

**Submission to:**

Education and Workforce Select Committee

**Subject:**

Employment Relations (Triangular Employment) Amendment Bill

**Date: 11 May 2018**

Citizens Advice Bureaux New Zealand (CABNZ) Ngā Pou Whakawhirinaki o Aotearoa welcomes the opportunity to make this submission on the Employment Relations (Triangular Employment) Amendment Bill.

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**We wish to appear before the Committee to speak to our submission.**



# Submission on the Employment Relations (Triangular Employment) Amendment Bill

## Introduction

Citizens Advice Bureaux New Zealand (CABNZ) Ngā Pou Whakawhirinaki o Aotearoa welcomes the opportunity to comment on the Employment Relations (Triangular Employment) Amendment Bill.

We support the two purposes of the Bill:

- To ensure that employees employed by one employer, but working under the control and direction of another business or organisation, are not deprived of the right to coverage of a collective agreement covering the work being performed for that other business or organisation.
- To ensure that such employees are not subjected to a detriment in their right to allege a personal grievance by providing that where an employee is employed by one employer, but working under the control and direction of another business or organisation, that employee may join the other business or organisation that is party to any personal grievance action.

Our submission is based on information from analysis of enquiries made to CABs. Client stories have been used to illustrate points made. Identifying details have been removed from the examples provided but the essence of the clients' circumstances and experiences remains.

## About Citizens Advice Bureau

The purpose of our organisation is to:

- Ensure that individuals do not suffer through ignorance of their rights and responsibilities or of the services available; or through an inability to express their needs effectively — Me noho mataara kia kaua te tangata e mate i tōna kore mōhio ki ngā āhuatanga e āhei atu ana ia, ki ngā mahi rānei e tika ana kia mahia e ia, ki ngā ratonga rānei e āhei atu ana ia; i te kore rānei e āhei āna ki te whakaputa i ōna hiahia kia mārama mai ai te tangata.
- Exert a responsible influence on the development of social policies and services, both locally and nationally — Kia tino whai wāhi atu ki te auahatanga o ngā kaupapa ā-iwi me ngā ratonga ā-rohe, puta noa hoki i te motu.



We support the principle of partnership reflected in the Treaty of Waitangi — E tautoko ana Ngā Pou Whakawhirinaki o Aotearoa i te mātāpono o te pātuitanga e ai ki Te Tiriti o Waitangi.

We work to empower individuals to resolve their problems and to strengthen communities. The person-to-person service provided by over 2,300 Citizens Advice Bureau (CAB) volunteers is unique in New Zealand. From 84 locations around New Zealand, the CAB provides individuals with a free, impartial and confidential service of information, advice, advocacy and referral — Ka mahi mātou ki te whakakaha i ngā tāngata takitahi ki te whakatika i ā rātou ake raruraru, ki te whakakaha hoki i ngā hapori. He mea ahurei i roto o Aotearoa te ratonga kanohi-ki-te-kanohi e whakaratohia e ngā kaitūao 2,300 o Citizens Advice Bureau (CAB). Mai i ngā takiwā e 84 puta noa i Aotearoa, e whakaratohia ana e te CAB ki ngā tāngata takitahi he ratonga koreutu, tōkeke, matatapu hoki e pā ana ki te mōhiohio, te tohutohu, te tautoko me te tukunga.

In the 2016 / 2017 financial year we had over 520,000 interactions with clients, including over 200,000 in-depth enquiries where we offered information, advice and support across the range of issues that affect people in their daily lives. This includes around 13,500 in-depth enquiries about employment rights.

We use our experience with clients to seek socially just policies and services in Aotearoa New Zealand.

### **Support for increased protections for vulnerable workers**

CABs around New Zealand regularly respond to enquiries from clients whose minimum employment rights have been breached. This includes breaches of the right to have a written employment agreement, denial of minimum entitlements relating to pay, sick leave and holidays, unfair dismissals, workplace bullying, unlawful application of 90 day trial periods and employers changing terms of employment without negotiation. Some of the difficulties experienced by CAB clients were highlighted in our report *Spotlight on CAB clients without employment agreements* (CABNZ September 2017).

Whilst New Zealand has a comprehensive set of employment laws to ensure that workplaces operate under minimum employment standards and that good faith behaviour underlies all aspects of the employment relationship, the current enforcement mechanisms are failing to ensure these standards are met. We therefore support efforts to improve the protections for employees and to ensure that all workers are able to access fair conditions and enjoy fundamental employment rights without hardship.

On this basis we support the intent of the Employment Relations (Triangular Employment) Amendment Bill. We consider that the amendments proposed by this Bill will help to ensure that employees who are working in a triangular employment arrangement are not denied the benefits available under a collective agreement operating in their workplace and are able to raise a personal grievance against the party who has actually done wrong. We believe that workers who secure employment through labour hire companies and temporary employment agencies should have access to the same rights and conditions as the permanent employees they are working alongside.

In addition to the proposed protections for those in triangular employment relationships, we also recommend that further work be undertaken to improve protections for vulnerable workers more generally, including:

- educating and upskilling employers about their responsibilities as good employers, emphasising the requirement to uphold minimum employment standards, and in particular the requirement to provide a written employment agreement.
- ensuring that free, independent, confidential information, advice and support is available to employees to help redress some of the inherent power imbalance in the employment relationship, and in particular targeted education for young people about their employment rights.
- ensuring that the mechanisms for reporting breaches of employment law are accessible and visible so that it is easier to report an employer's non-compliance with the law. Individuals reporting a breach should be able to do this anonymously if they wish, and be protected from negative consequences.
- continuing to increase the capacity of the Labour Inspectorate so that consistent action can be taken in response to reported breaches of employment law.
- exploring a 'good employer' accreditation system that makes business compliance with good employment practices transparent and allows consumers to make informed choices about their spending based on whether a business treats their workers fairly and in accordance with the law.

### **Issues presented by CAB clients in triangular employment arrangements**

Triangular employment arrangements can have the benefits of allowing labour shortages to be addressed as needed, employers to reduce administration burdens, and workers to have some degree of flexibility. However, the reality for many workers in these kinds of arrangements is that they are highly vulnerable and there is a significant power imbalance between the worker and the party they are working for.

The notion that this kind of arrangement offers increased choice and flexibility to workers does not stack up against the experiences of many workers in the array of work environments using (or relying almost entirely) on temporary workers or people supplied through labour hire companies – in particular the experiences of vulnerable workers who are being put into distorted employment arrangements to keep business costs down.

In the CAB client enquiries we reviewed where there was a triangular employment relationship described – a person has a direct employment relationship with one entity, ‘the primary employer’, but works for another, ‘the secondary employer’ -- clients were often unsure of their rights and of where the responsibilities lay between the various parties to the relationship. People in bilateral employment relationships already come to us confused about the status of their work relationships and whether they are employees or contractors – triangular employment arrangements add another layer of confusion and potential unfairness.

Common themes presented by CAB clients in triangular employment arrangements were:

- **Unfair treatment by secondary employer** – Workers’ lacking clarity about rights and remedies available when they are treated unfairly by the secondary employer eg, dismissed without a fair process.
- **Lack of clarity about entitlements as a ‘temp’** – ‘Temporary’ workers receiving lesser conditions than those in direct employment – lesser wages, holidays, leave, fair processes. Workers being unclear of their entitlements – particularly around level of pay and holiday pay.
- **Lack of understanding of the relationships or terms of the contract** – Workers not understanding the nature of the workplace relationships or the terms of their contract.
- **Problems with the agency / primary employer** – Workers experiencing problems with the temping agency or labour hire company, particularly around the payment of wages.

Further details and examples of client’s experiences follow below.

### **Unfair treatment by secondary employer**

Clients often describe situations where they feel they have been treated unfairly by their secondary employer but are unsure what their rights are, what remedies they have available, and where they can seek help.

Client has obtained work through an employment agency. She has worked for a few weeks but is unhappy with the treatment she is receiving from her on-the-job boss – he has been criticising her, shouting orders at her, and generally giving her a hard time. The client wants to know what her rights are.

Client has just started her first job temping at a distribution centre. The job was going well and the distribution centre had indicated they would likely offer her permanent employment. Recently however, her supervisor has complained that she is taking too much time off during her breaks. She denies this and has asked her employer for proof. The employer says they are talking to the agency. She is now worried she won't have a job and wonders what her rights are.

Client had a full-time temporary job through an agency, which she was promised would become permanent. However, her employment was terminated without notice after one week. She would like to know if she has any redress as she left a permanent job to take up this one.

Client is employed by an agency that pays his wages and is contracted out to another company. After 5 months of working for the company he has been dismissed from his job due to a temporary health issue. This is despite his doctor saying he could return to work. He wants to know what his rights are regarding termination and pay.

Client had been in a temporary administrative position for two months. His direct manager, and also the temping agency he was working through, had led him to believe that the term would be extended. Last week he was told that the term would not be extended – no reason was given. He had sent numerous texts and emails asking for an explanation but has received no response. He wondered what he can do next.

Client is employed through a temping agency and her placement was terminated abruptly without a reason being provided. She wants to know what her rights are.

Client has been accused of stealing by the company he is working for (contracted through an agency). He has been suspended from work and has not received his pay. He denies that he has stolen anything and wants to know what he can do. They haven't shown him any evidence or police reports.

Client has been working for a week through an employment agency. He took a day off during the week and the boss was not satisfied with the reason given and says she will cancel the contract with him. They have said they are not going to pay him any wages for the week and he wants to know what he can do.

Client commenced a new job last week through an employment agency. At work he experienced significant bullying. Other staff also confirmed that the work environment wasn't great and most people didn't stay long. He was not given any time for breaks. After 3 days of work he refused to go back. When returning to the employment agency he was told that he would not be paid for the 3 days that he had worked. He wondered how this was fair when he had been treated so badly.

### **Lack of clarity about entitlements as a 'temp'**

Clients who are in triangular employment relationships are often unclear about their entitlements – particularly in relation to levels of pay and holiday entitlements.

Client is a temp working through an agency. She works Monday to Friday and will be in the same job for six months. She wants to know, given she is a temp, whether she will get paid for Easter Friday and Easter Monday as these are days she would usually work.

Client took on work through an agency. The agency is getting paid \$20 per hour for his work, and it then pays him just \$16.50 per hour. The client wants to know whether this is legal and whether he is entitled to receive the \$20 wage.

Client is employed through a temping agency. She has been working Monday to Friday and wants to know if the temping agency can end her contract on a Thursday to avoid a public holiday that falls on a Friday?

Client wants to know if he is entitled to sick pay. He was employed with an employment agency on what was a temporary basis but this has lasted 9 months. He had a contract but this appears to be very vague. The agency has not yet clarified the situation despite his requests.

Client works casually through an agency, but has been with same employer for 4 years working varying numbers of hours per week. He doesn't have an employment agreement, and thinks his employer is not meeting his obligations under the law in terms of annual leave. He wants to know what he can do.

Client is working through an employment agency as a full-time temporary employee. She has worked for the company eight or more hours each of the last six Fridays. The client is scheduled for work next Friday on a public holiday and wants to know if she is entitled to holiday pay and a day in lieu. She says that because her work is through an agency she was not sure about this.

Client was told by the agency that she works through that she is not entitled to public holiday pay because the company she is contracted to has a two week shutdown

period during the Christmas holidays. The client felt her signed agreement was unclear and wanted to know what she was entitled to.

Client is working through an agency as a labourer and is being paid \$19 per hour. The other workers doing the same job as him are being paid \$25 per hour and he doesn't feel this is right. He has tried to discuss the rate of pay with the agency and he was told to 'stop whinging'. What can he do?

### **Lack of understanding of the relationships or terms of the contract**

While in some circumstances workers actively choose the option of working through an agency, there are many vulnerable workers who have limited negotiating power, who take the work they can get and work within the parameters set by the powers that be. The reality of this is that they may not have a clear understanding of the nature of the work relationships, or of the details of their 'employment' contract.

We frequently see this lack of clarity and understanding in relation to clients who are in a direct 'employment' situation but are in fact being treated as independent contractors – even though they didn't quite understand that this is what they have signed up for.

For clients who are in triangular employment relationships we find that often they don't have a very clear understanding of what they've agreed to.

Client has a job she gained through a recruitment agency. She is asking if she is bound by the contract offered by that agency or the employing firm.

Client obtained work through an agency and was given a six month placement. After a week he was told that the contract was cancelled. The agency told him that under the terms of the contract the client has with the agency the workplace is entitled to do this after a one week trial period. The agency told the client that he had electronically signed their contract. The client was unaware of this clause and wondered if the contract is binding.

Client was working through an agency but was not receiving a lot of work. She was not sure if she was employed as a sub-contractor or contractor with them and was unsure of her tax responsibilities. English was not her first language and she was finding it difficult to understand what she needed to do.

### **Problems with the agency / primary employer**

Clients also come to the CAB because they want assistance in dealing with the 'primary employer' – the temping agency or labour hire company. Issues often relate to pay as this is the main lever the agency has available to exert power.

Client started work through a temping agency. He worked a full week last week but when he went to pick up his pay they said they are withholding his pay till next week, saying that this is company policy. The client has no written contract and no longer wishes to work through this agency, but wants to get his pay.

Client called temping agency saying that she was unable to make it to work due to personal issues. The agency staff told her that if she wasn't able to go to work 'there would be problems with her pay'. She has not received her pay for the previous week's work despite working a full week and thinks this is because of the day off work. She wants to know if the agency can withhold her pay like this.

Client is in New Zealand on a work permit working for a company through an agency. His rate of pay is \$15.75 per hour. The agency is quite erratic in making wage payments and this is now affecting his family because of the impact on meeting rent payments, buying groceries, etc. He wants to know what he can do.

Client is employed by an agency. She doesn't have a contract. The agency is withholding her wages claiming that the business she is working for has raised health concerns about her and they will only pay her after she provides a medical certificate. They haven't told her what the issues are that they want the medical certificate for and they also say she needs to pay for the medical certificate herself. The client has clarified with her boss that he hasn't raised any concerns and has no problems with her at all. Her boss has undertaken to contact the agency directly to see if they can work things out but she wondered what else she can do.

## Summary

We support the amendments proposed by the Employment Relations (Triangular Employment) Amendment Bill. We believe that these provisions provide for greater fairness and protection to workers by ensuring:

- that employees employed by one employer, but working under the control and direction of another business or organisation, have the right to coverage of a collective agreement operating in that workplace,
- that such employees have access to appropriate remedies for unfair treatment and breaches of their rights by being able to join the secondary employer to a personal grievance action.

Improving the protections available to workers in triangular employment arrangements provides a clear signal that the structure of workplace relationships should not be used to avoid providing fair work terms or to deprive those workers of particular conditions and rights that those in direct employment expect as a minimum.