



COVERSHEET

Minister	Hon Brooke van Velden	Portfolio	Workplace Relations and Safety
Title of Cabinet paper	Collective Bargaining Rebalance – Allowing for Pay Deductions in Response to Partial Strikes	Date to be published	16 December 2024

List of documents that have been proactively released		
Date	Title	Author
October 2024	Collective Bargaining Rebalance – Allowing for Pay Deductions in Response to Partial Strikes	Office of the Minister for Workplace Relations and Safety
29 October 2024	Collective Bargaining Rebalance – Allowing for Pay Deductions in Response to Partial Strikes CBC-24-MIN-0105 Minute	Cabinet Office

Departmental note: MBIE has been made aware, subsequent to the consideration of the Cabinet Paper, that a correction is required at paragraph 11.2 as the partial strike took place in 2023 and not 2024 as stated.

Information redacted	YES
<p>Any information redacted in this document is redacted in accordance with MBIE's policy on Proactive Release and is labelled with the reason for redaction. This may include information that would be redacted if this information was requested under Official Information Act 1982. Where this is the case, the reasons for withholding information are listed below. Where information has been withheld, no public interest has been identified that would outweigh the reasons for withholding it.</p> <p>Some information has been withheld for the reasons of legal professional privilege, free and frank opinions, negotiations and international relations.</p>	

In Confidence

Office of the Minister for Workplace Relations and Safety

Cabinet Business Committee

Collective bargaining rebalance: Allowing for pay deductions in response to partial strikes

- 1 I propose to amend the Employment Relations Act 2000 (the Act) to reinsert provisions allowing for pay deductions in response to partial strikes, and I am seeking Cabinet's views on appropriate timing.

Relation to government priorities

- 2 Rebalancing collective bargaining settings will support the Government's priority to deliver better public services, as partial strikes can result in the public experiencing greater disruption to public services, or a lower quality of service.

Executive Summary

- 3 On 24 September 2024, the Ministerial Employment Relations Forum discussed current issues relating to collective bargaining, including those relating to partial strikes.
- 4 Negotiations [REDACTED]
[REDACTED]. In the public sector, the effect of a partial strike by frontline services is often borne by the public.
- 5 In discussion with other Ministers, I have received an indication that there may be appetite to reinsert partial strikes provisions that would enable employers to make pay deductions in response to partial strikes, and for this change to be made in a timely manner.
- 6 I consider that changes are needed to collective bargaining settings to provide for a more effective and efficient bargaining environment where rights and consequences are more balanced, and which minimises potential disruption to public services.
- 7 I therefore propose to reverse changes made by the previous Government in 2018 that removed employers' ability to reduce pay in response to partial strikes. I seek Cabinet's view on whether these changes are best progressed via an Employment Relations (Partial Strikes) Amendment Bill, to be introduced in December 2024 or the Employment Relations Amendment Bill, scheduled to be introduced in early to mid-2025.

Current provisions are causing undue disruption and protracted bargaining

- 8 Partial strikes are industrial actions that fall short of a full withdrawal of labour (e.g. a go-slow order, partial discontinuance of work, or work-to-rule) where it results in a reduction in the normal output or rate of work or breach of the employee's employment agreement, but does not include refusing to work overtime. Employers can suspend the employee for the duration of the strike, but this results in a larger impact on the employer by stopping all work by those employees. There is currently no provision to allow a more nuanced response, such as pay deductions.
- 9 I consider the current strike provisions do not appropriately balance rights and consequences in situations where there is not a total withdrawal of labour. When a full strike occurs, employers can respond by suspending the employees and not providing pay. In this situation, there are negative consequences for both sides – the employees are losing pay and the employer is losing output. This provides an incentive for both sides to cease industrial action, and return to the bargaining table, as soon as practicable.
- 10 For partial strikes, the employer's options are to accept the partial strike action and the output loss, if any, that may result or to lock out or suspend the employees for the duration of the strike (removing their entitlement for wages). In many cases of a partial strike, the lockout or suspension option may be a disproportionate response and could inflict greater losses on the employer.
- 11 In the public sector, the effect of a partial strike by frontline services is often borne by the public. Examples of strikes in the public sector, and their effect, include the following:
- 11.1 The recent Magnetic Resonance Imaging and Nuclear Medicine Technician partial strike actions¹ in August 2024 resulted in a reduction of more than 50 percent of scans, increased outsourcing, caused a loss in Accident Compensation Commission revenue, significant increases in all waiting lists, delays in early cancer treatment, and necessitated redeployment of front-line staff to cover work in Radiology.
- * 11.2 In 2024 teachers declined to teach particular student-year groups on specified days. Teachers were still working but most students in affected year levels did not attend school on those days, disrupting their learning and impacting the ability of some parents to work. Teachers also refused to participate in after school meetings, supervise extracurricular activities, run Ministry-directed initiatives, and to provide internal relief cover for absent teachers or teach students from other classes.

¹ Noting some of the action undertaken included refusing to work overtime, which would not be covered by the proposed partial strike provisions.

*Departmental note: MBIE has been made aware, subsequent to the consideration of the Cabinet Paper, that a correction is required at paragraph 11.2 as the partial strike took place in 2023 and not 2024 as stated.

11.3 In 2022, Fire and Emergency New Zealand (FENZ) staff, who were members of the New Zealand Professional Firefighters Union, withheld activities such as processing and sending non-critical situation reports, gathering and reporting statistics, training and other administrative tasks. In response, FENZ pulled volunteer staff and managers from other stations to cover the work.

12 Partial strikes may also cause disruption for publicly funded or subsidised services. For example, this year train staff union members voted not to accept shift alterations. This had a flow-on effect for services experienced by the public, including train cancellations and bus replacements.

It is time to restore balance in collective bargaining

13 I am seeking approval to reinsert the provisions in relation to partial strikes that were inserted in the Employment Relations Act 2000 in November 2014 (and came into force in March 2015) and then repealed in December 2018. This will provide the ability for employers, in partial strike situations, to either reduce an employee's pay by a proportionate amount (calculated in accordance with a specified method that is based on time not undertaking work) or deduct a fixed percentage (10 percent) of their pay.

14 These settings, including the procedural provisions that were introduced by the 2014 Act to operationalise the proposal, are described in **Appendix One**.

15 It is not possible to determine how bargaining parties will use the new settings in their industrial strategies and data is not reliable enough to signal which outcome is more likely. For example, it is possible that the changes to partial strikes settings reduce strike action in general, or it could lead to an increase in full strikes, rather than partial strikes. International relations

[Redacted text]

16 Enabling employers to make partial pay deductions in response to partial strikes is a more balanced and appropriate response which can help incentivise parties to reach agreement sooner. It would also be more consistent with the approach in Australia and United Kingdom.

17 Organisations' use of partial strike provisions to deduct pay will depend on organisational and payroll system capacity and the nature of the partial strike action.

Free and frank opinions

- 19 Around 75 percent of Public Service collective agreements are expiring between November 2024 and July 2025, with the majority of those expiring between November 2024 and April 2025. These agreements cover over 70 percent of the Public Service workforce.
- 20 Significant bargaining in the health sector is also occurring during this time. For example, Health New Zealand bargaining covering nursing services (estimated coverage 35,000) and senior doctors (estimated 6,000) is underway, and bargaining covering midwifery services will begin within six months. Although these workforces have not favoured partial strike actions in the past, other health sector unions and workforces have. **Negotiations**. Health New Zealand advises that if nursing and senior doctors were to utilise partial strike actions, it would have substantial impact on productivity, clinical safety and the potential for patient harm with prolonged deferrals of care including cancer treatments, continuity of service, and waiting lists. Partial strike action in the health sector may also impact the delivery of Government Targets around length of stay in emergency departments and wait times for elective treatment.
- 21 In the education sector, bargaining for principal and teacher collective agreements can be initiated from March and May 2025 respectively.
- 22 In addition, significant workforces at the New Zealand Defence Force and Fire and Emergency New Zealand are in bargaining, and a number of larger Crown agents will also be bargaining in late 2024 and the first half of 2025, including the New Zealand Qualifications Authority, Aviation Security, Callaghan Innovation, WorkSafe, Accident Corporation Commission, Tertiary Education Commission, Kāinga Ora, Environmental Protection Authority, and the New Zealand Transport Agency.

23 **Negotiations**

24 **Negotiations**

Negotiations

- 25 **Free and frank opinions**
[REDACTED], I am seeking Cabinet's views on whether it prefers to introduce a bill (and for it to have its first reading) to change partial strike settings prior to Christmas 2024, or to include these changes in the Employment Relations Amendment Bill (ERAB) already on the 2024 Legislation Programme, which will also include amendments to other areas of the Act.
- 26 **Free and frank opinions**
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] The difference between these two choices is approximately seven months.

Cost-of-living Implications

- 27 There are no direct cost-of-living implications associated with the options.

Financial Implications

- 28 There are no direct financial implications associated with the proposed changes in this paper.
- 29 The size of indirect financial implications would depend on how the changes impact the progress and outcome of collective bargaining, and the extent of strike action during bargaining, the type of action taken, how disruptive it is and how long it is planned for.

Legislative Implications

- 30 Legislation will be required to amend the Act to enable employers to make partial pay deductions in response to partial strikes. I am seeking Cabinet's view on two timing options. A change to partial strikes settings could be:
- 30.1 progressed via an Employment Relations (Partial Strikes) Amendment Bill and added to the 2024 Legislation Programme with a priority category five – to be introduced and have its first reading by the end of 2024, or
 - 30.2 included in the Employment Relations Amendment Bill, which is on the 2024 Legislation Programme with a priority category seven – policy development to continue in or beyond 2024.

- 31 I propose to issue drafting instructions for amendments to partial strike settings, subject to Cabinet decisions.
- 32 The proposed amendments to the Act will bind the Crown.

Impact Analysis

Regulatory Impact Statement

- 33 A Regulatory Impact Statement (RIS) has been completed and is attached. MBIE has internally peer reviewed the RIS and assessed it partially meets the quality assurance criteria.

Climate Implications of Policy Assessment

- 34 The Climate Implications of Policy Assessment (CIPA) team has been consulted and confirms that the CIPA requirements do not apply to this proposal as the threshold for significance is not met.

Population Implications

- 35 Given that it is not possible to determine how bargaining parties will use the new settings in their industrial strategies, it is unclear what the population impacts will be.

Human Rights

- 36 The proposal to enable employers to deduct pay for partial strikes may engage section 17 of the New Zealand Bill of Rights Act 1990 (NZBORA) which affirms that everyone has the right to the freedom of association.
- 37 Strike action may be considered to be an exercise of right to the freedom of association. The ability for employers to deduct pay for partial strike action may disincentivise partial strike action in some cases but it does not limit the ability for union members to choose to undertake strike action in general. I consider that the ability to deduct pay for partial strike action is a proportionate response to addressing the current imbalance in collective bargaining in this area, i.e. the ability for employees to undertake partial strike action with no proportionate consequence. Therefore, to the extent there is any limitation on the right protected under section 17 of the NZBORA, I consider it is justified.
- 38 The proposal will be assessed by the Ministry of Justice for consistency with NZBORA before introduction.

International Obligations

- 39 The ILO Committee on Freedom of Association (CFA) has determined that salaries can be deducted for strikes, provided the amount of the deduction is commensurate with the period of the strike. International Relations



- 40 Legal professional privilege [redacted]

Consultation

41 The following departments were consulted: Department of the Prime Minister and Cabinet, Ministry of Defence, Ministry of Education, Ministry of Foreign Affairs and Trade, Ministry of Health, Department of Internal Affairs, Ministry of Justice, Oranga Tamariki, Ministry for Regulation, Ministry of Social Development, Te Kawa Mataaho Public Service Commission, Ministry of Transport, The Treasury, and Ministry for Women.

- 42 Free and Frank [redacted]

Communications

43 I intend to make an announcement confirming Cabinet decisions were taken on legislative amendments to collective bargaining settings relating to partial strikes.

Proactive Release

44 This paper will be proactively released (subject to redactions in line with the Official Information Act 1982) within 30 business days of final Cabinet decisions.

Recommendations

The Minister for Workplace Relations and Safety recommends that the Committee:

- 1 **note** that changes are needed to collective bargaining settings to provide for a more effective and efficient bargaining environment where rights and

consequences are more balanced, and which minimises potential disruption to public services;

- 2 **agree** to the policy proposals as set out in Appendix One, which reverse the 2018 changes made to the rules relating to partial strikes and revert the settings in these areas to those set out in the Employment Relations Amendment Act 2014;
- 3 **agree** to a transitional provision that an employer must not make a specified deduction of pay in relation to:
 - 3.1 any partial strike that ends before commencement; or
 - 3.2 any period of a partial strike that occurred before commencement;
- 4 **agree** that:

EITHER

 - 4.1 the Employment Relations (Partial Strikes) Amendment Bill be added to the 2024 Legislation Programme with a priority category five – to be introduced and have its first reading by the end of 2024;
 - 4.2 the policy changes in recommendations 2 and 3 be given effect through the Employment Relations (Partial Strikes) Amendment Bill;

OR

 - 4.3 the policy changes in recommendations 2 and 3 be given effect through the Employment Relations Amendment Bill, which holds a category seven priority (policy development to continue in or beyond 2024);
- 5 **invite** the Minister for Workplace Relations and Safety to issue drafting instructions to the Parliamentary Counsel Office for the policy changes in recommendations 2 and 3;
- 6 **authorise** the Minister for Workplace Relations and Safety to make decisions, consistent with the policy in this paper, on any issues that arise during the parliamentary process, including any transitional provisions.

Authorised for lodgement

Hon Brooke van Velden
Minister for Workplace Relations and Safety

Appendix One – Policy settings for partial strike provisions

I am seeking approval to reinsert the provisions in relation to partial strikes that were inserted in the Employment Relations Act 2000 in November 2014 (and came into force in March 2015) and then repealed in December 2018.

Reinserting those provisions will implement the following policy proposals:

1. A partial strike means an employee, who is party to a strike:
 - a. continuing to perform some work for their employer, including partially discontinuing work, reducing their performance at work; or
 - b. breaching their employment agreement.
2. In partial strike situations, employers can either:
 - a. reduce an employee's pay by a proportionate amount, calculated in accordance with a specified method that is based on time not undertaking work, as set out in point 4 below; or
 - b. deduct 10 percent of their wages.
3. Employers will have to provide written notification to employees that they will be reducing their pay before the deduction is made (the amount of deduction is not required in the notice).
4. If an employer decides to reduce an employee's pay by a proportionate amount then they must work out the proportion of the pay deduction by using the four steps referred to below, and the employee's (or group of employees') pay may then be reduced by that proportion:
 - a. identify the usual hours of work for the day of the partial strike for the employee
(or group of employees);
 - b. identify what work the employee (or a group of employees) is not performing;
 - c. estimate how much time an employee (or group of employees) would, but for the strike, spend doing this type of work during the day of the strike;
 - d. work out how much this time is as a proportion of the employee's (or group of employees') hours of work for that day.
5. Employees' pay could be reduced below the applicable minimum wage where an employer has made a specified pay deduction in response to a partial strike and in accordance with the partial strike provisions.
6. The pay that is to be reduced will only include payments for work that is not being done, and will exclude payments such as cashed up annual holidays and reimbursement expenses.
7. Employers only have to respond to written requests from unions for information on how specified pay deductions are calculated (they do not respond to requests from

individual employees). A request must be made as soon as reasonably practicable after the pay day on which the deduction was first made.

8. Where a union requests information on how a specified pay deduction is calculated:
 - a. employers must respond in writing to the union's request for information as soon as practicable;
 - b. the employer must provide the union with all information relied on to make the specified pay deduction;
 - c. the information must include an explanation of how the calculation of the specified pay deduction, or the 10 percent deduction, was applied to make the deduction from the employee's wages.
9. If the union disagrees with the employer's calculation, the union must advise the employer in writing that they disagree as soon as practicable after receiving the employer's information on how they calculated the specified pay deduction. The union may lodge an application with the Employment Relations Authority if they are unable to resolve the problem with the employer.
10. The Employment Relations Authority's duty to prioritise previously mediated matters will not apply to disputes about specified pay deductions for partial strikes.
11. The Employment Relations Authority can determine whether the employer has correctly applied the specified steps for determining the specified pay deduction, and may also determine the correct proportion if it finds that the steps have not been applied correctly.
12. The Employment Court has the jurisdiction to grant an injunction to stop a specified pay deduction.
13. Any recovery of overpayments when a specified pay deduction applies is to be done by adapting the procedure set out in the Wages Protection Act 1983 in the following way:
 - a. the notice to recover an overpayment must be made no later than five working days after the pay day that the overpayment occurred; and
 - b. the notice must specify the amount of the overpayment to be recovered.
14. The partial strike provisions will not apply:
 - a. if the partial strike is undertaken on the grounds of safety or health;
 - b. where the employee is paid by piecework, and if the partial strike involves the employee reducing their normal output;
 - c. if the partial strike involves a refusal to work overtime or to perform call-out work (if the employee would otherwise receive a special payment for performing that work).