TEU | TERTIARY EDUCATION UNION
TE HAUTŪ KAHURANGI

Submission of

Te Hautū Kahurangi | Tertiary Education Union

to the

Education and Workforce Select Committee

on the

Employment Relations Amendment Bill

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1. Te Tīmatanga | Introduction

1.1. Te Hautū Kahurangi | Tertiary Education Union (TEU) welcomes this opportunity to respond to the *Employment Relations Amendment Bill*.

1.2. The TEU is the largest union and professional association representing 12,000 academic and general/allied staff in the tertiary education sector (in universities, institutes of technology/polytechnics, wānanga, private training establishments, and rural education activities programmes).

1.3. The TEU actively acknowledges Te Tiriti o Waitangi as the foundation for the relationship between Māori and the Crown. We recognise the significance of specific reference to Te Tiriti in the Education Act and the emergent discourse resulting from this. We also accept the responsibilities and actions that result from our nation's signing of the UN Declaration on the Rights of Indigenous Peoples.

1.4. The TEU expresses its commitment to Te Tiriti by working to apply the four whāinga (values) from our *Te Koeke Tiriti* framework as a means to advance our TEU Te Tiriti relationship in all our work and decision-making – with members and when engaging on broader issues within the tertiary sector and beyond – such as our response to the *Employment Relations Amendment Bill*:

> *Tū kotahi, tū kaha – We are strong and unified; we are committed to actions which will leave no-one behind; we create spaces where all people can fully participate, are fairly represented, and that foster good relationships between people.*
>
> *Ngā piki, ngā heke – We endure through good times and bad; we work to minimise our impact on the environment; we foster ahikā – the interrelationship of people and the land, including supporting tūrangawaewae – a place where each has the right to stand and belong.*
>
> *Awhi atu, awhi mai – We take actions that seek to improve the lives of the most vulnerable; we give and receive, acknowledging that reciprocity is fundamental to strong and equitable relationships; and we work to advance approaches that ensure quality public tertiary education for all.*
>
> *Tātou, tātou e – We reach our goals through our collective strength and shared sense of purpose, which are supported through participatory democratic decision-making processes and structures.*

1.5. Our response to the *Employment Relations Amendment Bill* stems from our commitment to the whāinga expressed above and our wish to see these enacted in the tertiary education sector and in our society and communities.

2. TEU POSITION

2.1. TEU strongly opposes the Employment Relations Amendment Bill (the Bill).

2.2. The Bill represents a fundamental attack on workers' rights by undermining the personal grievance system, introducing a new category of worker excluded from employment protections, expanding 'fire at will' provisions for high-income earners, weakening good faith obligations, dismantling support for union access, and eroding the statutory test of justification.

2.3. Rather than addressing real issues of exploitation and inequality in the labour market, the Bill entrenches employer power and strips away vital safeguards for all working people.

2.4. We strongly support the New Zealand Council of Trade Unions Te Kauae Kaimahi's submission on the Bill.

2.5. We would like to provide an oral submission on the Bill.

3. TEU RECOMMENDATION

3.1. TEU recommends the Bill be withdrawn.

4. INTRODUCTION OF 'SPECIFIED CONTRACTOR' STATUS

4.1. TEU strongly opposes the proposed amendment to section 6 of the Bill that introduces a new statutory worker category, the "specified contractor."

4.2. This amendment represents a significant and unjustifiable departure from long-standing employment law principles in Aotearoa New Zealand, and threatens to remove workplace rights and protections from some of the most precariously employed workers in the country.

4.3. Under the current law, the distinction between an employee and a contractor is determined by the "real nature" of the working relationship. This test – well-established in law and endorsed by the courts – requires considerations of all relevant circumstances, and rightly prevents contractual labels from overriding the actual substance of the relationship. It is a vital safeguard against the misclassification of workers, a practice that often leaves vulnerable people without access to minimum rights and entitlements such as sick leave, job security, or collective bargaining.

4.4. The proposed new category of "specified contractor" subverts this test by introducing a pre-emptive "gateway" that will lock many workers out of access to a status determination. While the real nature test technically remains in the legislation, in practice it will become irrelevant to workers who are deemed "specified contractors" by this new provision.

4.5. Critically, the criteria for this designation rest on superficial features of contractual arrangements – such as the ability to subcontract, work for others, or decline assignments – that are routinely present in casual or insecure employment relationships. These are not reliable indicators of genuine contractor status. Instead, they will provide employers with new tools to mask employment relationships and evade their obligations.

4.6. This is especially dangerous in the tertiary education sector, where increasing numbers of workers – particularly in vocational education, community, and adult-education – are already engaged on casual, fixed-term, or contract-like agreements. Many of these workers perform core teaching and research roles under conditions that resemble those of employees: they are integrated into institutional structures, subject to managerial control, and lack meaningful independence. By allowing employers to simply label these workers as a "specified contractor," this Bill would strip them of their rights under the Act.

4.7. Rather than addressing the real and growing problem of worker misclassification, this Bill entrenches it. It shifts power further into the hands of employers, enabling them to pre-emptively define workers out of employment protections. In doing so, it undermines the most basic principles of employment law.

4.8. We strongly oppose the introduction of "specified contractors" as a new worker category. What is needed instead is genuine contractor law reform – reform that protects workers from exploitation and ensures that those who are, in reality, employees, receive the rights and protections they are entitled to.

5. UNDERMINING THE PERSONAL GRIEVANCE SYSTEM

5.1. TEU strongly opposes the proposed changes to the personal grievance system contained in the Bill.

5.2. These amendments would severely weaken one of the few legal mechanisms available to workers to challenge unjust treatment in the workplace and hold employers accountable for breaches of employment law.

5.3. The Bill proposes to remove the availability of remedies such as reinstatement and compensation where an employee is found to have contributed to the situation – regardless of the nature or extent of that contribution. This represents a fundamental and alarming shift in the law. Under the current Act, any such

contribution is considered proportionally, with remedies adjusted accordingly based on the seriousness of the worker's actions. The proposed changes would instead treat any condition, however minor or blameless, as grounds to deny redress altogether.

5.4. This blanket denial of remedies undermines the entire purpose of the personal grievance system. It allows a worker to prove unjustified dismissal or disadvantage, but receive nothing in return – no reinstatement, no compensation, and no accountability for the employer's unlawful behaviour. It turns the grievance process into a hollow formality and incentivises bad-faith conduct by employers who know that any minor worker contribution can be used to escape consequences entirely.

5.5. The Bill also introduces the vague and troubling notion of "employee obstruction," which risks being weaponised by employers to excuse unfair processes or silence legitimate worker resistance. Furthermore, the removal of the right to raise disadvantage claims under a 90-day trial period strips the most precariously employed workers of what little protection they currently retain.

5.6. These changes fly in the face of the Act's foundational purpose: to address the inherent imbalance of power in employment relationships. Instead of protecting workers from abuse, the Bill entrenches that imbalance by limiting workers' ability to challenge mistreatment and eroding employer accountability.

5.7. These amendments are unjust, unworkable, and we strongly reject them. Rather than achieving a "better balance," they tilt the entire system against workers, and threaten the very integrity of employment law in Aotearoa New Zealand.

6. INTRODUCING 'FIRE AT WILL' FOR HIGH-INCOME WORKERS

6.1. TEU strongly opposes the introduction of a wage-based exemption to employment protections, as proposed in the Bill.

6.2. Under the new provisions, workers earning $180,000 or more annually would be stripped of their rights to challenge unjustifiable dismissals and would no longer be entitled to even basic procedural fairness.

6.3. This "fire at will" protocol allows employers to dismiss high-income workers without providing reasons, without disclosing any information, and without affording the worker any opportunity to respond. These workers will also lose access to personal grievance mechanisms for dismissal or disadvantage, removing any legal recourse or accountability for employers.

6.4. The Bill assumes that income alone equates to bargaining power, but this is a flawed premise. Many workers earning above the threshold do so through

collective, not individual, bargaining – particularly in unionised sectors. High pay does not negate the inherent imbalance of power between employers and employees, nor does it justify the removal of fundamental rights.

6.5. We reject this unfair and unjustifiable threshold. No worker – regardless of income – should be denied the right to fair treatment and due process.

7. REMOVING THE 30-DAY RULE AND UNDERMINING UNION ACCESS

7.1. TEU strongly opposes the Bill's removal of the 30-day rule and the associated obligations on employers to support workers in making an informed choice about union membership.

7.2. These provisions are essential to ensuring fair access to union representation, particularly for new employees entering the workforce.

7.3. The current law requires that new employees receive the terms and conditions of a collective agreement for their first 30 days of employment, and that employers inform them of their right to join a union. These requirements exist to prevent employers from locking new workers into inferior individual agreements before they are aware of their rights or have had the opportunity to engage with a union.

7.4. Removing these obligations entrenches employer control at the point of hire and creates a chilling effect on union visibility and influence. It opens the door for employers to pressure workers into signing non-union contracts immediately, often without a clear understanding of their rights or entitlements. This is particularly harmful in sectors with high turnover, casualisation, or a lack of union density.

7.5. The claim that the 30-day rule is unnecessary or burdensome fails to recognise the power imbalance inherent in the employment relationship – especially when workers are most vulnerable. Without clear, proactive employer obligations to facilitate union engagement, many workers may never be made aware of their right to organise or bargain collectively.

7.6. We recommend that these provisions remain in place and retain the existing wording at s62(3) of the Employment Relations Act. Dismantling them weakens the foundation of collective representation and erodes the ability of workers to act in solidarity.

8. EXPANDING 90-DAY TRIAL PERIODS AND WEAKENING WORKER PROTECTIONS

8.1. TEU strongly opposes the Bill's proposed expansion of 90-day trial periods, which would further erode workers' rights by eliminating the ability to raise personal grievances for a disadvantage where that disadvantage is in any way connected to a worker's dismissal.

8.2. Under current law, workers on valid 90-day trial periods are already barred from challenging unjustified dismissals. However, they still retain the right to raise grievances where they experience unjustifiable disadvantage prior to, or independent from, the dismissal. The Bill removes even that modest safeguard.

8.3. By broadly prohibiting disadvantage claims "related" to dismissal – without clearly defining what that means – the Bill will allow employers to shield a wide range of bad behaviour from scrutiny. Workers could be subjected to bullying, exclusion, or arbitrary changes to their conditions and then dismissed, with no legal pathway to seek redress for any of it.

8.4. The expansion of employer power is unjust and unnecessary. It will disproportionately impact vulnerable workers – especially those who are young, in insecure, entry-level, or precarious roles – who already face heightened risk of unfair treatment. It also sends a dangerous message that employers are free to act without any accountability during a trial period.

8.5. We reject these changes. Trial periods should never be a licence for mistreatment. Stripping away core rights under the guise of flexibility undermines both fairness and dignity at work.

9. CONCLUSION

9.1. TEU urges the government to abandon the Employment Relations Amendment Bill.

9.2. The proposed changes are unjust, unnecessary, and fundamentally at odds with the purpose of the Employment Relations Act – to promote fair and balanced employment relationships. If passed, this Bill will significantly weaken protections for workers, undermine union representation, and increase the risk of exploitation across the workforce.

9.3. We call instead for legislative reform that strengthens, rather than diminishes, the rights and dignity of working people in Aotearoa New Zealand.