

**Employment Relations Pay Deductions
for Partial Strikes Amendment Bill**

**Submissions on behalf of The Law
Association of New Zealand by the
Employment Law Committee.**

1. INTRODUCTION

- 1.1 The Law Association of New Zealand ("TLANZ") is an independent membership organisation representing over 7,500 legal professionals. Through its expert law committees, TLANZ provides informed contributions to legal review and policy advocacy. The TLANZ Employment Law Committee ("the Committee") appreciates the opportunity to submit on the Employment Relations (Pay Deductions for Partial Strikes) Amendment Bill ("the Bill").
- 1.2 The Bill seeks to reinstate provisions allowing employers to deduct pay for partial strikes, reversing changes introduced by the Employment Relations Amendment Act 2018. This submission offers recommendations to ensure that the Bill achieves its objectives without unintended negative consequences.

2. EXECUTIVE SUMMARY

2.1 The Bill proposes reinstating employers' ability to deduct wages during partial strikes. While it aims to provide employers with a mechanism to address industrial action without resorting to more disruptive measures such as lockouts or suspensions, the Committee has identified several concerns:

- Unjustified Pay Deductions – The Bill allows employers to deduct wages even when an employee's workload has not decreased (e.g., via the proposed fixed 10% pay reduction), undermining the principle that workers should be fairly compensated for their labour.
- Risk of employees receiving less than Minimum Wage – Employees could end up being paid less than the minimum wage despite maintaining full output.
- Further clarification required on "partial strikes" – It is not clear whether breaches of policies and procedures or reduction in an employee's working hours gives rise to "partial strikes".
- Lack of Transparency – Employers are not required to inform employees of deduction amounts in advance (or how these amounts have been calculated).
- Inability for employee to directly challenge deduction – rather, unions must raise disputes on behalf of employees.
- Lack of clarity when no prior notice of strike – The Bill does not currently address what happens when a partial strike occurs without prior notice.

2.2 To address these concerns, the Committee recommends:

- removing the flat 10% pay reduction and replacing this with the ability for an employer (or union) to apply to the Employment Relations Authority or Employment Court to seek an assessment of the deduction (e.g., in circumstances in which there has been no loss of productivity);
- considering ways in which the Minimum Wage could be protected within this proposed framework;
- refining the definition of partial strikes;
- introducing a requirement to inform employees of deduction amounts in advance;
- providing an ability for employees to challenge the deduction (without needing to go through the union); and

- clarifying what should happen when a partial strike occurs without prior notice.

3. SUBMISSIONS

3.2 The Purpose, Policy and Strike/Lockout Provisions of the ERA 2000

3.2.1 While strikes and lockouts are not mirror image processes for employees and employers respectively to influence collective bargaining by imposing conditions which “bite” (including which affect adversely third parties with a view to persuading them to bring pressure on the parties to settle the bargaining), there has been and should continue to be a degree of equality of power and influence in the use of these tactics. Another longstanding (albeit often unspoken and unwritten) principle of employment law is that strikes (and lockouts) should be a tactic of last (or at least not first or early) resort. They should be of only sufficient nature and duration to achieve the desired concessions in bargaining. To resort early to what are sometimes referred to as the “nuclear options” of strikes and lockouts risks driving bargaining parties further apart with adverse consequences for the employees, the employing enterprise and in many cases, innocent third parties affected by the strike or lockout.

3.2.2 It follows as a matter of principle that responses to strikes and lockouts should be proportionate to the harm caused by the strike or lockout action. A disproportionate response risks enflaming the collective bargaining process and delaying its resolution, as well as causing harm to the party affected adversely by the strike or lockout.

3.2.3 We submit that the Select Committee should keep these broad, long-standing and widely accepted principles of strikes and lockouts in mind in its deliberations.

3.3 The Objectives of the Bill

3.3.1 The Bill aims to provide employers with the ability to deduct wages from employees participating in partial strikes. The stated policy objectives of the Bill include promoting faster dispute resolution, minimising workplace disruptions, and alleviating financial burdens on employers caused by partial industrial action. Proponents argue that the current framework incentivises low-level industrial action that imposes costs on businesses without prompting urgent negotiations.

3.3.2 While the Committee acknowledges these objectives, the proposed mechanisms require careful scrutiny to ensure they do not undermine fundamental employment principles, including fairness, proportionality, and good faith bargaining. The Bill’s provisions must be assessed in the broader context of industrial relations in New Zealand, taking into account international labour standards, the role of industrial action in workplace negotiations, and the potential unintended consequences of financial penalties on employees exercising their lawful rights.

3.4 Recommendations:

Reconsider the amount of pay deduction for certain “partial strikes”

- 3.4.1 Clause 5 of the Bill introduces Section 82AA, which defines a “specified pay deduction”.
- 3.4.2 The Committee recognises that financial penalties may incentivise faster negotiations between unions and employers. However, the proposed flat 10% deduction fails to account for the differing nature and impact of partial strikes.
- 3.4.3 Historical evidence demonstrates that punitive industrial relations measures frequently escalate disputes rather than resolve them.¹ Partial strikes provide a mechanism for workers to raise awareness of critical issues while maintaining some level of workplace functionality. Penalising such actions through indiscriminate wage deductions may deter employees from engaging in moderate, lawful protests, forcing them towards full strikes instead. This outcome would directly contradict the Bill’s stated aim of reducing workplace disruptions.
- 3.4.4 The Committee advocates for a more proportionate approach that aligns wage deductions with the actual impact of partial strikes. In particular, the Committee recommends:
- (a) Removing reference to the proposed flat 10% deduction and, instead, revising the Bill to ensure wage deductions are tied to either the actual loss of productivity (as currently proposed) or providing the ability for the employer (or the union) to apply to the Employment Relations Authority or the Employment Court to determine what a proportionate reduction should be if the partial strike does not give rise to any clear loss of productivity (e.g., if the partial strike involves non-compliance with a uniform policy).
 - (b) Including safeguards to ensure that wages do not fall below the statutory minimum wage. More specifically, the Bill as currently drafted raises serious compliance issues with the Minimum Wage Act 1983. Section 7(2) of the Act outlines that deductions cannot be made from wages except for time lost due to the default of the worker, and judicial decisions such as *Faitala v Terranova Homes & Care Ltd* [2012]² and *Sandhu v Gate Gourmet New Zealand Ltd* [2021]³ reaffirm the fundamental nature of the minimum wage as a non-negotiable baseline.

¹ Hornsby-Geluk, S. (2012). An uneven playing field – Partial strikes. *New Zealand Journal of Employment Relations*, 37(1), 60–69. Retrieved from <https://www.nzlii.org/nz/journals/NZJIEmpR/2012/6.pdf>

² *Faitala v. Terranova Homes & Care Ltd*, [2012] NZEmpC 199 WRC 22/12. (2012). Retrieved from <https://www.disputestribunal.govt.nz/assets/Documents/Decisions/2012-NZEmpC-199-Faitala-and-Goff-v-Terranova-Homes-Care-Limited.pdf>

³ *Sandhu v. Gate Gourmet New Zealand Ltd*, [2021] NZCA 591. (2021). Retrieved from <https://www.employmentcourt.govt.nz/assets/2021-NZCA-591-Sandhu-and-Others-v-Gate-Gourmet-NZ-Ltd-and-another.pdf>

Definition of "Partial Strike"

- 3.4.5** Clause 5 of the Bill introduces Section 82AA, which defines a "partial strike" as occurring when "employees perform some, but not all, of their duties during industrial action." This includes actions such as refusing to perform specific tasks, reducing the rate of work, or breaching employment agreements.
- 3.4.6** The Committee recommends consideration is given to the following:
- (a) Whether "partial strikes" are intended to include non-compliance with an employer's policies / procedures that do not give rise to loss of productivity (e.g., non-compliance with social media policies or uniform policies); and
 - (b) Whether "partial strikes" are also intended to capture a reduction in the employee's normal hours of work (rather than just a reduction in the normal performance of work, such as a "go slow").
- 3.4.7** The Committee submits that Clause 5 of the Bill requires revision to align with the principles of fairness, proportionality, and constructive industrial relations. The Committee recommends refining the definition of partial strike to distinguish between symbolic or low-level impact or disruptive actions and ensuring that specified pay deductions are proportionate to the impact of the industrial action.

Concerns with provision of notice to employees regarding Pay Deductions

- 3.4.8** Section 95B of the Bill mandates that employers provide notice before imposing pay deductions. We consider there are two main concerns with this section:
- (i) The current timeframe is insufficient for unions and employees to respond effectively; and
 - (ii) The notice does not need to specify the exact amount to be deducted or the method of calculation. This lack of transparency may create confusion and may lead to disputes over the accuracy of deductions, further straining employment relationships and increasing litigation.
- 3.4.9** Accordingly, we recommend the following:
- (a) Extending the notice period to at least five working days would allow for meaningful engagement and dispute resolution.
 - (b) Notices should include a detailed explanation of deduction calculations, ensuring that employees understand the basis for any wage reductions.

More clarity regarding what happens when no prior notice of strike

- 3.4.10** The Bill introduces a new section 95C, which prescribes the method by which an employer must calculate a specified pay deduction for a partial strike. Pursuant to subsections (1)(b) and (3), employers are required to determine both the nature of the work that will not be performed and the duration of the partial strike, relying

on information contained in the relevant strike notice. This approach assumes that a formal strike notice will always be provided.

3.4.11 However, the Bill does not address circumstances where a partial strike occurs without prior notice. In such cases, there is no clear mechanism for employers to ascertain the specific tasks affected or the period for which the strike applies, creating uncertainty in the implementation of pay deductions.

3.4.12 We submit that the select committee should consider appropriate provisions to address situations where no prior notice of a partial strike is given.

Employee's inability to challenge pay deductions

3.4.13 The Bill's provisions restrict employees from individually challenging pay deductions. Instead, unions must raise disputes on behalf of employees. This limitation may delay the resolution of grievances and diminish employees' ability to address unfair or inaccurate deductions in a timely manner. Therefore, we recommend that this limitation is removed from the Bill.

4. CONCLUSION

4.1. To ensure the Bill achieves its intended objectives while maintaining New Zealand's commitment to fair and sustainable employment relations, Parliament should consider the recommendations outlined in this submission. We consider that the removal of a flat 10% deduction, a refined definition of partial strikes, and enhanced procedural safeguards (as described above) would provide a more balanced and effective framework.

4.2. The Committee appreciates the opportunity to contribute to this legislative process. Should further discussion or clarification be required, we are available to provide additional insights. Please do not hesitate to contact Moira McFarland the TLANZ Committee Secretary, at moira.mcfarland@thelawassociation.nz for any further engagement.

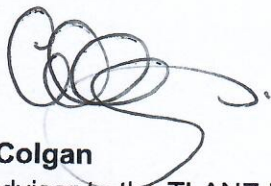
5. ACKNOWLEDGMENTS

5.1. The Committee acknowledges the contributions to the submissions by the following members:

- Rosemary Wooders
- Simon Schofield
- Graeme Colgan

Ngā mihi

pp: **Catherine Stewart**
Convenor of the TLANZ Employment
Law Committee

A handwritten signature in black ink, appearing to be 'Graeme Colgan', written in a cursive style.

Graeme Colgan
Special Advisor to the TLANZ Employment
Law Committee