The Employment Relations Act 2000

The Employment Relations Act 2000 recognises that the employment relationship involves more than a contractual exchange between the employee and the employer. The Act is based on the concept of 'good faith', which applies to all aspects of the employment relationship.

The Employment Relations Act 2000 (the ERA) was one of the cornerstones of the coalition government's election promises. The Act replaces the 1991 Employment Contracts Act, which was perceived by the coalition government as being anti-union and tipping the power balance in favour of the employer.

The ERA is designed to recognise and address the perceived power imbalance in the employment relationship by promoting collective organisation of employees and collective bargaining, through unions.

A further aim of the ERA was to 'de-legalise' the employment relationship. This is clear from the changes in terminology, such as the renaming of employment contracts as **employment agreements**. The major move to use standard mediation to solve employment relationship disputes is also part of this process.

Good faith bargaining in individual agreements

The ERA does not define 'good faith bargaining', but a generic code of good faith has been established in relation to employers and unions bargaining for a collective agreement or variation of a collective agreement.

All parties to individual employment agreements have a general duty to demonstrate good faith behaviour by bargaining fairly and remaining consistent with the implied terms of mutual trust and confidence in the employment relationship.

The ERA supplements this general duty with a specific prohibition against unfair bargaining. Unfair bargaining includes the situation where an employee:

- Does not understand the provisions or implications of his or her individual employment agreement by reason of diminished capacity due to, for example, the employee's age, sickness, emotional distress, mental or educational disability, or a disability relating to 'communication';
- Relied on the skill, care or advice of the employer at the time he or she entered into the agreement;
- Was induced to enter into the agreement by oppressive means, undue influence or duress; or
- Has not been given the required information or the opportunity to seek independent advice before entering into the agreement.

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An employee may apply to the Employment Relations Authority (the Authority) if he or she considers there has been unfair bargaining. If unfair bargaining is found to have occurred, the Authority may direct the parties to seek an agreement for themselves through mediation. If mediation fails to resolve the problem, the Authority may cancel or vary the individual employment agreement and may also award compensation.

What about fixed term agreements?

Under the old Employment Contracts Act, many people were employed on a fixed-term basis. The ERA makes it more difficult for employers to employ people for a limited period of time, whatever the reason. Under the ERA, before an agreement is made for a fixed-term, the employer must:

- have genuine reasons based on reasonable grounds for specifying the employee's contract as a fixed-term agreement; and
- advise the employee of when and how the employment will end.

This means that even employment of a truly seasonal nature will need to be justified. Employers will need to take care when drafting fixed-term employment agreements to make sure that individuals engaged as independent contractors can not later claim that they, in fact, have employee status.

Good faith bargaining in collective agreements

The Act sets out the minimum requirements that must be met in any bargaining for a collective agreement. The code of good faith sets out those obligations in more detail. For example the union and employer must:

- Use their best endeavours to agree a process for conducting the bargaining in an effective and efficient manner;
- Meet periodically to bargain;
- Consider and respond to proposals;
- Not undermine the authority of the other party (or parties) in the bargaining process.

The duty of good faith extends to all parties involved in the collective bargaining process (which can be significant in a multi-party bargaining situation). These good faith bargaining requirements are directed at the process of bargaining which means that parties are required to bargain but are not obliged to settle or reach a particular agreement.

What about existing contracts?

The employer and employee choose to renegotiate these. Collective contracts that were negotiated before the introduction of the ERA also continue but expired by the backstop date of 31 July 2003.

Personal Grievances Procedure and Remedies

The ERA introduced new problem-resolution regime exists for personal grievances. The personal grievance procedure set out in the Employment Contracts Act was not carried over into the ERA.

The only set requirement relates to the time in which a personal grievance must be raised. The grievance does not need to be made in writing and there is no requirement for the employer to formally respond in writing within 14 days of receipt of the grievance. However, if an employee who has been dismissed requests a statement of the reasons for that dismissal, the employer must provide the employee with a written statement within 14 days of receiving the employee's request.

In one of the major changes introduced by the ERA, reinstatement is now seen as the primary remedy in personal grievance cases. The Authority will grant reinstatement where the employee seeks it and if it is practicable. Other remedies that may be granted include reimbursement of lost wages and compensation.

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