

The major parties: National's and Labour's employment relations policies

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Abstract

The past two decades have seen new directions in New Zealand employment relations (ER) with ongoing shifts away from previous neo-liberal models. Most recently, two Labour-led governments have introduced a number of significant moves, ranging from changes to improved statutory minima and conditions, through to gender pay equity provisions and new protections for workers with labour-hire agencies. Another set of longer-term programmes were initiated but not completed, including holidays, protections for contractors and income insurance. Legislation providing for sector-wide Fair Pay Agreements was passed but no agreements have been concluded yet.

The future directions of ER will largely be determined by the outcome of the 2023 General Election. The policies of the two main political parties, Labour and National, will be influential, although one week out from the election close, some policy areas have not yet been made available to the public. The situation will be further complicated by the MMP (mixed-member proportional) system which may see coalition or support arrangements negotiated with minor parties who have their own, separate ER policies.

Keywords: New Zealand General Election, public policy changes 2020-2023, major parties' election promises, employment relations themes.

Introduction

The Aotearoa New Zealand 2023 General Election campaign is occurring against the backdrop of a wider international pattern of economic recession and inflationary pressures. While agencies such as Moody's credit rating indicate that Aotearoa New Zealand fared well during the 2020-2022 period, the country has not escaped the international economic shocks associated with the pandemic and subsequent high inflation (Moody's, 2023).

Previously, the 2020 General Election happened amidst an ongoing series of disturbances, including the Covid-19 pandemic as well as terrorism and natural disasters. The response of (then) Prime Minister, Jacinda Ardern in those situations received high levels of approval from international and local commentators. There is an accepted wisdom that voters are likely to continue to support the party that is in power when it appears to be successfully leading a country through a sudden crisis (Fredén & Sikström, 2021), reflecting in Labour's resounding parliamentary majority. However, those elements are less prominent in the current 2023 election, and, as discussed below, the focus has shifted to other policy matters and the public appeal of the political candidates.

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As with the 2017 election campaign, both major parties are presenting new leaders and leadership teams. The Labour Party, in particular, has been affected by a series of forced departures of members in high-profile ministerial roles (for example, Kiri Allen, Michael Wood, Meka Whaitiri). At the time of writing (first week of October 2023, one week from the election), there is also a lack of detail about workplace relations policy platforms, especially from the National Party.

The earlier 2017 and 2020 general election commentaries have pointed to a long, slow reversal of the neo-liberal, free-market approach which dominated Aotearoa New Zealand public policy during the 1980s and 1990s. This encompassed changes to taxation, public expenditures, welfare interventions, and statutory minima. The shift has coincided with adjustments in economic thinking amongst international institutions (see OECD, 2018; Berry, 2020), which has influenced the understanding of ER fundamentals, such as collective bargaining, statutory minimum wages, equity regulation, and vocational education and training.

Those neo-liberal, free-market approaches have been reversed in several different ways. Legislative and regulatory changes have occurred post-2000, especially during the most recent electoral cycles with Labour-led governments, shifting the approach of Aotearoa New Zealand ER in areas, such as collective bargaining, pay equity, and employment standards. Alongside these, enforcement has been strengthened with better information and advice, more labour inspectors and improved access to the specialist employment institutions (Rasmussen & Anderson, 2023).

However, the pace of change slowed in 2023. Shortly after Jacinda Ardern's resignation as Prime Minister, Chris Hipkins announced that a series of government programmes would be stopped or delayed in order to allow the government to focus more time, energy and resources on "bread and butter issues" facing New Zealanders. The savings from this "reprioritisation" were to be reallocated to address issues around the cost of living (Hipkins, 2023, March 13). This 'bonfire' of policy initiatives involved several policies impacting on ER, including the income insurance scheme which was shelved until economic conditions significantly improved (Taunton, 2023), as well as public consultation on protections for dependent contractors (McConnell, 2023) and implementing changes to the Holidays Act.

The 2023 General Election may signal a change of direction, and a return to more neo-liberal, free-market approaches if parties such as National and ACT form a new government. Those parties have proposed to introduce tax cuts, benefit cuts and large public sector staff cuts which could have significant impact on the labour market and ER. They have also signalled a return to an employer-centric focus with the return of trial periods for all businesses and an expected moderation of statutory minimum wage increases.

The employment relations context

Traditionally, ER policy has been a key point of division between Aotearoa New Zealand's two major parties. This was magnified in the contention surrounding the Employment Contract Act (ECA) 1991, the intense debate regarding the introduction of the Employment Relations Act (ERA) 2000 and subsequent amendments, along with fundamental disagreement over increased statutory employment rights, employment protection and union involvement. Despite this, there have also been notable areas of agreement, as previous General Elections commentaries have highlighted by Anderson et al., 2020:

"It has previously been argued that, under the Employment Relations Act (ERA), there appears to be less of an ideological gap between the two major parties' employment relations positions. This was partly caused by the National Party's decision, in 2007, not to repeal the ERA but

instead focussing on specific amendments (see Rasmussen & Anderson, 2010), and partly due to pressure on the National-led governments to expand legislation in health and safety, to have a stronger focus on employment standards, constraining ‘zero-hours’ practices, as well as implementing tripartite agreed changes to pay equity in aged care (Foster & Rasmussen, 2017)” (p.4).

Employment relations issues and changes during 2017-2020

During the 2017 General Election campaign, differences between the parties were once again heightened, with the Labour Party’s employment relations policies containing a range of proposed changes. While these aspirations sought the reversal of many of the neo-liberal, free market approaches to employment, once in power, Labour was seemingly constrained by the 2017 Coalition agreement between Labour and New Zealand First, which contained a much smaller number of mutually agreed ER changes (Foster & Rasmussen, 2017).

Nonetheless, a range of changes eventuated. Increases to the minimum wage did occur along with changes including the Education (Vocational Education and Training Reform) Amendment Act, amendments to Paid Parental Leave which extended support from 18 to 26 weeks’ paid leave, Triangular Employment legislation allowed labour-hire employees to apply to ‘join’ a controlling third party to a personal grievance claim, and the Equal Pay Amendment Act provided mechanisms for workers in female-dominated industries to seek pay equity in relation to external comparator sectors.

Reversing changes made by earlier National-led governments, 90-day trial periods became restricted to organisations with fewer than 20 people, meal and rest breaks were reinstated, while the “30-day rule”¹ was re-introduced for new employees (Anderson et al., 2020). A wage floor equivalent to the Living Wage was introduced for all those directly employed in the core public service, including full-time, part-time and casual employees.

To initiate other proposed changes, taskforces and working groups began the longer processes involved with developing changes to the Holidays Act, increased protection for contractors, changes to the ‘Hobbit’ legislation introducing Fair Pay Agreements (FPA), and comprehensive welfare reforms.

The 2020 General Election and 2020-2023 employment relations changes

During the 2020 election campaign, significant public policy differences were evident between the two main parties, with National promising to reverse many of the changes that had been introduced by the Labour-led government, around a theme of increasing employer-driven flexibility and ‘opening up’ for short- and long-term net migration (Anderson et al., 2020). The notable Labour victory in the election, however, made the Labour Party the first single-party majority government under Aotearoa New Zealand’s MMP system. This situation was seen as giving the Labour Party’s MPs the freedom to implement policy initiatives without the constraints of coalition partners or support arrangements.

In the 2020 election, Labour’s economic plan was “built around five key principles: investing in our people, growing jobs, preparing for the future, supporting our small businesses, and positioning New Zealand globally” (Labour, 2020). This was accompanied by a corresponding sets of workplace

¹ This requires that where an applicable collective agreement exists, a new employee is employed on terms and conditions not less than those contained in the collective, for the first 30 days of employment.

relations policies. Table 1 shows those main policy areas, along with their corresponding outcomes, at October 2023²

Table 1: Labour’s 2020 policy promises and actual outcomes

Policy	Outcome (October 2023)
Living Wage: We will progressively extend Living Wage guarantees to contractors to the public sector – such as our cleaners, caterers, and security guards.	Done - core Public Service departments and agencies directed to ensure that contracts for cleaning, catering and security guards signed or renewed after 1 December 2021 pay at least living wage rate
Sick leave: We will increase minimum sick leave entitlements from five days to 10 days a year.	Done - minimum sick leave entitlements increased from five to 10 days per year from 24 July 2021.
Minimum Wage We will increase the minimum wage to \$20 an hour in 2021.	Done – effective from April 2021
Pay Equity: We will make it easier for women to gain pay equity in their organisation or across their industry, by ensuring there are better records of pay equity across Aotearoa New Zealand, including by ethnicity and age as well as gender.	Partially done – Pay Equity Amendment Act 2020 introduced. Also, further preparatory work is in progress, involving a staged progression, based on organisation size.
Fair Pay Agreements (FPA): We will make it easier for workers to receive fair wages and conditions and avoid the ‘race to the bottom’ that occurs within competitive industries by implementing FPA.	Done – legislation has been in force since late 2022, but no FPAs have been agreed.
Holidays Act: We will strengthen and simplify the Holidays Act and allow sick leave to be taken when needed.	Partial – agreement on legislative change, but legislative implementation delayed to after 2023 election.
Strengthen the Employment Relations Act to make it harder for collective agreements to be undermined – strengthen s59b so unions don’t have to establish the “intent” of employers who automatically pass on gains from collective bargaining	Not done
Contractors and Vulnerable Workers: We will protect vulnerable workers by legislating protections for dependent contractors and by recognising security guards as vulnerable workers to ensure their terms and conditions are protected.	Placed on hold - Consultation and planning work have been done but put on hold until court appeals completed. Done – security workers classed as vulnerable workers from 1 July 2021.
Screen Industry Workers: provide greater protections for screen industry workers	Done – new legislation, Screen Industry Workers Act 2022 now in place.
Health and Safety: We will raise the age for workers to be allowed to perform hazardous work , ensure all workers have the right to elect health and safety representatives, and ensure Seafarer Welfare Centres provide better services.	Not done but implemented other improvements. No age changes for workers performing hazardous work, nor legislation introduced to amend. The Health and Safety at Work (Health and Safety Representatives and Committees) Amendment Act 2023 has passed into law, aimed at increasing access to worker engagement, participation and representation.

² This article focuses on the higher profile policy areas and does not attempt to cover all ER changes during this period.

	A 2021 reform enabled maritime levies to be used to provide support services coordinated by the Seafarers Welfare Board (Wood, 2021).
Covid-19 support: We will implement a major support package to assist businesses in hiring at least 40,000 New Zealanders whose employment is impacted by Covid-19.	Partially Done – support packages were implemented during Covid-19. Unemployment did not significantly increase.
Modern Slavery: The government committed in its 2020 Election Manifesto to continuing “work to stamp out migrant worker exploitation with a focus on exploring the implementation of modern slavery legislation in New Zealand to eliminate exploitation in supply chains”.	The government has begun work on a supply chain register to monitor modern slavery, announced in July 2023 but legislation will not be completed until January 2024. Companies earning more than \$20 million a year in revenue would need to report how they had tackled exploitation risks in their operations and supply chains (RNZ, 2023a, March 28).

Fair Pay Agreements

Although Fair Pay Agreements (FPAs) were part of the Labour Party’s 2017 election promises, the Fair Pay Agreements Act (2022) was only passed into law in late 2022 due to a rather tortuous tripartite development process (MBIE, 2021). The protracted development process was largely caused by strong employer (and political) opposition to regulation on industry or occupational agreements (Kent, 2021). Fair Pay Agreements allow unions to initiate bargaining in a sector or occupation where they either cover a minimum of 1,000 employees or 10 per cent of workers (whichever is lower). There is also a so-called ‘public interest trigger’ where an FPA could be initiated to counter harmful employment conditions within a sector or occupation. While FPAs would increase union bargaining power, it was also hoped that FPA negotiations would facilitate better union-employer association dialogue.

As employers threatened to boycott FPAs, there was a late change to the proposed legislation that enhanced the role of the ER Authority in the new proposed sectorial bargaining procedures. In particular, the ER Authority was given the authority to progress FPA negotiations in situations when normal bargaining processes could not proceed. The ER Authority also gained powers to break any negotiation deadlocks. It can also decide, if necessary, the employment minima to be included in an FPA (for the full role of the ER Authority, see Employment New Zealand, 2023): the explicit intention is for re-established sectoral or occupational agreements to set and/or ensure new employment minima, instead of just relying on statutory minima, such as the statutory minimum wage. It also signals that FPAs will be able to stipulate many other conditions which go beyond standard pay and conditions, including vocational training, health and safety requirements, flexible working and redundancy (MBIE, 2023a).

Currently, there are three FPA negotiations taking place, all in low wage sectors (hospitality, transport and retail). Wages in those sectors have lagged behind labour productivity increases, particularly for low paid employees. No FPAs have been completed prior to the election. With the National Party campaigning on repealing the FPA legislation, it is unclear whether the legislation will have any impact on addressing poor wage rates and conditions.

Contractor Protections

Concerns regarding contractors' working conditions have existed for many years. Initial drafts of the ERA 2000 proposed a category of 'dependent contractors', workers whose contract defines them as being self-employed while simultaneously removing much (if not all) of the autonomy that traditionally accompanies self-employment (Hughes, n.d.). In recent years, the issue has grown in significance with the expansion of contracting arrangements. Although the Minimum Wage (Contractor Remuneration) Amendment Bill did not proceed, the public submissions in 2015 and 2016 joined the growing awareness of the disadvantages experienced by many workers.

Recent developments have occurred on two levels. Firstly, at a judicial level, a number of significant Employment Court decisions have followed the Supreme Court decision, *Bryson v Three Foot Six Ltd.* These have applied the existing legislation to a range of cases that included couriers, uber drivers, pizza delivery drivers, builders, as well as members of the Gloriavale community (see relevant court decisions in the References section). Although these judgements were each confined to a specific set of circumstances, the Court has frequently found that the 'real nature of the relationship' was that these workers were employees, often contrary to the written agreement and industry practice. The Uber decision is being appealed but once finally determined, the case is likely to be precedent-setting for the way in which workers in similar organisations are treated.

Workers' access to the specialist institutions for challenging their employment status was also widened with a Supreme Court decision that the ER Authority has the power to determine employment status, thereby ensuring decisions are made "as efficiently and cheaply as possible" (see decision in References section). Although this improves access for individuals to initiate cases, parties could still proceed on to a costly process of appeals.

These legal challenges in the Aotearoa New Zealand system are echoed across the globe, with debate regarding the classification and protections of workers, such as Uber drivers, and with several recent court decisions occurring in jurisdictions such as the United Kingdom, France, Australia and the USA.

The second level on which the issue has been approached has been the government's initiatives to explore policy, systems and legislative changes. A 2019 MBIE Discussion Paper contained a set of options clustered around four areas: deterrents to misclassification, facilitating workers' access to determinations, changes to the legal definition of employees, and enhancing protections for contractors without making them employees (MBIE, 2020).

Feedback showed widespread support for more resourcing to enforce the current system, but widespread opposition to creating a new category of workers with a limited set of rights and protections. There were mixed levels of support for other options (MBIE, 2020)³. Any changes would impose significant changes, and likely provoke strong opposition from sectors, such as transport and construction where contractor arrangements are entrenched as a core part of the operating model.

A government-appointed Tripartite Working Group considered those responses and heard directly from stakeholders. Their 2021 report identified multiple problems associated with misclassification. The group proposed a set of recommendations which included creating a clearer legislative boundary between employment and contractor relationships, providing guidance and support services, and allowing judicial determinations on employment status to cover other workers (MBIE, 2021).

³ An associated MBIE survey of contractors showed the complexity of the issue; 59% of contractors said that their income (after tax) was not enough money or only just enough money to meet their everyday needs, but at the same time, 66% of respondents said they enjoyed independence as a contractor (MBIE, 2020).

Media reported that, in February 2023, the government was finalising a set of proposals for consultation. However, this suddenly changed with the government's "reprioritisation" of policies, which included pausing work on contractor protections. Apparently referring to the 2022 Uber decision, the government advised that it would "put our work on hold until all appeals of the case are heard" (Hipkins, 2023, March 13). Those appeals are likely to take several years though and so, under a Labour-led government, the legal position could continue to remain unclear, with little immediate resolution for those workers regarding their employment rights and protections.

At the time of writing, the National Party had not released policy on the issue of contractors. Polls suggest that, if elected, the National Party may need coalition or support arrangements with the ACT Party. The ACT Party has stated its plans to exclude independent contractors from the definition of employee, so that contractors who have explicitly signed up for a contracting arrangement cannot challenge their employment status in the Employment Court. Business New Zealand has expressed its support for ACT's plan saying the matter was a significant concern for the business community (RNZ, 2023a June 22b). The outcome of any National-led coalition or support arrangements could, therefore, significantly affect workers under contractor-principal arrangements.

Screen Workers

Following the Bryson case (*Bryson v Three Foot Six*), the makers of The Hobbit movie trilogy threatened to move production away from New Zealand. In response, the National government hurriedly passed the Employment Relations (Film Production Work) Amendment Act 2010, whereby workers in film productions were excluded from being classed as employees and unable to challenge their status in the employment court (Tyson, 2011; Walker & Tipples, 2013).

In 2018, the Labour-led government convened a Film Industry Working Group comprising industry, business and worker representatives. This group was tasked with finding ways to address power imbalances and allow workers in the film industry to bargain collectively while, at the same time, allowing screen production workers to continue to be engaged as contractors, ensuring that the Aotearoa New Zealand film industry remained internationally competitive.

The resulting Screen Industry Workers Act 2022 now provides that a screen production worker's employment status is determined by their written agreement. The default position is that they are contractors, unless they have a written employment agreement specifying that they are employees. As contractors, however, they can organise and pursue their collective interests at occupation or enterprise levels. There are additional protections but also constraints around this. For example, the parties are required to bargain in good faith but industrial action such as strikes are prohibited; collective contracts must contain certain terms, with protection from bullying, discrimination and harassment, reasonable termination of contracts and fair rates of pay. Dispute resolution systems include mediation and facilitation, and the ER Authority can make determinations using a final offer arbitration process, selecting one of the parties' final proposals in its entirety.

Immigration

In previous elections, immigration has been a major issue. Before the 2017 election, both the Labour Party and New Zealand First promised significant decreases in immigration levels which had been running at very high levels under the Key-English National-led governments (Foster & Rasmussen, 2017). However, subsequent to the 2017 General Election, the number of immigrants were only reduced slightly as the labour market remained tight with employers facing staff shortages. This changed abruptly with the Covid-19 pandemic and border closure, and thus, immigration was less of an issue in the 2020 General Election (Anderson et al., 2020). Instead, the Labour government

promoted a ‘reset’ of immigration regulations in 2020-2022, which emphasised higher skilled, higher paying jobs or particular job schemes (for example, the Recognised Seasonal Employer (RSE) scheme in the horticulture industry). Associated with the ‘reset’, issues of migrant exploitation continued to be exposed, leading to significant penalties from the Employment Institutions and other agencies, as well as prompting government moves to develop policy and legislation to protect these workers (see for example Smith, 2019; Collins & Stringer, 2019).

The ‘reset’ of immigration has gone ahead in an attempt to make it more difficult for employers to ‘import cheap labour’ (see also New Zealand Productivity Commission, 2022), since most job offers will have to include pay rates *at or above the median wage* (for example, job offers concerning (ANZSCO) skill levels four and five roles would need to include wage rates at 150 per cent of the median wage). There was also an increase in workers under the RSE scheme. Still, there has been an extraordinary rise in new immigrants and there have been regular media reports of record number of immigrants in most of 2023, with a nearly 100,000 net immigration record in the 12 months to July 2023 (Spoonley, 2023).

Considering the crucial wide-ranging impacts of high immigration levels, there appears to have been limited debate so far in this election campaign of the policy platform of the major parties (Spoonley, 2023). Media commentary has been that both parties’ policies are similar in this area (1news, 2023; RNZ, 2023c, September 23). Both parties have signalled some adjustment, with the Labour government suggesting that there will probably be a significant decline in net immigration in the coming year while the National Party will adjust immigration levels to changing economic circumstances. Both parties have also suggested that higher wages are necessary to avoid a ‘brain drain’ of workers going to Australia (Cann, 2023).

Pay Equity

The Labour government’s commitment to pay equity has progressed further since 2020 (for earlier developments, see Parker & Donnelly, 2020). Through legislation, the introduction of Pay Equity Principles, and public sector wage adjustments, the government has placed a strong emphasis on removing and preventing gender-based discrimination in the remuneration and employment terms and conditions within female-dominated jobs. One of the key milestones achieved was the Equal Pay Amendment Act 2020, seeking to improve the process for raising pay equity claims, and to eliminate and prevent discrimination on the basis of gender (Little & Genter, 2020).

In amending the Equal Pay Act 1972, the new processes and legislation strengthened the rights of workers to challenge pay disparities and pursue pay equity claims in a manner aligned with New Zealand’s existing bargaining framework. The Act allows workers to compare their wages with those in different but similar roles, provided they are of ‘equal value’ to the employer (Employment.govt.nz). By introducing a new process for individual employees and unions to raise a pay equity claim directly with an employer, it also obliges employers to engage in a pay equity process that may include negotiations to rectify any unjust wage gaps (Public Service Commission, 2023).

To further solidify their commitment to pay equity, the Labour government introduced Pay Equity Principles in 2021. These principles provide clear guidelines for employers and employees to follow when addressing pay equity issues in the workplace through an examination of the work being performed (Public Service Commission, 2023). In the public sector, there has been a systematic review of wage scales in areas historically undervalued, resulting in pay adjustments for workers in female-dominated industries, such as healthcare and education.

While there have been a limited number of pay equity settlements in the 2020-2023 period, the number of state sector employees affected has been significant as the Pay Equity outcome can be extended to deliver for all workers who are government funded and who do the same work. In July 2022, a pay equity claim for school administration support staff was settled with New Zealand Educational Institute (NZEI) Te Riu Roa. This saw more than 11,000 school administration support staff, mostly women, being more fairly paid for the work they do (Ministry of Education, 2023).

In a historic ballot in July 2023, nurses, healthcare assistants and kaimahi hauora⁴ covered by the Nursing Pay Equity claim, voted overwhelmingly to accept a proposed settlement. The proposed settlement arose from mediation between Te Whatu Ora, New Zealand Nurses Organisation (NZNO) and the Public Service Association (PSA) who have been in litigation over the claim in the ER Authority and Employment Court since early 2022 (NZNO, 2023). However new rates addressing gender inequality have not extended to pay parity across all nursing sectors. In 2022, the PSA, NZNO and E Tū unions began a pay equity claim against a representative group of 15 employers of care and support workers in Aotearoa New Zealand (NZNO, 2023). This claim is still being progressed through the Pay Equity Principles.

Plans for pay transparency reporting announced in August 2023 marks a significant step in understanding the pay gap; although it is unknown whether the reporting would continue with a change of government. Around 900 public entities with over 250 employees would be required to publicly report their gender pay gap, and later those with over 100 workers (Tinette, & Radhakrishnan, 2023). The government is also committed to exploring the inclusion of ethnicity in pay gap reporting if they gain a third term. Nonetheless, the New Zealand Council of Trade Unions (NZCTU) in August reported little progress in closing the gender pay gap in the last year “despite continued low unemployment, wage growth, and strong labour demand” (NZCTU, 2023).

Modern Slavery

Increasing disquiet regarding slavery within New Zealand supply chains, combined with media coverage of ongoing migrant exploitation throughout the pandemic saw the government endeavouring to enact a Modern Slavery Act (Armstrong, 2023). Designed to increase transparency, a disclosure law was intended to be introduced, however, it is now on hiatus as it was not enacted prior to the closing of Parliament in 2023. Organisations with an annual revenue of over \$20 million were to be required to submit a disclosure statement identifying modern slavery risks internationally and worker exploitation risks domestically. These statements must be signed off by the highest governing body in an organisation and intended to be published in a public digital register (Armstrong, 2023). Nonetheless, progress has been slow in making any meaningful change in this area, despite working groups and consultation ongoing.

Holidays Act

The government’s taskforce into amending the Holidays Act 2003 has been a long slow process, with interruptions during the Covid-19 lockdowns, and finally, the Labour government deciding this year to delay any implementation until after the 2023 General Election. There have already been several attempts to reform the Holidays Act – both before and after the current Holidays Act 2003 – and another attempt to create a tripartite solution was launched with the establishment of a Holidays Act Taskforce in May 2018. The Taskforce developed an Issues paper in August 2018, before starting a round of

⁴ Māori Health workers providing cultural support and advice to patients and their family members while they are in the hospital; they may also advocate for patients and provide information and resources. (<https://www.cdhb.health.nz/glossary/kaimahi-hauora-maori/>)

public consultations, which resulted in an Interim Report in December 2018. The Final Report of the Taskforce was delivered in October 2019 and provided unanimous support for 22 recommendations which were jointly agreed to by union, businesses, and other representatives. These changes sought to address the high degree of ambiguity that has made the Holidays Act difficult to understand and implement for employers, while making it easier for employees to understand their entitlements (MBIE, 2023b).

The Labour government announced in February 2021 that: “the Taskforce’s recommendations should be adopted in full as the basis for an amended Holidays Act” (Wood, 2021). This also included amendments to sick leave, bereavement leave, and family violence leave which would make these entitlements more accessible for new employees. While legislative drafting has occurred and further practical issues have been considered (MBIE, 2023b), the fact that the legislation did not proceed prior to this General Election creates further delays. However, it appears likely that the current legislative drafting will provide the basis for a new Holidays Act, irrespective of the political constellation of a new government, since there are both union and employer support for the proposed changes.

Income Insurance Scheme

The Government’s Income Insurance Scheme was a controversial public policy which was among policies that were deprioritised in early 2023 (Hipkins, 2023, March 13). The scheme was designed to support workers during unemployment by providing initial financial security as these workers found suitable future employment. It was intended to be funded through a 2.77 per cent levy split equally between employees and employers and provide 80 per cent of prior income (up to a cap of \$2000 a week) during the first seven months of unemployment. While some inspiration could be found in a similar Danish scheme, there were some significant differences in terms the scheme’s generosity, financing and support period (Chapple & Fletcher, 2021). There was also direct opposition towards the scheme, including widespread critique from the part of the business community about the cost and need (Sachdeva, 2022). On the other hand, a variety of community groups also signalled concern that it would further “bake in inequities” and increase inequality (Child Poverty Action Group, 2023).

Vocational and Education Training

Changes to the national vocation and education training system (VET) were controversial before and during the 2020 General Election. These changes followed frequent occurrences of skill shortages and regulatory adjustments since the enactment of the Industry Training Act 1992 (for details, see Rasmussen et al., 2022, pp.173-176). Key issues have included a lack of buy-in from businesses, where especially small and medium-sized businesses have limited capability and interest in promoting VET, which has put extra pressure on additional government investment in VET efforts. Against that background, the ‘solution’ has often become to increase short- and long-term immigration.

During 2017-2020, the Labour-led government implemented a radical Reform of Vocational Education (RoVE) which involved new structures, funding mechanisms and education processes (Rasmussen et al., 2022, pp.176-179). As the reform came into effect in April 2020, it was implemented amidst the industry upheavals associated with the Covid-19 pandemic and not a major issue in the 2020 General Election. The timing of RoVE also meant that implementation is still ongoing, and the Labour government has clearly signalled its intention that the implementation – bar a few adjustments – will continue after the 2023 General Election, if returned to power (see Table 2).

On the other hand, the National Party has committed to undoing the RoVE reforms, including decentralisation and returning control of the polytechnic system back to the regions and removing the funding to the workforce development councils and regional skills leadership group (National, 2023a;

2023b; Palmer, 2023a; 2023b). National has also signalled support for apprenticeship training, but has not provided any specific policy decisions, such as continuing the apprenticeship boost programme that provides \$500 a month for the first two years of the training programme. National has also signalled a desire to return to an immigration-based approach to skills development (National, 2023a). The direction of the announced policy decisions appears to represent a return to the policy framework developed under the previous National government (2008-2017).

Triangular employment

In light of the recent regulatory focus on contractors – both in general and in the film industry (see above) – it is surprising that regulations of labour hire or agency work have been rather limited in Aotearoa New Zealand, compared to international conventions, European Union (EU) regulations or individual European state regulations (see Gramano, 2021; van Schadewick, 2021). Some changes began, however, with the Employment Standards legislation in 2016 and the Employment Relations (Triangular Employment) Amendment Act 2019, which came into force in June 2020. Employees are no longer restricted to pursuing a personal grievance against the employing agency and can now seek to include a “controlling third party” – typically the host organisation where they are working – in their grievance claim. This could offer a new level of protection for workers against sub-standard employment practices since, previously, there has been little provided by way of regulation for employment agencies nor the protection of agency workers in Aotearoa New Zealand. The triangular employment legislation also provides other employee entitlements, such as various leave benefits.

As yet there have not been substantial numbers of ER Authority or Employment Court cases applying to these protections for agency workers. It may be that the costs involved and the complexity of needing to first seek judicial determination for including a “controlling third party”, may prove to be deterrents.

The 2023 General Election

Going into the 2023 General Election, the contrast between the ER policies of the two main parties is somewhat obscured by the lack of information regarding the National Party’s policies. The Labour Party’s framework has been publicised for some time and so the comparisons between the two parties’ policies are shown in Table 2. There are no major surprises in the Labour policies as they are largely a continuation of the Party’s existing direction of travel (Labour, 2023).

Table 2. Employment relations policies at the end of September 2023

	Labour Party	National Party
Fair pay agreements	Protect and implement Fair Pay Agreements.	Will repeal the Fair Pay legislation
90 Day-Trial Periods	Limited to businesses with fewer than 20 employees	Reinstate the 90-day trial period for all businesses
Sick Leave	Retain 10 days sick leave	Retain 10 days sick leave
Minimum Wage	Increase minimum wage annually, working towards all being paid the Living Wage Remove the starting out and training rates	Has yet to publish any policy and policy details
Living Wage	Continue living wage minimum in the Public Service and Progressively extend this to education and Te Whatu Ora	Has yet to publish any policy and policy details

Paid Parental Leave	Introduce paid leave for partners	Has yet to publish any policy and policy details
Contractor Protections	Legislation to define employees and contractors. Develop a process for misclassified workers to have status changed	Has yet to publish any policy and policy details
Modernised tripartite employment relations	Establish a new tripartite mechanism for key economic issues. Initial focus on Fair Pay Agreements, statutory minimum wage, and pay transparency	Has yet to publish any policy and policy details. Fair Pay Agreements to be abolished early.
Collective bargaining	Legislate to prevent discrimination against union members through the pass-on of gains from collective bargaining	Has yet to publish any policy and policy details
Training	Continue the reform of vocational training (RoVE) process and implement	Has yet to publish any policy and policy details. However, there is a commitment to abolish the RoVE process.
Health and safety	Increase access to union health and safety training. Union officials access to workplaces and issuing improvement notices. Continue work on hazardous Substances and regulations. Increase the age for young people performing hazardous work	Has yet to publish any policy and policy details.
Harassment and Violence	Strengthen support and increase educational resources regarding workplace violence or harassment.	Has yet to publish any policy and policy details.
Ratifying ILO Conventions	Move to ratify ILO Convention 87 on Freedom of Association in line with European Free Trade agreement, and ILO Convention 190 on violence and harassment.	Has yet to publish any policy and policy details.

Comment: After several inquiries, the National Party advised two weeks out from election close that it would change particular areas and a more detailed policy platform would be published later.⁵

⁵ At 29 September 2023, the National Party Communications, Research and Policy Advisor for Office of Hon Paul Goldsmith, Opposition Spokesperson on Workplace and safety advised that: “As it currently stands, we have not released the National Workplace Relations & Safety policies.” /.../ “We can however confirm that we will be bringing back 90-day trials, retaining current leave entitlements and scrapping the Fair Pay Agreement”.

Conclusion

While the last two Labour-led governments have implemented a range of changes to ER, the outcome of the 2023 General Election will determine the extent to which those changes endure and survive a potential change of government. There are three main categories of policies involved. The first are the ongoing ‘political footballs’, that is, areas that one party implements and then another party reverses. In that category are issues that would be highly likely to be reversed with a National-led government. The expansion of 90-day trial periods (removal of personal grievance rights) is a stated policy, while changes may well occur in other areas, such as meal and rest breaks and the ‘30-day rule’ for new employees. Likewise, a National-led government would repeal Fair Pay Agreements.

In contrast, a second category involves other areas that may be less likely to change. For example, the National Party have indicated that they will not change current leave entitlements, while other changes to statutory entitlements, such as extensions to Paid Parental Leave, the current statutory minimum wage level, and Triangular Employment legislation, seem likely to endure. A third category is a set of newer innovations introduced by the Labour-led governments which may not proceed with either party. The Labour government’s move to ‘pause’ policies around income insurance and protections for contractors means they are unlikely to happen in the medium-term future, even with a Labour-led government, while a National-led government could be very unlikely to pursue them. Finally, immigration presents one separate issue outside of those categories. Commentators point to a discrepancy between what parties are doing, which has not really changed despite the Labour government’s promises of a ‘reset’, contrasting this with the pressing need for a more long-term strategy.

The outcome of an election is never known until the final vote is counted. One scenario that has looked increasingly possible in pre-election polling is a shift towards support for right-wing parties. A National-led government could involve coalition or supply arrangements with ACT and/or New Zealand First. Given statements from the National and ACT parties, this is likely to result in some reversal of the pattern of movement away from neo-liberal, free-market policies in ER. It would also be likely to bring changes in areas such as public sector employment and welfare provisions.

Two lessons are clear through all of this. Firstly, ER have changed, particularly in the last six years, and some types of changes are now embedded and likely to persist despite a change of government. Secondly though, even if a party is voted in with a majority that allows them to govern alone, as with the latest Labour government, their ability to implement their own policies is still constrained by other factors including the three-year electoral cycle and the time required for consultation and policy development.

Employment relations in an MMP democracy, such as New Zealand, are dynamic and still in a process of ongoing evolution. Thus, the 2023 General Election is likely to once again determine the direction of ER in the foreseeable future, affecting issues around equity, and the balance between employer and employee interests. In particular, the elusive problem of creating a sustainable high skill, high pay and highly productive economy seems to remain unsolved.

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