

A-Z Guide

COLLECTIVE AGREEMENTS



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Use This Guide To Help You Understand

- What a collective agreement is and who it covers
- The minimum contents of a collective agreement
- What terms apply
- The duration and operation of a collective agreement
- Drafting and enforcement of a collective agreement

What is a Collective Agreement?

Collective agreements are employment agreements between one or more employers and one or more unions; multi-employer collective agreements, known as MECA's, are collective agreements between one union (which represents members employed by a multiple of employers in the same or similar industries) and a multiple of employers who all do the same type of work.

Collective agreements are a feature of the Employment Relations Act 2000. Collective agreements must be and operated according to the Act.

This guide covers the operation of collective agreements including what they must contain and how they can be enforced.

Refer to the A-Z Guides on:

- **MECA's** for information on multi-employer collective agreements
- **Bargaining** for information on the initiation of and bargaining for collective agreements
- **Strikes and Lockouts** for information on strikes and lockouts in relation to collective bargaining

Coverage of a Collective Agreement

A collective agreement between an employer and a union must contain a coverage clause. The clause must specify the work that the agreement covers, whether by reference to the work or type of work or employees or types of employees and it can include a provision in the agreement that refers to named employees, or the type of work done by named employees, to whom the collective applies.

Union member employees

Because a collective agreement is between an employer and a union, it only covers the employer's employees who are union members and who are caught by the coverage clause of the agreement. If an employee resigns their union membership but remains an employee, then:



- The employee may not be subject to any other bargaining for a collective agreement until after 60 days before the agreement that the employee was covered by is due to expire (whether or not it is continued for a further 12 months).
- The employee's employment is bound by an individual employment agreement based on the collective agreement which may be varied by agreement as the employer and employee think fit.

If an employee is a member of two or more unions, and of those unions two or more are bound by a collective agreement with the employee's employer that cover the work of the employee, then the employee is bound by only the collective agreement that resulted from the bargaining first initiated.

Non-union member employees

If an employee is not a union member at the time when a collective agreement is entered into between the employer and a union, but subsequently joins that union and the work the employee does is covered by the coverage clause of the collective agreement, then the terms and conditions of that employee's employment may be an amalgam of their individual employment agreement and the collective agreement.

Whether the terms and conditions of employment contained in the employee's individual employment agreement continue to apply to the employee's employment or whether those contained in the collective agreement will apply, will depend on the construction of the two agreements. Employment agreements should take into account the various possibilities.

New non-union member employees

The Employment Relations Amendment Act 2018 reintroduced the 30-day rule effective from 6 May 2019. New employees who are not a member of the union that is a party to a collective that covers the work to be done by the employee, will be automatically covered by the terms of the collective that would bind the employee as if they were a union member for the first 30 days of employment.

Parties can agree on any additional terms that are no less favourable with the terms of the collective agreement in place.

When offering employment employers need inform new employees that a collective agreement exists and covers the work, provide information about the union, a copy of the collective agreement, and inform them that they will be covered for the first 30 days by the terms of the collective agreement.

Please contact AdviceLine if you require a sample offer of employment letter.

There is now a requirement for employers to share information about a new employee with the union. However, this is subject to any objection by the employee within 30 days of starting work. The information includes the name of the employee and whether the employee has elected to join the union or not. The form is available from MBIE or by calling AdviceLine.

Union information for new employees

A union that is party to a collective agreement can request, at any time, that an employer that is party to the agreement provide information about the union and its functions to new employees who are not union members. An employer must comply with a



request unless the request relates to information that is about the employer, would mislead or deceive prospective employees, and would significantly undermine bargaining.

The union would have to meet the costs of providing the information if it is to be provided in hard copy.

Refer to the **A-Z Guide on Individual Employment Agreements** for more information on the interplay of individual agreements and collective agreements.

Form and content of collective agreement

Collective agreements need to contain the rates of wages or salary payable to employees. Details of wages or salary payable must be included. It will not be enough for the collective agreement to just refer to a document or process that is not part of the agreement or provide that the employer has sole discretion to determine the wages or salary payable. This requirement will be complied with if the collective agreement contains either the rate of pay, a minimum rate of pay, or the method of calculating the pay. This applies to any collective concluded on or after commencement of the amendment on 6 May 2019.

Unions

If the registration of the union that is a party to a collective agreement is cancelled, or the union ceases to be an incorporated society, the Employment Relations Act 2000 stipulates that the collective agreement remains binding on the employer and the employees who were bound by the agreement.

The Act also stipulates that where a union's registration is cancelled because it has amalgamated with another union that the collective agreement then binds the amalgamated union. This is not a reference to the new, but only the former but now amalgamated union. If, in this situation, two or more unions amalgamate and each union is bound by a collective agreement with an employer of, then an employee is only bound by the collective agreement that bound them before the amalgamation whether or not it has been cancelled.

Collective Agreement Duration

In force

A collective agreement comes into force either on the date specified in the agreement stating when it comes into force, or where no such date is specified, on the date on which the last party to the agreement signed the agreement.

It is possible for a collective agreement to contain more than one 'in force' date; different provisions of the agreement may come into effect at different times after the date on which the agreement came into force.

Expiry

A collective agreement will expire, if it is not continued, at the earliest of either:



- The expiry date specified in the agreement; or
- The date on which an event occurs, being an event that is specified by the agreement as an event on the occurrence of which the agreement expires; or
- The date three years after the date on which the agreement came into force.

Continuation

A collective agreement that would otherwise expire may continue in force for up to 12 months (but not longer) if the union or employer that is a party to the agreement initiates bargaining before the agreement expires and for the purpose of replacing the collective agreement.

Content of a Collective Agreement

Agreement Collective agreements must be in writing and signed by each union and employer that is a party to the agreement, otherwise the agreement has no effect.

The minimum form and content of a collective agreement is covered in Section 54 of the Act.

A collective agreement is to be treated as if it contains a provision that requires an employer who is party to the agreement to deduct union fees (with the employees' consent) from union members' salary or wages on a regular basis. A collective agreement may exclude or vary the requirement.

Once a collective agreement is entered into a copy of the agreement must be delivered to the chief executive of the Ministry of Business, Innovation and Employment. The collective agreements collected may only be used for statistical or analytical purposes.

54 Form and content of collective agreement

1. A collective agreement has no effect unless

- it is in writing; and*
- it is signed by each union and employer that is a party to the agreement.*

2. A collective agreement may contain such provisions as the parties to the agreement mutually agree on.

3. However, a collective agreement

- must contain.*
 - a coverage clause; and*
 - the rates of wages or salary payable to employees bound by the agreement; and*
 - a plain language explanation of the services available for the resolution of employment relationship problems, including a reference to the period of 90 days in section 114 within which a personal grievance must be raised; and*
 - a clause providing how the agreement can be varied; and*
 - the date on which the agreement expires or an event on the occurrence of which the agreement*

- is to expire; and*
- b. must not contain anything*
 - I. contrary to law; or*
 - II. inconsistent with this Act.*

4. For the purposes of subsection (3)(a)(ii), a collective agreement **contains the rates of wages or salary payable to employees bound by the agreement** if it—

- a. contains, in respect of the employees bound by the collective agreement (whether by reference to the work or types of work done by the employees or by reference to named employees or types of employees):*
 - I. the rates of wages or salary payable for certain work or types of work or to certain employees or types of employees; or*
 - II. the minimum rates of wages or salary payable for certain work or types of work or to certain employees or types of employees; or*
 - III. 1 or more methods of calculating the rates or minimum rates of wages or salary payable for certain work or types of work or to certain employees or types of employees; and*
- b. indicates how the rate of wages or salary payable to an employee bound by the agreement may increase during the term of the agreement.*

Employment Relations Act – Hours of work

The Amendment to the Act in April 2016 addressed so-called “zero hours contracts” and provides that hours of work agreed must be specified in a collective agreement, in additional terms to a collective agreement, and an individual agreement.

Hours of work includes *any or all* of:

- The number of guaranteed hours of work
- The days of the week on which the work is to be performed
- The start and finish times of work
- Any flexibility in days of week, and/or start and finish times

An employee may refuse to perform work in addition to guaranteed hours if the employment does not contain an availability provision under the Act. An employee must not be treated adversely for such a refusal.

Note: The law does not interfere with the existing practice of true casual employment relationships where there are no guaranteed hours, but the employee is not required to be available if asked to work. But where an employer requires an employee to be available to work when required then they will have to provide for guaranteed hours.

Application of Collective Agreement

A collective agreement that is in force binds and is enforceable by the union and the employer that are parties to the agreement and the employees who are or become members of the union and whose work comes within the coverage clause in the agreement. Subsequent parties can also become party to a collective agreement.

Drafting a Collective Agreement

The drafting of employment agreements, particularly in an environment where some employees will be non-union members, is a complex task that requires specialist input.

Employment agreements should take into account the possibility that an employee may resign their union membership and enter into an individual employment agreement and alternatively that an employee on an individual employment agreement may join a union that is a party to a collective agreement with you.

Enforcement

A provision of a collective agreement may be enforced by a compliance order. A compliance order may be issued by the Employment Relations Authority or the Employment Court on the grounds that a party to a collective agreement has not observed or complied with a provision of that agreement.



Collective Agreements

Any provision of the Employment Relations Act 2000 that relates to collective bargaining and collective agreements may be also enforced by way of a compliance order.

Further, any person who is bound by a collective agreement or any party to a collective agreement may pursue a dispute about, interpretation or operation of the collective agreement either by seeking mediation on the matter or by lodging an application in the Employment Relations Authority or Employment Court requesting its assistance with the dispute.

Refer to **the A-Z Guides** on , and **Employment Relations Authority** for more information on each topic.

Conclusion

Collective agreements are employment agreements between unions and employers that specify in their coverage clauses which employees are bound by their terms and conditions. Collective agreements frequently involve protracted negotiations before they are entered into.

EMA Consultants and Lawyers can provide assistance to employers with collective agreements and with bargaining for a collective agreement.

Remember

- Always call AdviceLine on 0800 300 362 to check you have the latest guide.
Never hesitate to ask AdviceLine for help in interpreting and applying this guide to your situation.
- Use our AdviceLine employment advisors as a sounding board to test your views.
- Ask one of our Lawyers or Consultants to provide formal assistance to your business.

This guide is not comprehensive and should not be used as a substitute for professional advice.

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Published: **June 2024**

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