



A-Z OF EMPLOYING

Bargaining arrangements

Our guide for Employers and Managers

**SUPPORTING,
FACILITATING &
REPRESENTING
BUSINESS**

Business**Central** 

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This is only a guide.
It should not be a
substitute for
professional advice.

Please seek advice
from our AdviceLine
Team if you require
specific assistance.

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Bargaining Arrangements

The Employment Relations Act 2000 encourages employers, unions, and employees, in the context of collective bargaining, to draw up a bargaining arrangement that specifies the rules the parties have agreed to abide by while bargaining for their collective employment agreement. Where bargaining for a collective employment agreement is to involve multiple parties, then the need for a comprehensive bargaining arrangement is greater.

Good faith in bargaining for a collective agreement is covered in section 32 of the Act. Section 32(1)(a) stipulates that the duty of good faith (in section 4 of the Act) requires that a union and an employer use their best endeavours to enter into an arrangement, as soon as possible after the initiation of bargaining, that sets out a process for conducting the bargaining of the collective in an effective and efficient manner. But the Act provides little guidance on what matters should be addressed in a bargaining arrangement.

In April 2011 a new sub-section was added to Section 32 stating that the section “... does not prevent an employer from communicating with the employer’s employees during collective bargaining (including, without limitation, the employer’s proposals for the collective agreement) as long as the communication is consistent with...” subsection (1)(d) of the section and the duty of good faith in section 4.

The law was not intended to extend the ability of employers to communicate, but to clarify the current situation.

Check Bargaining Process Agreement Does Not Restrict You

The law change is helpful clarification however it does not over-ride your bargaining process agreement. Check that your BPA does not restrict your legal right to communicate directly with employees.

Section 2 of the Code of Good Faith sets out what matters the parties should consider when developing an agreed bargaining arrangement. The matters that should be considered are:

- ▶ Advice as to who will be the representative(s) or advocate(s) for the parties in the bargaining process.
- ▶ Advice as to whom the representative(s) or advocate(s) represent.
- ▶ The size, composition and representative nature of the negotiating teams and how any changes will be dealt with.

The Employment Relations Act may be viewed at www.legislation.govt.nz

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Sample Bargaining Process Agreement

User Notes:

1. The Employment Relations Act requires parties to collective bargaining to use their best endeavours to agree a Bargaining Process.
2. This Bargaining Process is designed to raise issues you need to consider when arranging for bargaining to commence and suggests a position on issues that a company may wish to take.
3. The union will wish to discuss this document and you may need to reach a compromise in some clauses.
4. If you would like further assistance, please call Business Central on 0800 800 362 (NZ).

BARGAINING PROCESS AGREEMENT

This Bargaining Agreement is between:

[The Company]; and

[The Union]

For the bargaining as initiated in the notice dated [DATE].

Meeting Details

- a) The parties agree to meet and commence bargaining at [TIME] on [DATE] at [PLACE]. Further dates for bargaining will be agreed on a case by case basis as required.
- b) The Employer Advocate will be [NAME]. Other Employer representatives attending are [NAMES].
- c) Additional employer representatives may attend from time to time.
- d) The Union Advocate will be [NAME]. Other paid union officials may attend from time to time.
- e) Delegates attending will be as named below. Any changes to these delegates will be agreed between the parties.

[NAME DELEGATES]
- f) Other employees may attend as agreed between the parties and in their own time (i.e. not when they are required to work). These other employees do not have speaking rights.
- g) The Union will provide a list of members they are representing at the same time the Union provides its claims to the Employer.

Payment Details

If there is a cost to hiring a venue, that cost will be

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[CHOOSE 1), 2) or 3)]

- 1) paid by the union; or
- 2) paid by the employer; or
- 3) shared equally by the employer and the union.

Refreshments and lunch will be:

[CHOOSE 1), 2), 3) or 4)]

- 1) provided by the respective parties at their own cost for their own bargaining teams; or
- 2) provided and paid for by the union; or
- 3) provided and paid for by the employer; or
- 4) arranged by the employer/union with costs shared equally between the employer and union.

Delegates specifically named in this agreement will be paid on a without loss of pay basis. That is, they will be paid for the hours they would have worked had they not been attending the bargaining. Where the Employer considers bargaining is becoming protracted, it will advise the Union of its view and payment for delegates to attend will then be as agreed on a case-by-case basis.

Authorities

[CHOOSE 1) or 2)]

- 1) The Employer Advocate has the authority to reach a settlement on behalf of the employer; or
- 2) The Employer Advocate has the authority to reach a settlement which must then be approved by [POSITION OF APPROVER].

The Union Advocate has the authority to reach a settlement on behalf of the union subject to ratification by members. Ratification is achieved when [PERCENTAGE] % of those members who attend the ratification meeting accept the settlement.

Claims

Each party will e-mail their claims to the other party at least 3 working days before negotiations commence. The Employer's e-mail address is [E-MAIL]. The Union's e-mail address is [E-MAIL].

Any claims that will result in a significant change to the composition of the agreement will be advised at least 14 days in advance of negotiations. For example, a change to the coverage clause or inclusion of additional employer or union parties.

Late Claims

[CHOOSE 1) OR 2)]

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- 1) No late claims will be accepted by either party without mutual agreement; or
- 2) Late claims must be advised at the commencement of first day of bargaining and no additional claims may be made after that.

Bargaining

Each party will be responsible for keeping their own notes of claims, responses made, and counter claims.

The parties will meet and explain their claims, respond to the claims of the other party and provide an explanation of their response.

The parties are not required to continue to meet and respond to proposals that have already been considered and responded to.

Ratification Meeting

The employer will pay on a without loss of pay basis / allow unpaid leave [Choose] for each union member within the proposed coverage clause to attend one ratification meeting. The date, time and duration of the meeting to be as agreed between the parties, including whether all members attend one meeting or a series of meetings are required to ensure the continuation of business operations.

Pass-On

The parties acknowledge the pass-on of terms and conditions to non-union employees is as per the Employment Relations Act.

The employer may have a commitment to non-union employees to review wages and/or other terms by a specific date and if these negotiations are unresolved at that date, the parties acknowledge that the Employer is obliged to honour that commitment.

Requests for Information

Where either party makes a request for information under Section 34 of the Employment Relations Act, the information will be provided as required under the Act. Any costs incurred will be paid as agreed between the parties.

Communication

All communication, including those with employees, will be in a positive and constructive manner with the intention of assisting an amicable resolution of the issues. Issues from bargaining are to be

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reported fully and completely. As a courtesy, any written notices to employees will be forwarded to the other party.

Mediation

The parties intend to resolve the issues as appropriate using constructive efforts. In the event difficulties arise, they will use the Mediation Services provided by the Ministry of Business, Innovation, and Employment in the first instance. Mediation will be used before any industrial action is taken or notice of industrial action is served, unless one of the parties has communicated to the other that mediation is not appropriate and has suggested an alternative constructive and non-confrontational resolution process.

Breach of Good Faith

Where one party believes the other party has breached good faith, they will advise that party as soon as practicable.

Terms of Settlement and Collective Employment Agreement

The Employer and Union advocates will record any settlement in writing and sign it as soon as settlement is reached. That signed settlement will be the terms put to ratification by union members and for the employers approval.

Once the settlement is ratified, the employer/union [choose] will prepare the employment agreement for signature which the parties will sign as soon as possible. The party who prepares the document for signature will send a copy to the Ministry once it is signed by all parties.

Monetary increases will be paid as soon as practicable after both parties sign the employment agreement, unless the parties agree otherwise.

This Bargaining Process Agreement is dated [DATE]

[Company]

[Union]

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