



**SECTION 15 EPIDEMIC PREPAREDNESS ACT 2006**

**CHIEF EXECUTIVE'S WRITTEN RECOMMENDATION**

This written recommendation relates to the [epidemic notice](#) issued by the Prime Minister that came into force on 25 March 2020 and declared that the Prime Minister is satisfied that the effects of the outbreak of COVID-19 are likely to disrupt or continue to disrupt essential governmental and business activity in New Zealand significantly.

This written recommendation relates to an Immediate Modification Order proposed to be made under the Epidemic Preparedness Act 2006 in order to modify certain legislative requirements under the Employment Relations Act 2000 (ERA) where it is impractical to comply with them. The requirements are certain collective bargaining timeframe and process obligations (as outlined in the document appended to this recommendation).

The requirements will be modified for the duration of the epidemic notice.

**For the purpose of section 15 of the Epidemic Preparedness Act 2006, as the chief executive of the department of State responsible for the administration of the enactment concerned (the Employment Relations Act 2000), this constitutes my written recommendation stating that, in my opinion, the—**

- (i) effects of COVID-19 are or are likely to be, such that the requirements or restrictions outlined in the appendix to this document are impossible or impracticable to comply (or comply fully) with; and
- (ii) modifications the Immediate Modification Order makes go no further than is, or is likely to be, reasonably necessary in the circumstances.

Dated at Wellington this 9<sup>th</sup> day of April 2020

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Carolyn Tremain  
Chief Executive, Ministry of Business, Innovation and Employment

APPENDIX:  
**Reasons statement- modifications to Employment Relations Act 2000**

*It is impractical to comply with some collective bargaining timeframe and process obligations*

- When collective bargaining has been initiated, the Employment Relations Act 2000 (ERA) requires parties to that bargaining to take certain actions within specific timeframes. Some of those timeframes are impractical while the epidemic notice is in place, as both employers and unions face significant disruption due to the closure of some workplaces and the requirements to work from home.
- The ERA requires that where an employer receives two or more notices of initiation of bargaining from different unions for work of the same type within its workplace, the employer may request that bargaining is consolidated within a 40 day period. The Union has a corresponding obligation to respond within 30 days to the consolidation request. During the period in which the epidemic notice is in place, parties may not be able to carry out normal processes and find it hard to get in contact with their members due to inability via technological means, or inability to contact those people due to sickness.
- The ERA also requires that a union must ratify a collective agreement in accordance with procedures notified to the other party at the beginning of bargaining. This may be impracticable because many unions hold an in-person meeting to vote on ratification of the collective agreement. Such meetings are impossible during lockdown and inadvisable for public health reasons during the epidemic.
- The ERA enables expired collective agreements to continue in force, where bargaining has been initiated, for up to 12 months to enable parties to bargain and ratify a new collective agreement to replace the expired agreement. Due to the restrictions in place unions are unable to arrange meetings with their members in person, and all may not have access to electronic means in which to communicate. In some cases, employers and unions will be focused on immediate priorities relating to the COVID 19 response meaning resources are unavailable for bargaining during this period. It will be impractical or impossible for some employers or unions to conclude collective bargaining and ratify a collective agreement while an Epidemic Notice (EN) is in place. This may mean that some collective agreements expire, despite a willingness to conclude negotiations and ratify an agreement.

*Immediate modifications are required to address these concerns*

Immediate modifications are required to the ERA to enable parties to comply with their obligations and not disadvantage parties by the inability to bargain during this time. Specifically, the changes:

- Modify the maximum timeframes by which an employer must notify their employees who are in work and covered by collective bargaining that bargaining has been initiated, to exclude the duration of the EN.
- Modify the timeframes by which an employer must seek to consolidate collective bargaining (40 days), and for unions to respond to an attempted consolidation (30 days), so that it should be done as soon as possible, but in any event, no later than 40 or 30 days respectively, excluding the duration of the EN.

- For collective agreements which would otherwise have expired, but are still in force for 12 months: where the 12-month period ends within the EN period or up to three months after, the changes modify the 12-month period to exclude any period covered by the EN.
- If a union has committed at the outset of collective bargaining to a ratification procedure which is no longer practicable (e.g. in-person ratification meetings), the changes allow the parties to agree another means by which to ratify the collective agreement (e.g. online balloting, videoconferencing or teleconferencing).

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