Transforming New Zealand employment relations:
The role played by employer strategies, behaviours and attitudes

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ABSTRACT

There has been a shift to individualised and workplace based employment relations in New Zealand. Researchers have canvassed many explanatory factors behind this shift but this paper focuses on the role played by employers. It draws on several surveys of employer attitudes and behaviours. These surveys have shown that the majority of employers have negative attitudes towards collective bargaining and they seek more employer determined flexibility. Employers are very supportive of post 2008 reductions in employment rights. Interestingly, many employers have yet to apply these legislative changes in their own workplace and it is unclear what future impact the legislative changes will have on the development of 'positive employment relationships'.

Keywords: employer attitudes, individualisation, deregulation, flexibility, employment standards.

1. INTRODUCTION

In line with many other OECD countries, there has been a fundamental shift away from collective bargaining and industry arrangements to individualised and workplace based employment relations in New Zealand in the last two decades (Blumenfeld, 2010). While researchers have pointed to many explanatory factors 'driving' this shift away from collectivism, this paper will focus on the role played by employers and their associations. This is partly because the role of employers has been under-researched in New Zealand employment relations and partly because it allows us to draw on several recent research projects and their empirical research findings (Rasmussen *et al*., 2012).

The paper's discussion of collectivism and the role of employers draws on three research projects, *with a focus on findings from the last project*. First, legislative changes and three recent, high-profile collective bargaining disputes have highlighted the wider implications of employer pressure for change to legal precedent and employment relations legislation. While employers' success in seeking more labour market flexibility, decentralised and individualised bargaining has fluctuated in the last two to three decades there is now a situation in many private sector workplaces where employer determined flexibility prevails. This has created a segmented labour market with many low paid workers. Of particular concern is recent changes to protection of individual employees as well as a tendency towards labelling workers as contractors – regardless of the "true nature of their employment situation" (Nuttall, 2011).

Second, individual employers' strategies, attitudes and behaviours have been surveyed through a national survey of private sector firms employing 10 or more staff (Foster *et al*., 2011). Overall, the survey found that employers have little interest in collective bargaining and they didn't think that their employees had an interest either. These findings are supported by recent research of trends in HRM practices and the public policy positions taken by various employer organisations.

Third, survey findings from a recent survey of employers are presented. In light on considerable amendments to the current legislative framework (Employment Relations Act 2000) in recent years, the survey focuses on employer attitudes to employment legislative changes since the National-led government was elected in October 2008. The survey focused on whether employers were supportive of the government's reduction of

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employee employment rights in its quest for more labour market flexibility and whether public policy changes have had an impact on workplace employment relations.

Overall, our findings indicate a considerable attitudinal shift in favour of a stronger employer prerogative, less legislative support of employee rights and direct employment relationships. Paradoxically, many employers have not implemented the possible changes to terms and conditions in their own workplace and some employers still think that the legislative framework is either well balanced (in terms of employer and employee power) or favours employees. The research illustrates a major transformation of New Zealand employment relations towards individualised, workplace-based employment arrangements and how this transformation will have significant direct impact on employment relationships, employee protection and employment outcomes and processes.

2. HOW DID NEW ZEALAND END UP WITH ITS CURRENT EMPLOYMENT RELATIONS?

Current New Zealand employment relations is in a state of flux and the lack of a fundamental consensus over key public policy positions is well-established (Wilson, 2010). During 2011-2012, there was considerable political controversy over proposed legal changes as well as several high-profile collective bargaining disputes. The National-led government continued its piecemeal changes to the Employment Relations Act (ERA) but the real controversy was created outside Parliament. Real concerns were raised over variety of issues and trends: disappointing productivity levels, substantial incomes differences, prevalence of low paid and low skill work, 'brain-drain' (mainly to Australia), regulatory failures (especially the Pike River mining disaster) as well as the labour market implications of the Christchurch earthquakes.

Three recent high-profile collective bargaining disputes - known as the Hobbit/Actors Equity, Ports of Auckland/Stevedores, and Talley AFFCO/Meat workers - put the notion of contractors versus employees at centre of public debates. These disputes indicate weak labour markets where employers seek further control, flexibility and cost advantages through employers either labelling their employees as 'casuals' or changing the employment status of their workers to being 'contractors'.[2] It has been questioned whether the classifications are correct, with terms such as 'permanent casuals' and 'sham contracting' being used. In particular, the internationally renowned 'Hobbit' change involves the legislative overturn of recent legal precedent which classified the so-called contractor as an employee (Nuttall, 2011).

Overall, the on-going lack of a broadly-based consensus over employment relations as well as a range of concerns over outcomes lead to pertinent questions: how did New Zealand end up in such a situation and how can it generate positive and productive employment relationships (the explicit objective of the ERA)? As the recent history of New Zealand employment relations changes is well-established territory, we will only provide a brief overview of the most important changes and issues (for a detailed overview, see Rasmussen 2009).

Since the early 1980s, the traditional approach to employment regulation had been under scrutiny and pressures intensified as major economic, social and public sector reforms/deregulation were implemented in the 1980s – the so-called 'New Zealand experiment' (Kelsey, 1997). Instead of opting for on-going, piecemeal employment relations reforms, the Employment Contracts Act 1991 (ECA) was a radical departure from a nearly 100-year old regulatory approach.

> "The traditional conciliation and arbitration system was abandoned, the award system abolished, union promotion exchanged with non-prescriptive 'bargaining agent' status and individual

[2] While the aims of control, flexibility and cost-savings are similar, they are different strategies with different implications. The discussion of casual versus permanent employees has featured in Rasmussen and Anderson (2010) while the discussion of contractors and employees have been raised in many recent articles. In particular, the 'Hobbit' change to public policy has been widely debated since it shifted dramatically the formal employment status on an industry-wide basis and following pressure from film production firms (see *New Zealand Journal of Employment Relations*, 36(3)).

> bargaining was elevated in status. The ECA constituted probably the most radical public policy shift found amongst OECD countries with a non-prescriptive approach to bargaining and union activity. The limited regulation of bargaining facilitated a sharp shift from industry and occupational based bargaining to workplace and individualised bargaining, a steep decline in union density and new forms of employee representation. Within 5 years, union density was halved to around 20% and collective bargaining became 'ghettoised' to a few traditional sectors where large workplaces tended to be prevalent." (Foster *et al*., 2011).

In the 2000s, a Labour-led government tried to shift the balance of bargaining and employment rights through the Employment Relations Act 2000 (ERA) and a raft of supporting legislation. The ERA sought explicitly to bolster collective bargaining and more 'productive employment relationships'. There were several measures to bolster unions: better workplace access, exclusive bargaining rights for registered unions, 'good faith' bargaining obligations, and abolishing strike restrictions on multi-employer bargaining (Rasmussen, 2004). There were also significant changes to the health and safety regulations which included the statutory prescription of health and safety committees in medium sized and larger firms (Lamm, 2010).

The ERA did, however, continue to protection of individual employment rights and these became very important as new or enhanced individual employment rights were introduced by the Labour-led government. This included the introduction of paid parental leave and a fourth week of annual leave, a strong rise of the statutory minimum wage by nearly 70% during 1999-2008, flexible working hours could be requested and the compulsory retirement age was abolished. Beyond doubt, many improvements to low paid workers were driven by legislative enhancements of statutory minima during 2000-2008 though the economic upswing and a tight labour market had beneficial effects across the labour market.

Importantly, the explicit support of collective bargaining mainly worked well in the public sector while bargaining density in the private sector continued to decline and is now around 9%. Since 2008, a National-led government has introduced piecemeal changes to the ERA and these changes and their impact on bargaining and employment rights have been the focus on our series of surveys and interviews of employers (as discussed below). Since political power changed to a National-led government in 2008, public policy and legislative changes have focused on ways to dilute the ERA's support of collective bargaining though the main trust has been a reduction in employee rights. In particular, the personal grievance right of new employees is now up for negotiation (the so-called '90 days rule') and employees can sell their fourth annual leave week for cash. As mentioned above, employment status has also been contested with some employers favouring contractors over employees and contracting has been implemented industry-wide in the film industry through a controversial government intervention.

In hindsight, the ECA appears to have shifted - (permanently?) - New Zealand employment relations towards a new way of thinking about bargaining, employer and employee rights, employment status (employee or contractor?) and traditional working arrangements. Collective bargaining has languished and employee rights are under pressure. The New Zealand labour market has become fragmented with large incomes differences, diverse employment protection, and individualised and workplace based bargaining. Precarious, low paid work has become a public concern as have the regulation of health and safety hazards (Lamm, 2010). Overall, it appears that employers have managed to embed a flexible, decentralised employment relations approach though – as our surveys show - this is not quite the way that some employers see it.

3. EMPLOYER ATTITUDES TO COLLECTIVE BARGAINING

Several explanatory factors have appeared in the New Zealand debate of the decline of collectivism (Rasmussen, 2009: 129-133). Legislative changes have had a considerable impact as have contextual economic and social regulatory and market changes. Some researchers have also stressed changes in employee perceptions and associated declines in union membership preferences (Haynes *et al*., 2006). Thus, although we focus on employer attitudes in the following, employer attitudes to collective processes and arrangements (or employees' perception and reaction to perceived employer attitudes) can only be seen as one of several factors in a rather complex decision-making process surrounding collective bargaining and union membership (Bryson, 2008). Still, employer attitudes, behaviour and strategies have become crucial in

influencing the employment relations outcomes and processes in New Zealand. Unfortunately, there has been limited research into the employers' attitudes to collective bargaining or even to employment relations matters in general.

The sparse available research on employer roles, attitudes and behaviours indicates that there has been an attitudinal shift in favour of individualism and unitarist employer opinions in the last couple of decades. On that background, researchers from Massey University and Auckland University of Technology decided to survey employer attitudes to collective bargaining. Three surveys were carried out providing a national coverage of private sector organisations which employed ten or more staff.[3] These were undertaken using a cross-sectional survey design where the surveys matched the sample demographics used by previous New Zealand studies (see McAndrew, 1989; Foster *et al*., 2011). The three surveys involved a self-administered questionnaire; in two regions (the lower half of the North Island and the South Island) and in the third region (the upper half of the North Island) an online survey was used. The response rates ranged from a disappointing 8% for the online survey to 19% and 21% respectively for the two postal surveys. The survey information was also supported by in-depth interviews with 30 employers.

As discussed in other articles (Foster *et al*., 2009 and 2011), there were many different opinions amongst employers but we also could ascertain two distinct groups of employers. The attitudes of employers *who were engaged* in collective bargaining differed systematically from the attitudes of those employers *who were not engaged* in collective bargaining. The surveys asked employers about a number of key variables that are of significance to employers' attitudes toward the process of collective bargaining (such as, the interest of employees in the process, its relevance to the business, and whether collective bargaining has been considered at all). Taken as a whole, the responses to those variables showed marked differences between the two groups of employers. Of those engaged in collective bargaining, only 21% believed their employees lacked interest in the process. Of those *not* engaged, the proportion is reversed with 70.1% arguing that their employees lacked any form of interest in collective bargaining. While those *not* engaged in collective bargaining would also regard individual bargaining to offer greater benefit (73.8%) this was not so prevalent amongst employers engaged in collective bargaining where less than half saw individual bargaining as offering greater benefit.

The differences in employer opinions were confirmed by the interviews where a strong individual approach clearly prevailed, with many employers being quite clear that their staff had a preference for direct discussions and absolutely no interest in collective bargaining (Foster *et al*., 2011). Furthermore, while the negative attitudes to collective bargaining appeared rather firm amongst employers who were not engaged with collective bargaining, it appeared that the positive attitude amongst employers who were engaged with collective bargaining was tinged with some reservations. In the interviews, some employers involved in collective bargaining found that it was not relevant because of the quality of the relationship with the union or because the workplace had no major problems (according to the interviewed manager). There were also some of the employers who were engaged in collective bargaining who either found the bargaining costs too high or didn't think that it added much to the business. Again we found that this would depend on the ongoing relationship with the union but it was also associated with transaction costs: could a comprehensive 'package' covering many employees be obtained without a lengthy and costly negotiation process?

It is important to note that the employers who are engaged in collective bargaining constitute a clear minority and even amongst these employers there is criticism of bargaining processes and associated outcomes. Generally, employers have a negative attitude towards collective bargaining and unionism and they would prefer to conduct their employment relations affairs in direct discussion with individual employees. As fewer and fewer employers become engaged in collective bargaining, it is likely that employer resistance or indifference to collective bargaining and arrangements will grow.

[3] A more detailed description of the applied methodology can be found in Cawte, 2007; Foster *et al*., 2011.

4. EMPLOYERS' ATTITUDES TO POST 2008 LEGISLATIVE CHANGES

4.1 Methodology

In investigating employers' attitudes to employment legislative changes in New Zealand in 2008 and 2010 under a National led government, a survey carry out by Massey University and Auckland University of Technology using a representative sample of organisations employing more than 10 staff member focused on employer opinions. This was done by using a cross sectional survey design involving the development of a self-administered postal questionnaire in two regions (in the Lower Half of the North Island and the South Island). This survey sought information on employers' attitudes to a range of issues including did employers support these changes: what effect if any have these changes had on running their business and their relationship with employees; what are employers' views on employment legislation in New Zealand; are there differences of opinion on employment legislation related to employer characteristics (for example, between SMEs and larger organizations and the various industry categories)? Besides these issues, the survey targeted reactions to the two main pieces of legislation.

As with our previous employer surveys, the survey matched the sample demographics used by previous NZ studies and allowed the entire population of employers (2500 individual firms) to be surveyed. Employers within all 17 standard industry classifications used by previous researchers were included.

Participants were also asked if they wanted to partake in semi-structured interviews so as to extract any underlying issues that could not be gleaned from a questionnaire. We received 80 acceptances and a selected portion will be used to ensure that the participants covered the various regions in the survey. The interviews have yet to be done, but is anticipated that these will be completed in the second half of 2013. The interviews will be conducted by telephone and taped.

4.2. Results

The response rate from the cross-sectional survey was 16%. This rate for a self-administered postal questionnaire is accepted by comparative studies. However, this is a relatively low figure and the results must, therefore, be interpreted with caution. These results are purely descriptive and we hope to investigate the underlying reasons for the responses through our in-depth interviews of employers. While there are differences across the various questions and employer groups, it is important to stress *the overall message of the survey*: employers showed a clear preference for legislative change. However, when asked what impact on their businesses and employment relationships that these legislative changes have had the vast majority of employers responded that there had be no or minimal impact.

4.2.1. Employers in favour or opposed to employment legislative changes.

Table 1 shows that a large proportion of respondents were in favour of the amendments to the legislation particularly in relation to evidence of sick leave provisions, the 90 day provisions and that the substance of the case must be considered by the Authority rather than minor process defects. Respondents were mainly opposed to the amendments that related to reinstatement if practicable and reasonable as a remedy for PG's. There was also some opposition to union consent to entering the workplace. There was also a differentiation between the sizes of the organizations.

Table 1 Employers in favour or opposed to employment legislative changes.

	VMF	SWF	N	SWO	VMO
Trial period <20	232	77	58	4	10
Consent to enter workplace	209	80	64	12	14
Penalties re- enter workplace	119	107	103	10	10
Employers copy of EA	244	104	33	3	3
Trial period for any new employee	255	75	38	13	4
Test of justification fair and reasonable	107	168	66	27	8
Must consider substance of case	253	95	29	3	7
Reinstatement one of remedies	15	69	98	118	84
Cashing of one weeks annual leave	184	105	51	26	15
Transfer of public holiday	160	93	74	22	32
Proof of sick leave after one day	285	69	22	3	3

Note: The abbreviations used to describe the employer's attitudes to legislative changes are: Very much in favour (VMF), Somewhat in favour (SWF), Neutral (N), Somewhat opposed (SWO), Very much opposed (VMO), and Don't know (DK).

4.2.2. Legislative impact on changes to employers' business.

In Table 2 about a third of the respondents indicated that the amendments to the legislation had some impact on their enterprise, whilst over two thirds of respondents indicated that the changes had minimal or no impact on their business. Amendments that were perceived to have a positive impact included the provision for cashing 1 week's leave and transfer of holiday pay. The change that was perceived as having a major negative impact on the business was reinstatement as a remedy for PG's. The remaining amendments were perceived to have no or minimal impact on the business.

Table 2 Legislative impact on changes to employers' business.

	PI	CEL	NC	MI	NI	IC
Trial period <20	75	95	136	163	4	8
Consent to enter work place	42	46	162	169	17	7
Penalties re-enter work place	29	47	157	166	11	6
Employers copy of EA	57	83	169	148	4	10
Trial period for any new employee	86	93	134	144	7	3
Test of justification fair and reasonable	34	98	118	156	18	19
Must consider substance of case	63	101	119	134	11	11
Reinstatement one of remedies	9	26	119	141	101	18
Cashing of one weeks annual leave	165	57	90	115	14	32
Transfer of public holiday	113	66	112	127	19	10
Proof of sick leave after one day	86	105	118	127	24	9

Note: The abbreviations used to describe the legislative impact on changes to employers business are: Positively improved the employment relationship (PI); Clarified the employment legislation, simplifying processes and reducing costs (CEL); No cost in implementing the new changes (NC); Minimal impact on the business and relationships with employees (MI); Had a negative impact on the employment relationship with employees (NI) increased costs in implementing the new changes.

4.2.3. Which amendment had the most impact?

Employers were asked what was the change that had the largest impact, Table 3 shows that the by numbers of employees trial periods and the cashing up of the annual leave had the most impact. The two types of adjustments to employee rights have been considered amongst the most significant changes implemented during the post 2008 period. It was clear from responses to open-ended questions that employers were very positive about these changes and also indicated that 'cashing up' could create a win-win situation.

Typical responses for the trial periods were;

> *"New employees can be terminated more easily with the first 90 days".*
>
> *"Puts employer in a position of strength at the start of the relationship".*

Typical responses for cashing up the forth weeks annual were;

> *"Staff are happy to be paid 3 weeks holiday as this is enough for most people"*
>
> *"Employees are strapped for cash and would rather work and earn extra cash to get by than take time off on paid holiday*"

Table 3 which amendment had the most impact?

	10 to 19	20 to 99	100+	Total
Trial period <20	64	20	2	86
Union consent to enter workplace	1	5	0	6
Penalties re- enter workplace	0	0	0	0
Employers to retain copy of EA	5	7	3	15
Trial period any new employee	19	53	8	80
Test of justification fair and reasonable	3	2	2	7
Must consider substance of case	4	1	1	6
Reinstatement one of remedies	1	3	1	5
Cashing of one weeks annual leave	34	42	10	86
Transfer of public holiday	5	23	2	30
Proof of sick leave after one day	5	14	1	20

4.2.4. Which amendment had the least impact?

In Table 4, the provisions of union officials allowed entry on to the premises had the least impact (across all workplace sizes). This may because of the low union presence. Finer legal points – often associated with personal grievances – had little impact as had employers retaining a copy of the employment agreement.

Table 4 which amendment had the least impact?

	10 to 19	20 to 99	100+	Total
Trial period <20	8	13	6	27
Union consent to enter workplace	45	44	4	93
Penalties re-enter workplace	7	7	3	17
Employers copy of EA	24	23	6	55
Trial period any new employee	6	4	1	11
Test of justification fair and reasonable	3	4	0	7
Must consider substance of case	5	2	0	7
Reinstatement one of remedies	15	14	4	33
Cashing of one weeks annual leave	1	5	2	6
Transfer of public holiday	8	11	3	22
Proof of sick leave after one day	7	6	0	13

Table 5 Industry classification and focus of employment legislation

Industry classification of Firms	Employee focused	Balanced	Employer focused
Accommodation and food Services	15	9	2
Administration and Support Services	2	1	0
Agriculture, Forestry and Fishing	8	9	0
Arts and Recreation Services	1	1	0
Construction	31	14	0
Electricity, Gas, Water and Waste Services	7	4	1
Financial and Insurance Services	3	2	0
Health Services and Social Assistance	7	12	0
Information, Media and Telecommunication	6	5	0
Manufacturing	49	28	1
Mining	0	1	0
Professional, Scientific and Technical Services	15	15	0
Rental, Hiring and Real Estates Services	2	2	0
Retail Trade	23	6	0
Transport, Postal and Warehousing	6	8	0
Wholesale Trade	6	7	0
Other services	44	28	6
Total	225 (58.1%)	152 (39.2%)	10 (2.6%)

4.2.5. If business had implemented changes what impact was there on the employment relationship?

The results showed that 23 .8% of respondents thought that the changes had had a positive effect on their business and their employment relationships, 2.6% said there was a negative effect and an overwhelming 73.5% said there had been no impact. Across the three categories of sizes of organisations – small, medium sized and large - the distribution of responses was fairly uniform. This is a rather interesting response pattern as one would have thought that the legislative changes, which have been rather controversial but also

strongly supported by employers (as can be seen from Table 1 above), would have had considerable actual impact on employment practices.

The majority of all employers, 67.3%, believed that there was enough employment legislation; whereas, 29.6% believed there was too much employment legislation.

In table 5 above, a majority of employers, 58.1%, across all industry classifications believed that employment legislation in New Zealand is employee focussed, However in Professional Scientific and Technical Services there is approximate split between employee focused and balanced legislation. In the Health, Wholesale Trade and Agriculture there is a belief that the balance is about right. Again, these are interesting findings which are rather paradoxical. The findings do not align well with the standard comparative understanding of a high level of employer determined flexibility in New Zealand workplaces.

5. CONCLUSION

New Zealand employment relations has been through a turbulent period and there are no signs that a more stable period will occur. The lack of consensus surrounding public policy debates and a range of concerning employment outcomes mean that employment relations will continue to feature highly on the agenda of political parties, employers, unions and the general public.

New Zealand employers have pursued a consistent campaign which has highlighted the managerial prerogative, increased employer determined flexibility and cost containment. Within this consistent message, there have been diverse employer opinions. As our survey evidence underlines, employers have a growing resistance towards participating in collective bargaining (as it becomes a rare occurrence in the private sector). They are also very supportive of the National-led government's recent legislative changes. This is probably not surprising since the changes have been demanded by employer associations and they put the employer in a stronger position as indicated by some of the above mentioned comments from surveyed employers (for example: *"Puts employer in a position of strength at the start of the relationship"*).

Surprisingly, many employers are still of the opinion that the legislation is fairly evenly balanced or may be even in favour of employees. While rather puzzling in light of low union density and a weak labour market, these findings may indicate that employers will press for further reductions in employee rights, including changes to employment status. The findings also align with the constant employer criticism of too much legislation, transactions costs and unsuitable use of personal grievance rights. They also indicate that unions and centre-left political parties will be faced with considerable opposition if they want to move employment relations closer to the original intentions of the ERA. These opinions will be further investigated during our in-depth interviews of employers.

However, our survey results also raise two types of questions – what will be the immediate employment relations impacts and what will be the long-term, wider economic and social impacts? As indicated by our survey, it is not all employers who has used the new legislative options and for many employers the changes have had limited or no impact. As stressed, the distribution of responses was fairly uniform across the three categories of sizes of organisations (small, medium sized and large). This is an interesting finding as it was expected by most employment relations commentators that these changes will have a disproportional effect amongst smaller firms, on the lower end of the labour market and in retail, hospitality and tourism industries. Again, this is a response pattern which we will look further into during our in-depth interviews of employers.

Finally, we have argued in previous papers that the long-term, wider economic and social impact could be rather negative (e.g. Foster *et al*., 2011). There are already considerable concerns about low wage, low skill work and how this drives 'brain drain', career constraints, social problems and exclusion. It is also difficult to see how these changes can be part of overcoming New Zealand's long-running disappointing productivity record. These long-term, wider economic and social impacts will be – with the verdict of the electorate - the key influences on judgements of the considerable recent changes to New Zealand employment relations.

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