

## UNION ENGAGEMENT

### Introduction

1. The Employment Relations Act 2000 (Act) sets out the process by which employers and unions with members who are employed by the employer engage in collective bargaining for collective agreements (CA), including good faith requirements that apply and what happens when parties cannot agree.
2. Where a new union seeks to engage with employees in a workplace, we recommend seeking advice on what rights and responsibilities apply, as there are strict legal requirements about unions and employers' engagement.

### Union access

3. The Act prescribes what rights exist around union access to workplaces, including access request and response formats and timeframes.
4. Unions are entitled to access a workplace even if that union does not have any members.
5. Unions can access the workplace for:
  - 5.1 Purposes related to the employment of the union's members.
  - 5.2 Purposes related to the union's business. This might include recruiting new members, discuss union business or providing information on the union and union membership to any employee on the premises.
  - 5.3 Purposes relating to the health and safety of any employee on the premises who is not a member of the union, if the employee requests the assistance of a representative of the union on those matters.

### Collective Bargaining

6. Collective bargaining (bargaining) is the process of an employer and a union negotiating the terms of a CA.
7. During bargaining, the employer and the union must act in good faith at all times. In May 2019, the Code of Good Faith in Collective Bargaining (Code) came into force. The purpose of the Code is to give employers and unions guidance on their duty to act in good faith.
8. In some cases, where the parties cannot agree on a CA they can:
  - 8.1 Agree that they will stop negotiating.
  - 8.2 Attend mediation through Mediation Services to see if agreement can be reached.
  - 8.3 Ask that the Employment Relations Authority facilitate bargaining.
9. In more serious cases, union members may strike or employers may lock the union members out of the workplace to put pressure on the other party. Where there has been a serious breach of good faith, the Employment Relations Authority may fix the terms of the CA.

## Collective Agreements

10. The Act prescribes that a CA must:
  - 10.1 Be in writing.
  - 10.2 Be signed by the parties to the CA. In this case it would be the employer and the union that are the parties to the CA.
  - 10.3 Record what work is covered by the CA. This means what type of employees and what types of jobs are covered by the CA.
  - 10.4 Record the rates of pay for different types of work and whether employees will receive a salary or be paid wages. If there is to be an increase in wages or salary during the term of the CA, this should be recorded.
  - 10.5 Explain how employment relationship problems are addressed, including that there is a 90-day time limit for employees to raise a personal grievance.
  - 10.6 Record how the CA can be varied.
  - 10.7 Record when the CA will expire.
  - 10.8 Include a clause confirming compliance with the Holidays Act 2003. All employees that work on a public holiday must be paid at least time and a half.
11. Once the terms of the CA have been agreed, the CA must be ratified and signed in accordance with the Act.

## Who is covered by a CA?

12. In unionised workplaces where a CA is in place, any new employee who is covered by the CA must be employed on its terms for the first 30 days of their employment. The employer must provide the employee, within the first 10 days of their employment, an approved 'active choice form'. The employee must complete this form to notify the employer whether they intend to join a union or not.
13. An employee who is a member of a union, pays union membership fees. An employee may be a member of more than one union at any time.

## Our team can help!

14. Engaging with unions and navigating collective bargaining can be tricky. Our team is well placed to advise on any union matters. We can provide strategic and practical advice on complex issues, as well as advice on access, negotiation, reviewing the terms of the CA, and your good faith obligations.

**Our team of specialist workplace lawyers throughout the country are always happy to answer your questions, [contact us here](#)**

*Disclaimer: We remind you that while this e-resource provides commentary on employment law, health and safety and immigration topics, it should not be used as a substitute for legal or professional advice for specific situations. Please seek legal advice from your lawyer for any questions specific to your workplace*