

Hysteria About Employment Law: A 90 Day Wonder?

Here's a quick quiz.

First question: Name a wealthy country where either party to an employment contract is free to terminate it at any time, provided they give notice.

Answer: Switzerland, not a country known for worker exploitation. Its free labour market has helped keep the unemployment rate at low levels (currently 4.4%).

The rules are similar in the United States, which is a major factor in that economy's record for innovation. Silicon Valley firms, for example, are willing to take more hiring risks if they know they can lay off staff readily when projects don't work out.

The rules don't change when a Democratic administration replaces a Republican one: there is a political consensus around them. Americans understand that legislated employment security leads in practice to the opposite outcome.

Second question: Name a country where the current employment rules include a 12-month probation period for small firms (fewer than 15 employees) and 6 months for larger firms.

Answer: our trans-Tasman neighbour, Australia. These rules were brought in by Julia Gillard, the ex-trade union lawyer who was the minister responsible for industrial relations before coming prime minister. They are only slightly more restrictive than the Howard government's regime. Australian unions haven't made a big fuss about them.

Why are New Zealand unions so opposed to the government's minor step of extending the current 90-day probation period for small firms to firms of all sizes? After all, a Department of Labour survey found the current rules

were working well, with 40% of employers saying they were not likely to have made their last hire without the trial period.

Moreover, the probation period isn't mandatory. Workers can refuse such an arrangement if they wish, and half the employers surveyed hadn't used it.

The advantages of probation periods or at-will contracts for both sides are obvious.

As a recent letter writer to *The Press* put it, "I have been out of work twice over the last 12 months. When I try to find employment I want a prospective employer to think 'OK, let's give this person a go' rather than 'Better not risk it, it might be hard to get rid of him'".

Rhetoric about 'stripping away workers' rights' is nonsense. The basic right of workers should be the freedom to offer their labour services on terms that *they* – not a union or government – see fit. We ought to have a Workers' Rights Restoration Act which restores freedom of contract to employees. Far from being a valuable right, mandatory dismissal laws are a burden on workers as firms offset the risks of a costly dismissal through lower wages or other benefits.

The move is not anti-worker or pro-employer. Claims that employers will systematically exploit workers by sacking them after 89 days – having incurred the costs of hiring and training – show how far some New Zealand unionists are detached from modern workplace realities.

Unions are currently scrambling to find examples of 'bad' employer actions, and no doubt they will find some. There are bad employers, bad employees and bad unions. There are also bad marriages and other bad personal relationships.

But as Grace Collier, a former Australian union official has put it, "employment is a relationship between adults and as such the government should minimise its involvement. Just as adults are free to make or break their marriages they should be free to do the same at work."

The reality is that unions tend to represent the interests of their employed members – now only around 10% of private sector workers – not those of job seekers. EU unions typically push for employment laws that protect labour market ‘insiders’ with horrendous results for ‘outsiders’ – currently a 20% unemployment rate in Spain, for example.

Unions strive to give the impression that only they can protect workers’ interests. They are resisting the government’s proposal to allow workers to cash up a fourth week’s leave. But this is a pure benefit for workers: they don’t have to take it but those who do will effectively be paid twice by their employer for the week in question. Unions would infantilise them and deny them choice in the interests of recruitment.

Unions’ self-interest – as opposed to the interests of workers – is most apparent in their push to maintain a monopoly on collective bargaining. The government has promised to remove this monopoly but so far has not done so. It should not break its election commitment. Australia under Gillard allows any agent – such as a staff representative, a lawyer or an outside consultant – to bargain on behalf of a group of workers.

New Zealand is not going to bridge the wage gap with Australia, let alone the United States, by retaining outdated and illogical employment rules. Unions abroad are streets ahead of New Zealand unions in understanding how countries become more productive and prosperous. We must hope the government recognises the trumped-up hysteria for what it is. Chances are it won’t be more than a 90-day wonder.

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