

Good Faith

S4 of the Employment Relations Act 2000. Good faith is a foundation of the Employment Relations Act 2000 and underpins the relationship between the employer and the employee.

The objective of the Act is to build “productive employment relationships” through the promotion of good faith in “all aspects of the employment environment” and sets out the mandatory obligations which require parties to an employment relationship to deal with each other in good faith. Without limiting that duty, good faith includes three essential elements.

- The Act prohibits parties from doing anything, either directly or indirectly, to mislead or deceive each other, or which is likely to mislead or deceive.
- It emphasizes that the duty of good faith is “wider in scope than the implied mutual obligations of trust and confidence”. Parties are to be “active and constructive” in establishing and maintaining a “productive employment relationship in which the parties are amongst other things responsive and communicative”.
- There is a requirement on the employer where they are proposing to make a decision that will impact on an employee to provide the employee with access to information relevant to the continuation of the employee’s employment.

It is well established that a breach of good faith can constitute an unjustified disadvantage. That is because the duty of good faith is a condition of employment.

The Act sets out a non-exhaustive list of circumstances where the duty of good faith exists. They are:

- misconduct investigations and matters related to a collective or an individual employment;
- collective or individual collective bargaining (including variations and initiation of bargaining);
- in any matter arising under or in relation to a collective or an individual employment agreement while the agreement is in force;
- consultations between employers and their employees and unions about collective employment interests including the effect on employees of changes to businesses;
- employer proposals that might impact on employees including in particular to contract out work of employees or sell or transfer all or part of a business;
- restructuring and redundancies;
- access to workplaces by union representatives;
- communications or contacts between unions and employers relating to secret ballots held for collective bargaining.

The consequences of non-compliance with good faith obligations may include:

- a compliance order to require good faith conduct;
- liability to a penalty of \$5,000 (individual), \$10,000 (corporation) if the failure is, deliberate, serious and sustained or was intended to undermine bargaining (individual or collective) or an employment agreement (individual or collective) or the employment relationship or was a breach of s59B or s59C (passing on) of the Act;
- an unjustifiable disadvantage or dismissal (personal grievance);
- refusal of discretionary relief; and
- reductions of remedies in personal grievances (including disqualification from reinstatement).

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Mission statement

NZNO is committed to the representation of members and the promotion of nursing and midwifery. NZNO embraces Te Tiriti o Waitangi and works to improve the health status of all peoples of Aotearoa/ New Zealand through participation in health and social policy development.

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