

Fair Pay Agreements

What is a fair pay agreement?

Fair Pay Agreements (FPAs) set out minimum working conditions for all employers and employees in an industry or sector. They are achieved by collective bargaining (negotiations between groups of employers and employees) and once agreed, these terms and conditions become a legal requirement at sector-level as covered by the agreement.

What is the Government proposing?

The Government plans to introduce legislation allowing unions to negotiate minimum standards for all employees and employers in an industry or occupation. The systems design intends to stop the “race to the bottom” of organisations competing for contracts by reducing wages and employment conditions.

An FPA would not replace an individual employment agreement, but rather it would work alongside them to ensure minimum standards are upheld at sector-level.

An FPA is by no means a new concept. In Australia, these industry or occupation-wide agreements exist under the [Australian Fair Work regime](#) and are governed by the Fair Work Commission and the Fair Work Ombudsman as independent bodies.

Who will be affected?

Under the proposed changes, bargaining for a new FPA will be initiated by a union applying to the Ministry of Business, Innovation and Employment and demonstrating, either:

- 10 per cent or 1,000 employees (whichever is lower) in that sector support the initiation of fair pay bargaining; or
- there is public interest in initiating bargaining due to low pay, low bargaining power, lack of pay progression or uncertain working conditions within that industry or occupation.

This means that 1 in 10 employees would be empowered to potentially change terms and conditions of employment within the industry or occupation. [All employees \(even non-union members\) and employers \(including those who were not involved in bargaining\) will be covered by default if agreement is reached.](#)

What can be agreed?

At this stage, the FPAs proposal will cover wage rates, ordinary hours, overtime pay rates, governance, redundancy, leave entitlements, health and safety and flexible working (among other terms), with some of these being mandatory terms of the FPA.

How will it work?

Bargaining will be initiated by a union. It is envisioned the union would represent the employees in that industry or occupation (including non-union members), while employers must choose representatives who meet specified requirements.

The bargaining obligations currently under the Employment Relations Act 2000 will apply, meaning all bargaining must be done in good faith.

What if the parties can't agree?

In the first instance, the parties will have access to the Employment Mediation Services. This service is often the first port of call for any parties experiencing employment relationship problems.

The Government plans to empower the Employment Relations Authority ("ERA") to make determinations setting terms and conditions of the FPA (including mandatory ones). It remains to be seen whether this proposed change will be enacted, given it would allow the ERA to undermine parties' freedom to agree to terms of their contracts.

Will FPAs be legally enforceable?

If this proposal is implemented, FPAs would be enacted into secondary legislation, would be publicly available and could be enforced by any individual or entity through the ERA or the Labour Inspector. A possible flow-on effect of this would be the need to vary the terms and conditions of existing collective and individual employment agreements to ensure they are compliant with applicable FPAs.

It is also proposed there will be penalties for non-compliance with the FPA legislation while an FPA is developed and/or non-compliance with the terms of the FPA once in force. These could be significant, with up to \$20,000 for an individual and \$40,000 for a company or other corporation.

Why are people against them?

Employer peak-groups are extremely against FPAs, which would drastically reduce their power when hiring people. (Unions, as you would expect, are big fans.)

BusinessNZ chief executive Kirk Hope argued the new system essentially forces all businesses into the same mould, and takes away the ability for businesses to walk away from bargaining if they wish to.

"Any pay deals reached wouldn't be fair because the process is essentially compulsory – employers would be required to agree to what unions wanted, with compulsory arbitration if they didn't," Hope said.

The Employers and Manufacturing Association head Brett O'Riley said FPAs would make New Zealand businesses less flexible, resilient, and less productive – which could lead to some businesses shutting up shop or hiring less people.

"Our concern is that FPAs will result in higher wages, and the solution for businesses will be to cut down their workforce, or in the case of already struggling manufacturers and [small businesses], they may have to shut up shop," O'Riley said.

National's workplace relations spokesman Scott Simpson echoed those concerns and promised National would repeal the system if elected.

"This is compulsory wage controls. It is unionism gone universal. The National Party will repeal these recycled National Awards."

Next steps

The Fair Pay Agreements Bill is now going through the full parliamentary process. People have an opportunity to have their say during Select Committee and submissions are being accepted until Thursday 19th May 2022. Find out more about the select committee process and how to make a submission here:

[Fair Pay Agreements Bill\(external link\)](#) — New Zealand Parliament

The Fair Pay Agreement system is expected to commence shortly after the Bill has passed, anticipated to be at the end of 2022.