



COVERSHEET

Minister	Hon Iain Lees-Galloway	Portfolio	Workplace Relations and Safety
Name of package	Employment Relations (Infringement Offences) Regulations 2019	Date of issue	3 May 2019

In March 2019, Cabinet agreed to make section 65(1)(a) of the Employment Relations Act 2000 an infringement offence via the *Employment Relations (Infringement Offences) Regulations 2019*. This will come into effect on 6 May 2019. This minor, technical change clarifies an infringement in line with the original policy intent and does not change an employer's requirement to have a written employment agreement for each employee. The detail of why this change was needed has been withheld to protect legal privilege. Find out more about this requirement on [the Employment New Zealand website](#).

List of documents that have been proactively released		
Date	Title	Author
13/2/2019	Issuing Infringement Notices for Breaches under the Employment Relations Act 2000	Office of the Minister for Workplace Relations and Safety
13/2/2019	Minute of Decision: Issuing Infringement Notices for Breaches under the Employment Relations Act 2000	Cabinet Office
19/3/2019	Employment Relations (Infringement Offences) Regulations 2019	Office of the Minister for Workplace Relations and Safety
19/3/2019	Minute of Decision: Employment Relations (Infringement Offences) Regulations 2019	Cabinet Office

Cabinet considered the 'Issuing Infringement Notices for Breaches under the Employment Relations Act 2000' paper on 18 February 2019 and the 'Employment Relations (Infringement Offences) Regulations 2019' paper on 25 March 2019.

Information withheld

The proactive release of the Cabinet paper 'Issuing Infringement Notices for Breaches under the Employment Relations Act 2000' was delayed to allow consideration of the subsequent Cabinet paper 'Employment Relations (Infringement Offences) Regulations 2019'.

Some parts of this information release are not appropriate to be released and, if requested, would be withheld under the Official Information Act 1982 (the Act). Where this is the case, the relevant sections of the Act that would apply have been identified and are listed below. Where information has been withheld, no public interest has been identified that would outweigh the reasons for withholding it.

Section of the Act	Reason for withholding
9(2)(h)	Maintain legal professional privilege
9(2)(g)(i)	The free and frank expression of opinions by or between or to Ministers of the Crown or members of an organisation or officers and employees of any department or organisation in the course of their duty

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In Confidence

Office of the Minister for Workplace Relations and Safety

Chair, Cabinet Legislation Committee

Employment Relations (Infringement Offences) Regulations 2019

Proposal

- 1 I propose that the Cabinet Legislation Committee authorise the submission to the Executive Council of the *Employment Relations (Infringement Offences) Regulations 2019*.

Background

- 2 In April 2016, a number of changes were made to the Employment Relations Act 2000 (the Act) to strengthen the enforcement of minimum employment standards. One of these changes was to allow labour inspectors to issue infringement notices to businesses that could not supply employment agreements within a reasonable timeframe upon request.

3 s 9(2)(h)

- 4 The original policy intent is that a notice can be issued where no employment agreement is produced, regardless of the reason. The vast majority of the notices issued under section 64 by the Labour Inspectorate have related to cases where there was no employment agreement in existence.

5 s 9(2)(h)

s 9(2)(g)(i)

6 s 9(2)(g)(i)

The Act allows the Governor-General, by Order in Council, to make regulations to prescribe infringement offences for the purposes of section 235A(b).

The *Employment Relations (Infringement Offences) Regulations 2019* give effect to Cabinet's decisions

- 7 The *Employment Relations (Infringement Offences) Regulations 2019* give effect to Cabinet's decision to make breach of 65(1)(a) of the Act an infringement offence [DEV-19-MIN-0018]. There are no changes to Cabinet's decisions.

8 The *Employment Relations (Infringement Offences) Regulations 2019* is made pursuant to section 237(fb) of the Act, which states that the Governor-General may, by Order in Council, make regulations prescribing infringement offences. Section 235A of the Act sets out when a failure to comply with a specific section of the Act is an infringement offence, and subsection (b) includes those infringement offences prescribed in regulations.

It is proposed that the infringement fee is set at \$1,000

9 Under section 235E(1)(b) of the Act, regulations introducing new infringement offences must specify the infringement fee. To remain consistent with all other infringement fees, it is proposed that the fee for breach of section 65(1)(a) of the Act is \$1,000.

Timing and 28-day rule

10 The *Employment Relations (Infringement Offences) Regulations 2019* will come into effect on 6 May 2019.

11 In order to comply with the 28-day rule, the *Employment Relations (Infringement Offences) Regulations 2019* should be notified in the New Zealand Gazette on 28 March 2019.

Compliance

12 The regulations comply with:

- a) the principles of the Treaty of Waitangi
- b) the rights and freedoms contained in the New Zealand Bill of Rights Act 1990 or the Human Rights Act 1993
- c) the principles and guidelines set out in the Privacy Act 1993
- d) relevant international standards and obligations
- e) the Legislation Design and Advisory Committee's *Legislation Guidelines* (2018 edition).

Regulations Review Committee

13 There do not appear to be any grounds for the Regulations Review Committee to draw these regulations to the attention of the House under Standing Order 319.

Certification by Parliamentary Counsel

14 The *Employment Relations (Infringement Offences) Regulations 2019* has been certified by the Parliamentary Counsel Office as being in order for submission to Cabinet.

Impact analysis

15 A Regulatory Impact Analysis was not required as it was exempt, being of a minor and technical nature.

Proactive release

- 16 This paper, along with the Cabinet minutes and any relevant supporting documentation, is proposed to be proactively released on the Ministry of Business, Innovation and Employment's (MBIE's) website within 30 working days of the final decision being made by Cabinet. The release of the information is subject to redactions consistent with the Official Information Act 1982.

Consultation

- 17 The following agencies were consulted on this paper: the Treasury, Ministry of Justice and the Department of the Prime Minister and Cabinet (Policy Advisory Group).

- 18 s 9(2)(g)(i)
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Recommendations

I recommend that the Cabinet Legislation Committee:

- 1 note that on 13 February 2019 the Cabinet Economic Development Committee agreed to make breach of section 65(1)(a) of the Employment Relations Act 2000 an infringement offence [DEV-19-MIN-0018]
- 2 note that the *Employment Relations (Infringement Offences) Regulations 2019* will give effect to the decision referred to in recommendation 1 above
- 3 agree that the infringement fee for breach of section 65(1)(a) of the Employment Relations Act 2000 is \$1,000
- 4 authorise the submission to the Executive Council of the *Employment Relations (Infringement Offences) Regulations 2019*
- 5 note that the *Employment Relations (Infringement Offences) Regulations 2019* will come into force on 6 May 2019.

Authorised for lodgement

Hon Iain Lees-Galloway

Minister for Workplace Relations and Safety