base is kept up to date and helps organise the office.

NUPE Legal Officer



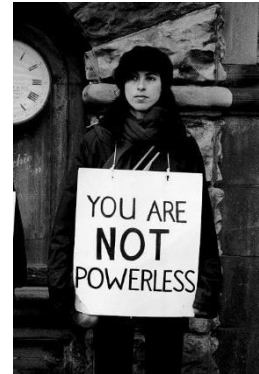
Andrew McKenzie
NUPE Legal Officer/Barrister

- Andrew has been involved with NUPE since 1995 when he was a law student. He is now a fully qualified Barrister specialising in Criminal and Employment law.
- The Legal Officer provides legal input to the Secretary and Organisers as well as legal representation for members when resolving employment issues where necessary.

NUPE Delegate

Delegates are elected or appointed by their Union colleagues at their workplace. They act as the Union's representative on site. They are often the first point of contact for members with the union and are usually the person members / staff come to if they have an employment problem or need advice.

The Delegate is the person that union members come to when they believe they have a problem or difficulty at work. The Delegate will work with the member to provide support, to either fix the problem or to help the member understand their rights and obligations.



If the problem is too serious, or if the advice is too complex, the Delegate will ensure that members are put in touch with the Organiser.

In some workplaces the Union might have negotiated that Delegates are entitled to additional benefits, such as time off work to conduct interviews and hold meetings etc.

NUPE does aim to negotiate union benefits for delegates in workplaces and or in the Collective Employment Agreement.

NUPE Delegate - Roles and Responsibilities

Being identifiable to members and acting as a first point of contact in the event of their questions or issues in workplace matters.

If a member wants a Delegate involved in a matter, and the delegate feels unsure about getting involved or they don't know if they can help, the Delegate should contact the Organiser.

Distributing union material and information / keeping members updated on Union News

NUPE will produce quarterly newsletters and the Organiser will put out regular e mail updates (where possible). The Delegate may be asked to distribute this information to their workmates and talk about any issues that arise.

- **Ensuring union notices are pinned up in the workplace and kept up to date.** Many workplaces have union notice boards. The Delegate is expected to maintain the information on notice boards and get rid of any outdated fact sheets/pamphlets.
- **Attend Orientation:** It is great if you can attend the orientation of new employees. At the orientation the delegate will tell new employees a bit about NUPE and the value of joining NUPE at their worksite.
- **Introduce** yourself to new staff as the union delegate in your work area. Delegates have a conversation with new workers, identify if they are union members, and if not, ask them to join.
- **Establish a regular link with the NUPE Office to get up to date membership details.** Often the Office is not aware of changes a regular link helps ensure our records are up to date.
- **Have a copy of your Collective Employment Agreement** – get familiar with this agreement.
- **Encourage and develop a collective perspective** on issues and for Collective bargaining.

- **Attend Union /Management meetings**, represent members views to management
- **Attend meetings and advocate (as required)** for members on low level employment concerns. (Note if the matter is disciplinary then contact the relevant union organiser prior to any meeting as the Organiser may attend)
- **Link the member with their Organiser** as required
- **Informing the Health and Safety Committees** in your workplace about current or potential risks issues. Your workplace may have committees set up to deal with Health and Safety. Delegates are expected to either directly participate in these committees or notify them and the Organiser of issues that come to either their or their members' attention.
- **Larger worksites may call (either occasionally or regularly) union meetings for Delegates.** These meetings may be information or campaign updates, or general Union site maintenance meetings.
- **Make sure NUPE is seen and is active across your site and assist members when they ask for help:**

Experienced Delegate:

The longer Delegates spend in their role, the more accustomed they get to the complexity of the collective agreement and their workplace's custom and practice. Experience in dealing with matters brings knowledge.

Experienced Delegates can liaise with and talk to members about the Union's work on a variety of workplace issues. This includes listening to what members say, correcting rumours or misunderstandings, and providing information to members about offers or concessions.

The experienced Delegate keeps an eye on workplace decisions and the conditions of workers, particularly after a formally agreed change.

The first point of contact if any situation arises should be with your delegate. Delegates can provide basic support if necessary. If the situation is more complicated, then you should contact your Organiser.

What delegates do not do?

- Delegates are not required to be all things to all the membership.
- Delegates are not required to be taking calls and concerns about work at home in their own time.
- Delegates are not required to represent members in disciplinary matters unless there has been involvement with the organiser on that matter. Delegates do have a status and if they are attending a meeting in an official capacity and agree on matters outside of their understanding it can complicate any legal process later if the union is challenging a matter.
- Delegates are not lawyers and must not represent members as though they were.
- Delegates are not on their own and if in doubt or uncertain on any matter should contact their Organiser for advice and support at the earliest stage email is great for this.

Organising a Meeting with Your Employer/Manager

Occasionally, you might be asked to arrange or attend a meeting with your employer or manager. Remember that presentation and planning are critical for successful negotiation and representation.



"I know it's awkward with me being the new boss and all ... but when you meet me in the halls, don't act like I'm going to eat you alive."

Make sure that you have the following:

- Clear objectives. Ask yourself what do you want to achieve?
- Workplace support. Your colleagues and you have discussed this matter and agree with your objectives
- All the relevant facts – use the experience and knowledge of the members in your workplace
- The key arguments of your case
- Anticipate management's response. If you know their argument this will help you prepare your counter argument
- A fall-back position or second option

You might consider letting your employer or manager know about the issues you want to discuss prior to any meeting. This can help speed

up the process and avoids the response, "We need to think about this." It also allows you to set the agenda of the meeting.

Employment Agreements

Under the Employment Relations Act 2000, there are two types of employment agreements. These are individual employment agreements and collective agreements. Individual employment

agreements are negotiated between an individual and their employer and only those parties.

WHEN WORKERS UNITE



Collective agreements are negotiated between a registered union and an employer. A collective agreement will only be binding on employees who are members of the union and whose positions are covered by the coverage clause of the collective agreement.

An employment agreement sets out the terms and conditions of your job. Under the law, your employer must provide you with a written employment agreement, no matter what kind of job you do.

Collective Employment Agreement

A collective employment agreement (CEA) is an agreement negotiated "collectively" between management (on behalf of the company) and unions (on behalf of employees who are in the Union). The collective agreement regulates the terms and conditions of employees in their workplace, their duties and the duties of the employer. It is usually the result of a process of collective bargaining

between an employer (or a number of employers) and a trade union representing workers. The objective of collective bargaining is to establish or renew a collective employment agreement.

A Collective Agreement must comply with a number of legal requirements. It must:

- Identify who is covered by the agreement — this is the “coverage clause”
- Include a plain language explanation of the services available to sort out any future employment relations problems
- Include a clause stating how the agreement can be changed
- Include the expiry date (or the event that will trigger expiry)
- Include a provision that complies with the Holidays Act 2003 requirement for employees to be paid at least time and a half for work on public holidays.

In most cases, it must also include a provision setting out how the employer will protect his employees if the business is sold or contracted out.

When a new Employee starts work, they go onto an Individual Employment Agreement based on the Collective Employment Agreement (CEA).

If a CEA is in operation in a workplace, then the Employment Relations Act 2000 stipulates that at the end of a month of employment workers must be offered the choice of whether they wish to continue on an Individual Agreement based on the Collective or join a Union and be represented under the terms of the Collective Agreement. The new employee can join the union at any time either before the end of the month or later.



An Individual Employment Agreement (IEA) is negotiated between an individual and their employer and binds only those parties. An IEA regulates the terms and conditions of employees in their workplace, their duties and the duties of the employer. Those on an IEA can choose to join the Collective Agreement at any time if the Collective Agreement covers the type of work they do.

What if there is more than one Collective Employment Agreement on Site?

In many of the worksites that NUPE is present there is more than one union. The staff at these worksites have choice in their union representation. If this is the situation at your worksite then please ensure new employees understand they have choice and understand what makes NUPE different to other unions on site.

If a staff member is with another Union and they want to change representation, then they can do this at any time. The staff member should resign from their current union by writing to the Union and advising them they are leaving. If the Union fee deductions are arranged through payroll then they should advise their payroll that they are leaving that union and tell payroll to cease the union membership fees to that union. The staff member can complete the NUPE membership form and send this to the NUPE office. These actions are straight forward and can occur at the same time.

The staff member changing to NUPE will be fully represented by NUPE from the time NUPE receives their membership form. If this staff member has left the other union when there is a current

Collective agreement in place for that Union, then they will be represented by NUPE, but they will remain on the other Collective terms and conditions until that agreement expires.

Delegates or new members unsure on this can contact their Organiser for clarification.

Important Legislation and Legal Overview

Legislation

Delegates and Union members need to know that there is specific legislation (Acts of Parliament) which protect the rights and conditions of workers.

Two of the most important pieces of legislation are the;

- Employment Relations Act 2000
- The Health and Safety at Work Act 2015

There are also other important Acts which provide minimums and protection for workers.

- Injury Prevention, Rehabilitation and Compensation Act 2001 (ACC)
- Privacy Act 1991
- Holidays Act 2003
- Human Rights Act 1993
- Parental Leave and Employment Protection Act 1987
- Equal Pay Act 1972
- Minimum Wage Act 1983
- Wages Protection Act 1983

The Employment Relations Act (Overview)

The Employment Relations Act establishes the industrial and legal framework we work in. The Act provides for balance in the relationship between employers, workers and their unions. The Act sets out to:

- Build good faith behaviour in the workplace
- Address unequal bargaining power between employers and unions
- Promote collective bargaining and collective agreements
- Provide effective employment problem solving mechanisms

The **good faith** provisions of the Act mean that the parties to the employment relationship (employers, workers, unions) cannot deliberately mislead or deceive each other. The government has developed a Code of Good Faith to give unions and employers principles and guidelines to follow when bargaining for collective agreements. Other codes may be developed over time to cover other aspects of good faith behaviour.

The Act also recognises the key role unions play in the employment relationship and assists unions to build collective organisation by providing some key rights, such as;

- Promoting collective bargaining, including industry bargaining
- Paid employment relations education leave for union representatives
- Union-only collective agreements
- Access by union officials to the workplace to talk with members and non-members
- Two paid stop-work meetings per year (2 hours each)
- Deduction of union fees from your pay.

The Employment Relations Act

- Promotes collective bargaining as the best way to enhance workers' bargaining power and achieve fair and just negotiation outcomes.
- Recognises that generally employers have more bargaining power than individual workers.
- Creates a framework, or set of rules, which each party has to follow.

Wages Protection Act 1983

The Wages Protection Act sets out the requirements of wage payments. Under this Act an employer needs to get a worker's written agreement to:

- Pay wages in any form other than in cash, or to make any deductions from a worker's pay.

The Holidays Act (2003)

Minimum entitlements

The Holidays Act sets out the minimum entitlements of annual holidays for all workers.

- It gives 4 weeks' annual leave after a worker has been employed by the same employer continuously for 12 months. Some MECA collective agreements also have additional leave for service and shift.
- If a part time worker is employed 4 days per week, that worker's entitlement is 4 weeks at 4 days per week. If the worker is employed 33 hours per week, then the entitlement is 4 weeks at 33 hours.

Holiday pay included in wages

Workers on fixed-term agreements for less than 12 months (s66 ERA) and casual workers can get their holiday pay included in their wages provided the worker's employment agreement explicitly provides for this arrangement and the holiday pay is an identifiable component of the wages.

The holiday pay is paid at a rate not less than 8% of the worker's gross earnings.

Taking holidays

The employer must allow workers at least two weeks of uninterrupted leave within 12 months of qualifying for annual leave.

- Employers can require workers to take annual leave
- If agreement can't be reached as to when a worker will take holidays, or
- When there is a closedown period, but
- Must give them at least 14 days' notice.
- If the employer fails to allow a worker to take leave, they don't lose their entitlement.

Closedown period

- The employer is entitled to 1 closedown period per 12 months.
- Workers who have not yet completed 12 months employment have their employment calculated at 8% of their gross earnings.
- Workers must be given 14 days' notice of a closedown period

Payment

Workers must be paid for the holiday before it is taken unless the worker agrees for it to be paid in the pay that relates to the period during which the holiday is taken.

If a worker is ending their employment, their holiday pay must be included in the final pay.

Public Holidays (Holidays Act 2003)

Every worker is entitled to not less than 11 public holidays each year, which are paid holidays when the worker, whether full time, part time or casual, would otherwise have worked. They are:

New Year's Day	Queen's Birthday
Second of January	Matariki
Waitangi Day	Labour Day
Good Friday	Christmas Day
Easter Monday	Boxing Day
ANZAC Day	

The anniversary of the province in which worker is employed.

An employer can require a worker to work on a public holiday if it would otherwise be a working day and if the worker is required to under the employment agreement.

Payment and alternative holiday

Any worker who works any part of a public holiday must be paid at least time and a half of the relevant daily pay for the time worked and allowed to take a whole day's alternative holiday on a working day agreeable to the worker and the employer.

If the employer won't agree, the worker can give the employer 14 days' notice of intention to take the holiday provided the worker considers the employer's view as to when it is convenient.

Public holidays are additional to annual leave.

A worker can request for their alternative holiday(s) to be paid out if 12 months have passed since the worker became entitled to it/them.

Sick Leave and Bereavement Leave

The following are minimums – your collective agreements usually provide better conditions. After six months with an employer, workers are entitled to 5 day's sick leave on pay during the subsequent 12 months of employment

- For their own sickness or injury, or
- For the sickness or injury to the workers spouse or someone who depends on the worker for care. A worker can accumulate sick leave to a maximum of 20 days.

A worker is entitled to take 3 days bereavement leave for each type of bereavement listed below:

- spouse parent
- child brother or sister
- grandparent grandchild

- spouses' parent

A worker is entitled to 1 day's bereavement leave where the employer accepts that the worker had/has;

- A close association with the deceased person
- Has to take significant responsibilities for all or any of the funeral arrangements
- Any cultural responsibilities in relation to the death.

Parental Leave and Employment Protection Act (1987).

To be eligible for parental leave a worker must have:

- worked for the same employer for 12 months and be employed for at least 10 hours a week when the baby is due.

Parental leave is for a maximum of 12 months, and can be for either you or your partner, or you can share it. Parental leave is also available to couples who are adopting a baby.

Applying for Parental Leave

An employer requires 3 months written notice of when a worker wants to take leave. The letter must say:

- Who is applying for leave, and
- The dates wanted for the leave.

For the male partner to obtain parental leave, the woman partner must make a written declaration stating that he is her partner and intends to assume care of the child while on leave.

What the employer must do

- Ask the worker within 7 days for any additional information
- Reply to the worker within 21 days telling you if you are eligible for Parental Leave or not and if your job can be kept open.

Within 21 days of starting parental leave, the employer must write to the worker saying;

- When the leave ends
- When the worker can return to work
- When the worker must decide if they're returning to work or not
- What the worker's rights are if you want to come back before the end of your leave.

Paid Parental Leave

Any worker who qualifies for and is taking parental leave is also entitled to a weekly payment for one continuous period of up to 22 weeks. There will be a further increase to 26 weeks from 1 July 2020.

Those who qualify are;

- A mother.
- An adoptive parent who adopts a child under 5 – payment is made to the parent who takes parental leave to care for the child.

- The partner of a woman who has qualified for parental leave but is unable to apply due to death or who no longer has legal guardianship of the child.

The rate of payment increases each year. The IRD pays the money directly to the worker's bank account each week. (The current rate can be checked on the Employment Relations website: www.ers.dol.govt.nz)

Injury prevention, Rehabilitation and Compensation Act 2001 (ACC)

NUPE should also be actively involved in ensuring members get their correct ACC entitlements after an injury and during the rehabilitation process.

After a member returns to work a return to work plan needs to be developed. This can be done with the assistance of the Union. Any plan must be based on the advice provided by the relevant GP or specialists. The object of the plan is to ensure that the member can return to full duties.

A number of employers are in the ACC Partnership Programme and work through various ACC providers (Well NZ and Gallagher and Bassett etc). This relationship has some special implications for workers, but all entitlements are the same as those that ACC would provide.

Companies in the Partnership Programme must be audited by ACC to make sure they comply – H&S reps and delegates are entitled to take part in the audit process – ask your Organiser for assistance.

More information about legislation

For further information on any of the legislation outlined in this section, see your Organiser or visit the Ministry of Business, Innovation & Employment (old Labour Department) website www.dol.govt.nz

Legal Information/Advice

Sometimes workers are involved in disciplinarys, or they might become involved in a grievance. It is important that delegates can understand the various terms that are involved as they mean different things and have different outcomes.

Disputes

When there is disagreement about the interpretation, application or operation of a collective agreement, any person covered by, or party to that agreement may pursue a dispute. Any person or party pursuing the dispute must tell all of the union and employer parties to the agreement that there is a dispute.



If a dispute is about pay or time worked, the Union has the right to request immediate access to, or a copy of, or an extract from any part or all of the wages and time record for a member for any time over the past 6 years.

Personal Grievances

Under the ERA, a worker may take a PG against his/her employer or former employer because of a claim that he/she has been;

- Unjustifiably dismissed
- Disadvantaged by some unjustifiable action by the employer.
- Discriminated against, based on their, sex, marital status, religious or ethical belief, colour, race, ethnic or national origins, disability, age, political opinion, employment or family status, sexual orientation
- Sexually harassed.
- Racially harassed.
- Subject to duress because of membership or non-membership of a union. A grievance must be raised with the employer within a period of 90 days of when the grievance occurred or came to the notice of the worker (whichever was the later).

When does a worker have a grievance for harassment or discrimination?

Harassment - when a worker is subjected to unwelcome or offensive behaviour through words, visual material or physical behaviour of a sexual nature, and this behaviour is of such a nature, or is repeated so often, that it has a negative effect on the worker's employment, work performance or job satisfaction.

Discrimination – when a worker experiences hostility, ridicule or contempt based on their race, colour, ethnic or national origin through language, visual material or physical behaviour, and this behaviour is of such a nature, or is repeated so often, that it has a negative effect on the worker's employment, work performance or job satisfaction.

Investigations and Disciplinaries

Be aware that a preliminary investigation is just that – it is supposed to establish the facts around what happened, and members may be asked to provide statements or answer questions.

- They are obliged to be ‘responsive and communicative’ and not to ‘mislead or deceive’ as part of their good faith obligations under current employment laws

An investigation can lead to the establishment of a **case to answer**, so even at this stage a member should be warned that any information they provide may be used in subsequent disciplinary proceedings and they should also be given the right of representation.

Disciplinaries are different. The member should be provided with any allegation(s) that have been made, all the information surrounding the allegation(s) and a warning of the possible consequences should the allegations be substantiated. The member should also be given the right to be represented.

If you are asked to represent a member the following checklist may help:

Investigations

- Has the purpose of the meeting been clearly explained to the member?
- Has the member been given a warning that any information they provide may be used in subsequent disciplinary proceedings?
- Has the member been given the right to representation including enough time to receive and consider advice?

Disciplinaries

- Have the allegation(s) been clearly spelt out?
- Have the possible consequences (dismissal/final warning/warning) been identified?
- Has the member been given all the information/evidence pertaining to the allegation including any witness statements, notes of interviews written and/or electronic evidence?
- Is the decision maker for the employer present at the meeting?
- Has the member been given the right to representation including time to seek and consider advice?
- In the event of the employer reaching a view the allegation(s) are substantiated is the member given an opportunity to make submissions on any possible penalty?

Dismissal

Sometimes a disciplinary might end with a dismissal. Employers need to ensure that they follow a process prior to a dismissal these processes are found in both Collective and Individual Employment Agreements. However, dismissals must certain legal requirements which are based on case law.

The ERA requires that an employer’s actions and how they went about these actions must reflect what a fair and reasonable employer would have done in those circumstances.

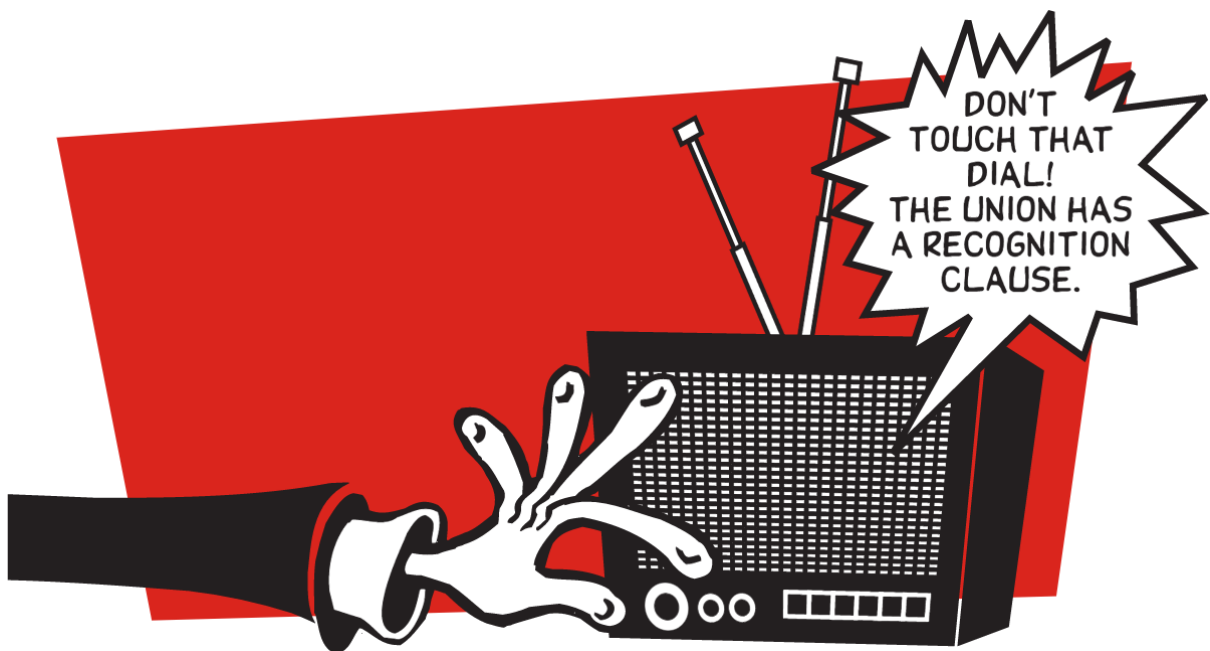


- Based on case law, a dismissal or an action is unjustifiable if
- There is no good reason for it
- It is not carried out fairly
- No reasonable notice is given
- The issue or problem had not been identified earlier to the worker
- The worker hasn't been given the opportunity to offer an explanation
- There was no thorough investigation, or it was carried out with prejudice against the worker
- There was no opportunity to improve their performance prior to dismissal (except for summary dismissal for serious misconduct).

The Right to Representation (ERA s236)

Remember that all Union members have the right to be represented in any matters involving their employment. If a member is in the public service, they are also entitled to representation under the provisions of the Public Service Act 2020.

Do not let the Employer deny you of your right to representation. If they do – contact NUPE Immediately.



Glossary

Agenda

A list of all the issues to be covered at a meeting.

Ballot/Secret Ballot

A method of voting on an issue, usually in secret, by marking a ballot paper and putting it into a box. The total number of votes recorded in an election, or to decide on an issue.

Casual Employee

A person who is employed to work at very short notice, for short periods of time, often through an employment agency.

Casualisation

An employment practice that sees large numbers of temporary casual workers at work to “provide flexibility” and “reduce the costs of running the business.”

Claims

A list of issues put forward by workers for the negotiation of the collective agreement.

Collective Agreement

This is where your terms and conditions of employment are set out. It is negotiated between your union and the employer. Any worker who is a member of the union, and does the work described in the coverage clause, is automatically covered by the collective agreement.

Coverage Clause

This is the clause that describes the work done by workers who are covered by the collective agreement.

Dispute

A dispute is where there is disagreement over the interpretation, application or operation of any part of a collective agreement.

Employment Court

The Employment Court mainly hears appeals against decisions made by the Employment Relations Authority. The Employment Court also hears applications for injunctions by one party to a collective agreement against the other party -unions or employers.

ERA

Either

- the Employment Relations Act 2000, or
- the Employment Relations Authority.

The Employment Relations Authority looks at employment related problems –(the facts presented by the parties) then makes a decision based on the merits of the case. An appeal against a decision can be taken to the Employment Court.

EREL

Employment Relations Education Leave is a provision of the ERA that provides paid time off work for union members to attend approved union training courses. NZMWU delegates attend courses that have been approved by the Minister of Labour. The union allocates the leave and the employer can only refuse permission for a delegate to attend if there are reasonable grounds to do so.

Lockout

When an employer refuses to provide work for workers in order to get them to agree to new terms and conditions in a collective agreement, the employer has “locked out” the workers. This is the employer’s version of a strike and can only be done when negotiating for a collective agreement or when there are issues relating to unsafe work.

Mediation

A service provided by the Department of Labour under the Employment Relations Act to assist workers, unions and employers resolve employment related problems. If an agreement can’t be reached between the parties, the issue may be taken to the Employment Relations Authority.

Minutes

The record of a meeting.

NQF

National Qualifications Framework

NZQA

New Zealand Qualifications Authority.

Organiser

Paid union official who organises, negotiates for/with and represents workers.

Part Time Employee

A worker who works for less than 40 hours per week and is paid pro- rata the weekly wage and leave entitlements of a permanent full-time employee. They may be permanent or temporary.

Personal Grievance (PG)

A claim by a worker that they have been unjustifiably treated or dismissed or been subjected to duress because of membership or non-membership of a union.

Picket

A picket occurs when striking workers stand outside their workplace, their employer’s head office or some other place, to draw attention to the existence of their strike.

Pro Rata

This is a term meaning “in proportion to”. A part time worker who works for 4 days per week (32 hours) will get paid 4/5 of the 5-day (40 hours) rate, and 4/5 of the leave entitlements.

Ratification

When a collective agreement has been negotiated between the union and the employer, the workers covered by the proposed settlement must meet and vote either to accept or reject the deal. This process is called ratification - if the majority agrees to accept the proposed settlement, then it becomes a collective agreement binding on both parties. The standard majority required for ratification is 50% + 1, but members can vote on setting a different majority figure.

Stop Work Meeting

The Employment Relations Act provides all workers covered by a collective agreement a minimum of two 2 hour paid stop work meetings per year to discuss union business. Many NZMWU collective agreements already allow for four hours of paid stop work meeting time.

Strike

Sometimes called industrial action, a strike is a refusal by workers to carry out any work or duties that they would normally do, ranging from a “work to rule,” to being “out the gate.”

Under the ERA, workers can legally strike if they have been in negotiations for a collective agreement for 40 days and can’t reach agreement with the employer.

Workers may also take strike action over health and safety issues where there is a risk of injury.

The union rules require a secret ballot if it is requested through a motion at a meeting, is seconded and supported by a hand vote of 30% of the members present.

Temporary Employee (Temp)

A worker employed for a fixed term either fulltime or part-time sometimes to cover a specific project, parental leave, long-term illness or ACC. An employer needs to have genuine reasons for employing temps and the temp employee must be made aware of the nature of their employment – s66 ERA.

Casual Employee

Casual employment is defined as the employment of a person on an on call and as required basis without any commitment from either party to ongoing employment. This includes staff engaged for one-off situations. They do not have pre-determined hours of work and work arrangements are made on an hourly, daily or weekly basis as the employer’s needs arise.

A casual employee is defined as an employee who:

- is engaged to work only on “as and when” required basis; and
- is under no obligation to accept work offered; and
- is employed for a discrete casual work engagement(s); and
- has no expectation of ongoing or further casual work engagements being offered; and
- is paid full at the end of each completed casual work engagement (including holiday pay).