

Submission

By



to the

Health Select Committee

on the

Sleepover Wages (Settlement) Bill

29 September 2011

Sleepovers Wages (Settlement) Bill (“the Bill”)

This submission is from the Employers’ Chamber of Commerce Central Inc. (hereafter “ECCC”). We understand the Select Committee’s very tight timetable and its need for urgency, but invite the Committee to consider our submissions, albeit that we have not been invited to do so.

ECCC’s two contact persons for further information are:

Ken Harris

Chief Executive

PO Box 1087

Wellington

P 04 470 9938

E ken.harris@eccc.org.nz

AND

Susan-Jane Davies

Managing Solicitor

PO Box 1087

Wellington

P 04 470 9923

E sjdavies@emalegal.org.nz

About ECCC

1. ECCC was formed in 2010 through the merger of the Employers and Manufacturers Association (Central) (“EMA (Central)”) and the Wellington Regional Chamber of Commerce. ECCC represents the interests of approximately 2,900 enterprises in the central and lower North Island and upper South Island regions. Collectively, our members employ approximately 120,000 employees.

2. We have seen the submissions made by Business New Zealand Inc. (our sister organisation) and support and endorse them. These submissions are supplemental to those submissions.
3. We have approximately 319 members who provide services in the health and disability sector across our region.
4. In these submissions we:
 - drill down on how the Bill directly affects our members
 - recommend some changes to the Bill to ensure that it achieves its objective and meets other important objectives for other employers both publicly funded and privately funded who are unnecessarily left out in the cold by this Bill.

Executive Summary

5. ECCC supports this Bill in so far as it is a patch to get Idea Services Limited and Timata Hou (together "Idea") over the line to settle their case.
6. However, there is an opportunity with this Bill to extend some of the benefits of certainty to other employers facing sleepover wages claims which will not have a direct or indirect fiscal effect on government resources.
7. The measures we recommend will provide employers in any employment which operate sleepovers and their employees and ex-employees with certainty about what period of time worked is actionable.
8. The approval mechanism in section 24 of the Bill is cumbersome and should not be necessary for sleepover case settlements which do not involve government funding.

Drilling down

Extinguishment

9. We do not support the inclusion of section 8(2) in the Bill which only confers on Idea the protection under s10 (of extinguishing sleepover wages claims lodged after 5.00pm on 2 September 2011) and under s 11 of preventing piggybacking existing cases and seeking some remedy other than wages claims.
10. Even employers in the health and disability sector are excluded from these important protections. We submit that all employers providing sleepovers be afforded these basic but important protections so that they can negotiate their liability with their affected employees with certainty as to the ambit of the claims.
11. These stoploss measures need not involve the government in any further or other expenditure commitments. As drafted the Bill would still require expenditure other than Idea's to go through the approval mechanism in section 24.

Our recommendation:

- (a) Insert a new section 8(1)(a) (iv) as follows:

8(1)(a)(iv) any other employer in any other employment which operates sleepovers whether funded through a Vote or otherwise.

- (b) Delete section 8(2)(a) of the Bill.
- (c) Amend section 10 to delete 'Certain' and delete "in the health and disability sector" in the heading so as to read **"Claims for sleepover wages by employees of other employers extinguished"**

Our Intended effect:

Let all employers benefit from the extinguishment of future claims, from piggybacking on existing claims and from employees being inventive in finding other causes of action for the same sleepover wages issue.

Back wages for sleepovers

12. We submit that all employers should have certainty over the period of their risk for back liability of sleepover wages. The protections afforded to Idea under sections 14 to 18 of the Bill should be replicated in “**Subpart 3- Miscellaneous**”, but without the need for these other employers to have to go through the Order in Council approval mechanism to gain certainty over the *duration* (but not the amount) of their back wages liability .

Our recommendation:

- (d) Delete the words “funded through a Vote” from section 23 (b); and
- (e) Replicate sections 14 to 18 inclusive in Subpart 3 as to duration but not the amount.
- (f) Substitute the word “shorter” for the word “different “ in section 26 (a) and 26(b) and section 28(c) of the Bill.

Stay of other proceedings

13. As it stands, there is nothing in section 30 of the Bill to require a stay of existing coat tail proceedings (or for that matter fresh litigation outside the health and disability sector) before the Employment Relations Authority pending the parties availing themselves of the dispute resolution mechanism in the Bill.

Our recommendation:

We submit that the Bill should impose a moratorium on existing and fresh sleepover wages claims proceeding in the Employment Relations Authority without the parties having previously been to mediation and if not resolved at mediation to a facilitation process akin to that contained in s50E to s50I Employment Relations Act 2000.

Conclusion

14. This Bill is a good stop gap measure. However, it could be better.
15. ECCC submits it is essential that the Bill builds on the settlement already reached with Idea to afford other affected employers and employees with certainty over their liability and a simple mechanism for giving effect to freely bargained settlements, where they might otherwise find it difficult to resolve their differences.
16. With the additional refinements we have recommended it will give Parliament and employers and employees who are involved in sleepovers greater certainty about their liability and a speedier and more streamlined mechanism in which to resolve them.
17. The Bill is not intended (and so does not address) the more fundamental problem about what is "work" and how this should be paid for. We hope that the new Parliament will consider the solutions adopted in Europe and North America and find time to give this its early attention.



Ken Harris
Chief Executive