

**THE EARLY CHILDHOOD EDUCATION  
COLLECTIVE AGREEMENT  
OF AOTEAROA NEW ZEALAND**

**2021-2022**

# The Early Childhood Education Collective Agreement of Aotearoa New Zealand 22.12.21 - 30.9.22

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## **Part 1**

### **Parties - Ngā Roopu**

This collective agreement is made pursuant to Part 5 of the Employment Relations Act 2000, and is made between, and is binding on, the following parties:

- (i) Employers as listed in Schedule A;
  - (ii) Employers who by agreement with the union become party to this agreement during its term;
- who shall be referred to in this agreement as “the employer”; and
- (iii) NZEI Te Riu Roa.

## **Part 2**

### **Coverage**

- (a) The following employees who are NZEI Te Riu Roa members shall be covered by this agreement:
  - (i) All employees employed by the employer parties to this agreement in any capacity in relation to supervision, care, and education of children in an early childhood education centre or out-of-school care and recreation programme or scheme.
  - (ii) Employees employed by employer parties to this agreement to undertake clerical and/or administration duties in an early childhood education centre as defined in clause 6(g) exclusive of the employers listed below:
    - Lincoln Hospitality Limited - Lincoln Childcare and Preschool Inc.
    - Wellington Public Service Childcare Incorporated - Pipitea Childcare Centre
    - Glenfield Community Centre Incorporated
    - Mana Tamariki Incorporated
  - (iii) Employees employed by employer parties to this agreement as a coordinator of a home-based early childhood education service.
- (b) New employees will be provided with a copy of this agreement and the details of how to contact NZEI Te Riu Roa (union) and will be advised that where a new employee joins the union, they will be covered by the terms and conditions of this agreement. Where the new employee has authorised the employer to pass on their contact details, the employer will advise the union that they have been employed and whether on an individual agreement or this agreement.
- (c) NZEI Te Riu Roa shall forward to each employer party to this agreement a list of the NZEI Te Riu Roa members employed by that employer prior to the commencement of this agreement and thereafter on an annual basis. The purpose of these provisions is to ensure that NZEI Te Riu Roa members covered by the coverage of this agreement are provided with the terms and conditions of this agreement.
- (d) This agreement reflects both a process of constructive engagement and a significant investment by NZEI Te Riu Roa and its members and employers and their representatives.

## **Part 3**

### **Term of Agreement – Te whakataunga o te kirimana**

This agreement shall come into force on [date of ratification and signature] and shall continue in force until 30 September 2022.

## **Part 4**

### **Definitions - Ngā whakamāramatanga**

#### **(a) Early childhood teachers/kaiako shall include persons employed**

- (i) In any capacity in relation to supervision, care, and education of children in centres or organisations licensed under the Education (Early Childhood Services) Regulations 2008 (or any subsequent regulations or other legislation replacing them).
- (ii) By or through any organisation as a coordinator of a home-based early childhood education service
- (iii) To provide supervision and care for children in out-of-school hours in an early childhood education centre or in an out-of-school care and recreation programme or scheme.

#### **(b) Permanent part-time early childhood teachers/kaiako**

- (i) Permanent part-time early childhood teachers/kaiako shall include persons employed as specified in 4(a) (i) for less than 40 hours per week, on one or more days, in any week on a permanent ongoing basis.
- (ii) For the purpose of this agreement, permanent/part-time early childhood teachers/kaiako are deemed to be permanent and employment is continuous and they are entitled to all service entitlements under this agreement, provided that sick leave, professional development leave and redundancy compensation shall be calculated on a pro-rata basis as specified in clause 12(a) (i) and 13(d) (i) and 20(d) of this agreement.

#### **(c) Part-year early childhood teachers/kaiako**

- (i) Permanent part-year early childhood teachers/kaiako shall include persons employed as specified in clause 4(a) (i), (ii), and (iii) for less than 52 weeks in any one year. Annual holidays, and sick and related leave provisions in this agreement shall apply to part-year early childhood teachers/kaiako on a pro-rata basis in relation to the number of weeks worked in a calendar year.
- (ii) A part-year position may only exist in centres which, for a portion/portions of the year, operate with a reduced number of enrolled children, or are closed.

**(d) Short-term relievers**

A short-term reliever is a person contracted by the employer to relieve in an existing position for 4 consecutive weeks or less. Short term relievers shall be entitled to all the provisions of this agreement except:

- 11 (b) Annual holidays
- 12 (a) Sick leave\*
- 12 (d) Leave on accident compensation.
- 19 Changes to Operating Model
- 20 Redundancy

Short-term relievers shall be paid 12% of their ordinary rate on completion of their term of employment. 12% represents 8% proportionate annual holidays as per Holidays Act 2003 and 4% in lieu of sick and domestic leave.

\*Except, where a short-term reliever has, over a period of 6 months, worked for an employer for:

- at least an average of 10 hours per week during that period **and**
- no less than one hour in every week during that period **or**
- no less than 40 hours in every month during that period,

they shall qualify for sick and related leave under Part 12. If an employee qualifies for sick leave, the 12% shall reduce to 8% at the same time the employee is granted their entitlement of sick leave.

**(e) Long-term relievers**

A long-term reliever is a person contracted to relieve in an existing position for more than 4 consecutive weeks. Long term relievers shall be entitled to all the provisions of this agreement for the term of their employment on a pro-rata basis except for the provisions of Part 19 (Changes to Operating Model) and Part 20 (Redundancy).

**(f) Meeting licensing requirements**

Employees who are not normally required to work with children but who may be required to take on the role as early childhood teacher/kaiako to meet the staff: child ratios for licensing purposes, shall be employed as early childhood teacher/kaiako and be entitled to the terms and conditions of this agreement as an early childhood teacher/kaiako for the period of time they are employed as such.

**(g) Clerical employees**

Any employee primarily employed to undertake clerical and/or administrative duties. A permanent full time clerical employee's ordinary hours of work shall not exceed 40 hours per week or 8 hours per day, to be worked Monday to Friday of the week. A permanent part time clerical employee's ordinary hours of work shall be less than 40 hours per week subject to payment pro rata of the appropriate rate of salary and pro rata entitlement to leave. A part time employee shall be provided at the time of their engagement with written notification of the terms and conditions of their employment.

**(h) Out-of-school care employees/kaimahi**

An out-of-school care employee is a person employed in an out-of-school care and recreation programme or scheme, except where part of that employee's employment, with the same employer, is in a licensed early childhood education centre.

**(i) Position of Leadership** includes:

- Senior Teacher/Tumuaki;
- Head Teacher/Kaiako Kaiarahi;
- Assistant Head Teacher/Kaiako Tuatahi;
- Home-based early childhood Team Leader; and
- Home-based early childhood Visiting Teacher

as defined in 6 (a) (i), (ii), (iii), (v) and (vi).

## **Part 5 Variations**

- (a)** The terms and conditions contained in this agreement may be varied during its term by written agreement between NZEI Te Riu Roa acting on behalf of its members and the employer parties to this agreement.
- (b)** This agreement may be varied by agreement between an employer and NZEI Te Riu Roa, where the employer is having serious financial difficulty complying with the terms of this agreement. In this case, the variation shall only apply to the employer (and its employees) with whom NZEI Te Riu Roa has agreed the variation. Such variation shall have no effect on any other employer party or their employees.

In any negotiation for a variation the provisions of section 34 (2)–(9) of the Employment Relations Act 2000, relating to the provision of information, shall apply.

## **Part 6 Salaries and Wages - Ngā utu**

**Pay parity:** The parties to the ECECA are committed to achieving pay parity with qualified and certificated teachers in kindergarten and in the primary and secondary education sectors for qualified and certificated teachers covered by this agreement.

The parties acknowledge that adequate government funding is fundamental to achieving this vision and shall continue during the term of this agreement to discuss how pay parity might be fully achieved.

Some positions covered by this agreement are salaried positions, while others are waged.

A salaried employee is paid an annual salary which includes the employee's normal hours of work, attendance at staff meetings, and some additional hours (see Part 7(a) and (b) of this agreement for further details).

A waged employee is paid an hourly wage for all hours worked. When overtime is worked, a waged employee is entitled to the overtime rates in Part 8 of this agreement.

### **Passing on of pay increases to non-union members:**

The parties have agreed that the increases in this agreement may be passed on to non-union members but shall take effect for non-members three months after the commencement date of this agreement (except in the case of attestation rates which took effect on 1 July 2021, and the first 5 steps of the teacher/kaiako and short term reliever scales, which take effect on 1 January 2022).



**(a) Classification of employees - early childhood**

For the purposes of payment for the minimum rates of pay set out in the schedule under sub-clause (d), (e) and (f) of this clause, the following classifications shall apply:

- (i) **Senior Teacher/Tumuaki:** is a qualified and certificated early childhood teacher who is the most senior early childhood teacher in the centre or service who is the professional and pedagogical leader and has substantive responsibility for the day to day operation of the centre/s or service. Every employer will employ in a permanent role a senior teacher who is an ECE qualified and certificated teacher per centre/service.

Where a centre / service and its teachers wish to use a collaborative leadership model, following robust consultation with staff, the senior teacher role may be shared between two or three teachers. Because each teacher will be doing a portion of the senior teacher role rather than the full role, such teachers will not be paid on this scale but will receive an allowance. This allowance will be equivalent to one half (where the job is shared between two) or one third (where the job is shared between three) of the difference between the teacher's current salary and the appropriate senior teacher salary for the service.

- (ii) **Head Teacher/Kaiako Kaiarahi** is a qualified and certificated early childhood teacher who is directly responsible for staff, whether within a single location or a location separate from their Senior Teacher/Tumuaki, and who has delegated responsibilities from their Senior Teacher/Tumuaki . Not all centres/services will employ a Head Teacher/Kaiako Kaiarahi.

- (iii) **Assistant Head Teacher/Kaiako Tuatahi** is a qualified and certificated early childhood teacher who supports and has delegated responsibilities from their Senior Teacher/Tumuaki or Head Teacher/Kaiako Kaiarahi. Not all centres/services will employ an Assistant Head Teacher/Kaiako Tuatahi.

- (iv) **Early childhood teacher/Kaiako:** is an early childhood teacher/kaiako engaged in the education and care of the children in the centre or service.

- (v) **Home-based Team Leader** is a qualified and certificated early childhood teacher who is directly responsible for staff, and who has responsibility for managing the effective delivery of the home-based service. Not all home based networks will employ a home-based team leader.

- (vi) **Home-based Visiting Teacher** is a qualified and certificated early childhood teacher whose duties include the selection, monitoring and support of carers/educators within a home-based network.

- (vii) **Qualified** means the holding of a recognised ECE teaching qualification recognised by the Teaching Council of Aotearoa New Zealand. An early childhood teacher shall only be classified as qualified where the teacher is certificated and holds a current practicing certificate in accordance with sub clause (xii).

- (viii) **Q3+** means a certificated early childhood teacher/kaiako holding:

- a bachelor degree together with a recognised early childhood teaching qualification or;
- a four year bachelor of education degree or;
- a four year honours degree of teaching or;

- a degree completed conjointly with a bachelor degree of teaching or;
- a bachelor degree of teaching together with a relevant 120 credit specialist graduate or post-graduate qualification assessed at level 7 (or higher) on the National Qualifications Framework or equivalent or;
- a Diploma of Teaching (ECE) plus an Advanced Diploma of Teaching together with a relevant 120 credit specialist graduate or post-graduate qualification assessed at level 7 (or higher) on the National Qualifications Framework or;
- a Bachelor degree of teaching, together with a relevant level 7, 120 credit graduate or post graduate diploma.

(ix) **Q3** means a certificated early childhood teacher/kaiako holding:

- a recognised three year early childhood teaching degree or;
- advanced diploma teaching ECE or;
- the Diploma of teaching ECE or its equivalent and attested as fluent in te reo Maori with a knowledge and understanding of tikanga Maori.

For the avoidance of doubt, where an employee has completed a three year Diploma of Teaching ECE and has done a one year upgrade to a Bachelor of Teaching, this means the employee is classified as Q3, not Q3+.

(x) **Q2:** means a certificated early childhood teacher/kaiako holding the Diploma of Teaching ECE or its equivalent and two-thirds of a degree as defined in clause 6(a)(viii) (except a three-year pre-service teaching degree); or a Higher Diploma of Teaching ECE.

(xi) **Q1:** means a certificated early childhood teacher/kaiako holding the Diploma of Teaching (ECE) or its equivalent.

(xii) **Certificated:** means an early childhood teacher/kaiako holding a Diploma of Teaching ECE (or its equivalent) who has been granted provisional; subject to confirmation; or full certification status and issued with a current practising certificate by the Teaching Council of Aotearoa New Zealand.

(xiii) **In-training:** means an early childhood teacher/kaiako who is enrolled and participating in a teacher education programme leading to a Diploma of Teaching (ECE) or a teaching degree (ECE).

Provided that an early childhood teacher/kaiako who is in-training and is attested as fluent in te reo Māori with a knowledge and understanding of tikanga Māori shall be paid on the Q1 scale.

Provided that any early childhood teacher/kaiako currently being paid as in-training shall continue to be paid on the in-training scale.

Provided that an early childhood teacher/kaiako in-training may not move from one in-training step to another without providing at the completion of each training year evidence of continued training.

(xiv) **Unqualified:** means an early childhood teacher / kaiako who holds no recognised early childhood teaching qualifications.

**Note:** New staff employed from 1 November 2002 who hold a single qualification worth 80 licensing points or more recognised by NZQA, or a qualification grandparented by NZQA to 100 licensing points or more, but who

do not hold an early childhood teacher education qualification will be classified as unqualified unless they are in-training.

**(b) Operation of salary scale - Early Childhood**

**(i) Salary on appointment**

Teachers with previous teaching experience and/or previous relevant work experience shall be paid at the relevant service step of the relevant qualifications group.

**(ii) Service recognition**

Service as a qualified and certificated teacher within the early childhood sector or as a qualified certificated teacher employed in a teaching position in a state or integrated primary, special, area or secondary school shall count for salary purposes, provided that a teacher holds the benchmark qualification for ECE teaching.

**(iii) Previous relevant work experience**

In addition to years of service recognised under 6 (b) (ii) the employer shall recognise previous paid work experience that is directly relevant to the teacher's duties and responsibilities and which has occurred within 10 years of the application for credit, subject to the provisions of this clause.

Any previous relevant paid work experience recognised under this clause shall be credited as half service up to a maximum of 2 steps. Half credit shall mean that each year (or part thereof) will count as six months (or part thereof) of service for salary purposes.

A special case may be made by a teacher to the employer to have crediting of relevant paid work experience in excess of this maximum considered.

Previous relevant paid work experience means professional employment using knowledge of the education service, and/or teaching skills including:

- Voluntary Service Abroad - providing service was in a teaching position while the teacher held a teaching certificate
- Teacher education lecturers and community education tutors - providing service was in a teaching position while the teacher held a teaching certificate
- Kaiarahi i te Reo
- Teacher Aides / Kaiawhina
- Public sector employment with education focus, e.g., Ministry of Education, Early Childhood Development or other Crown Education Agencies
- Education officer in Government and non-Government organisations
- Special Education
- Social worker employed by DSW or Board of Trustees

- Professional officer of NZEI Te Riu Roa /PPTA /TTANZ
- Librarian
- Unqualified employees in teaching positions in state or integrated primary, special, area or secondary schools, including Kaupapa Māori education
- Museum, Art Gallery, Zoo education officers (except for those previously employed in such positions by state or integrated schools)
- Unqualified or in-training employees in teaching positions in licensed early childhood education centres including kindergartens and Ngā Kohanga Reo
- Unqualified coordinators in home-based early childhood education services.

The employer shall, prior to making an offer of employment, request the applicant to provide evidence of their previous work experience in order to identify which step of the scale the prospective employee would be placed on. Where the employer has requested the information and the employee has not provided it the previous experience will not be recognised.

Previous relevant paid work experience in a less than full- time position shall be credited, where recognised, as a proportion of full-time employment based on a 40 hour week. Where service recognition is claimed for previous relevant paid work experience undertaken on a part-time basis, the evidence of such service must include the details of the hours worked.

No qualified teacher covered by this agreement on 1 November 2004 shall have their service prior to this date recalculated as a result of the operation of this clause. However, these provisions will apply to unqualified and in-training teachers employed prior to this date, once they are to be paid as qualified and certificated teachers (on the unified teaching pay scale) having completed an ECE teacher education qualification and become certificated.

Where a teacher who has previous relevant paid work experience recognised by one employer to this agreement commences employment with another employer to this agreement, that teacher shall be entitled to retain that service credit but shall not have any further service recognised under this clause.

(iv) **Improved Qualifications**

Upon obtaining the appropriate qualifications for Q2, Q3 or Q3+ a teacher shall be entitled to progress annually to the appropriate qualifications maximum, providing the teacher meets the requirements for progression.

Teachers who improve their qualification(s) shall, on the effective date of improving the qualification(s), receive at least the minimum commencing step for the new qualification(s). The effective date for the improvement of qualification(s) to a higher group in this situation is:

- (a) Where qualifications are improved at the end of the academic year - the commencing date of the following calendar year, that is 1 January; or
- (b) Where qualifications are improved during an academic year – the date of the official notification from the relevant tertiary provider of achievement of qualification.

Teachers who, in accordance with (a) above, have been held at the maximum point of the salary scale for their qualification group for one or more years of service for salary purposes and who subsequently improve their qualification(s) shall be entitled to progress one salary step towards the maximum step of their new qualification group from the effective date of improving their qualification(s). This date shall become their new anniversary date for salary progression purposes.

The effective date for the improvement of qualification(s) to a higher salary group is the date of official notification from the relevant tertiary provider of achievement of qualification.

In all cases, where an employee progresses to a new salary step or scale as a result of attaining improved qualifications, the date of this progress becomes the employee's anniversary date for salary progression purposes in the future.

(v) The minimum rates payable to employees covered by this agreement are set out in the schedule paragraph (d) below.

(vi) **Progression**

(a) Progression through all scales **except** for the first five steps of the early childhood teacher/kaiako and the first five steps of the short term relievers scale:

Full time employees will progress through their pay scale annually on the anniversary of their commencement of employment, provided their performance has been competent.

Part time and relieving employees will progress through their pay scale when they have worked 1440 hours since the anniversary of their commencement of employment, provided that at least 12 months has elapsed since the anniversary of the commencement of their employment.

Where an employee has improved their qualification and moves to a higher step in their pay scale as a result, the date that they moved to the new step becomes their anniversary date for the purposes of progression through the scale.

For example: a full time early childhood teacher/kaiako commenced on step 2 of the scale on 1 March with Q3. On 1 August, the employee improved qualifications to Q3+ and thus moved to step 3 of the scale. The employee will be entitled to move to step 4 when s/he has completed a year at step 3, i.e. on 1 August in the following year.

It should be noted that progression on the scale was frozen during the term of the 28 October 2015 collective agreement and thus progression for employees who were covered by that agreement will not correlate to the number of steps that their service would otherwise suggest. Where a staff member withdraws or is withdrawn from training they will revert back to the unqualified scale, no member will be disadvantaged financially as per Part 25 (Reduction of Salaries, Wages and Conditions) and will translate onto a rate equivalent or higher.

(b) Progression through the first five steps of the early childhood teacher/kaiako and the first five steps of the short term relievers scale:

Employees shall progress to the next step in the scale when they have worked 2080 hours since the anniversary of their commencement of employment, provided that at least 12 months has elapsed since the anniversary of the commencement of their employment.

(vii) **Unqualified and In-training**

Early childhood teachers/kaiako who move from one classification (as defined in clause 6(a)) to another shall be paid on the same step of the new wages schedule as they were on in their previous position or classification and continue to move through the steps as defined in 6(b) (ii).

(viii) **Higher duties**

Where an employee in a position of leadership is required to act in a higher position for five or more consecutive days they shall be paid on the higher scale as determined by centre / network roll and staffing responsibility.

Where an early childhood teacher / kaiako agrees to a request to act in a higher position for one or more days they shall be paid on the higher scale as determined by centre/network roll and staffing responsibility.

(c) **Operation of the salary scales for Positions of Leadership**

The following shall apply:

- (i) **Centre/Network Roll:** The centre/network roll is determined by the actual number of children enrolled in a centre or Home-based early childhood network, as at 30 June each year. Should the roll increase or decrease by 20% or more at 1 June in any subsequent year an effected employee or employer can request that a salary review be undertaken. The member and the employer may be represented at such review. If there is no agreement on a revised salary the appropriate rate set out below in (d) shall apply on the following 1 December.
- (ii) **Staffing Responsibility:** Staffing responsibility shall be determined as the number of permanent employees, including part-timers, part year employees and job shares. Should a teachers' staff responsibility increase or decrease an effected employee or employer can request that a salary review be undertaken. The member and the employer may be represented at such review. If there is no agreement on a revised salary the appropriate rate set out below in (d) shall apply six months after the increase or decrease.

(d) **Salary and Wages Schedule – Early Childhood.**

- (i) The minimum rates of pay applicable to all qualified early childhood teachers/kaiako are set out as annual salaries.
- (ii) Part time salaries, except those for short term relievers, shall be calculated as follows:

Full time salary ÷ by 52 (weeks) ÷ by 40 (hours) x part time employee's weekly hours = part time employee's weekly salary x 52 weeks = annual salary.

## Senior Teachers/Tumuaki

### Effective 1 January 2022

Staffing Responsibility	Centre Roll				
	U1A	U1B	U2	U3	U4
	0-25	26-50	51-100	101-150	151+
0 – 3	\$76,931	\$79,482	\$83,616	\$90,561	\$97,656
4 – 6	\$79,482	\$83,616	\$90,561	\$97,656	\$97,656
7 – 10	\$83,616	\$90,561	\$97,656	\$97,656	\$101,700
11 – 15	\$90,561	\$97,656	\$97,656	\$101,700	\$101,700
16 +	\$97,656	\$97,656	\$101,700	\$101,700	\$101,700

### Head Teacher/Kaiako Kaiarahi and Home-based Team Leader

Staffing Responsibility	Effective from 1 January 2022
0 – 3	\$76,747
4 – 6	\$78,787
7 – 10	\$80,828
11 +	\$82,867

### Assistant Head Teacher/Kaiako Tuatahi and Home-based Visiting Teacher

Centre Roll	Effective from 1 January 2022
0 – 25	\$73,635
26 – 50	\$74,705
51 +	\$76,747

### Early Childhood Teacher/Kaiako

#### From 1 January 2022:

Employers party to this agreement have opted into “parity funding rates” applicable from 1 January 2022 where they pay all certificated teachers according to the first five steps of the Kindergarten Teachers Head Teachers and Senior Teachers Agreement. The parties acknowledge that for some of the employers covered by this agreement, the additional funding does not cover the additional costs incurred.

Note: In the case of the first five steps of this scale, employees shall progress to the next step in the scale when they have worked 2080 hours since the anniversary of their commencement of employment, provided that at least 12 months has elapsed since the anniversary of the commencement of their employment.

Step	Qualification	Effective from 1 January 2022
1	Q1, Q2 and Q3 Entry	\$51,358
2		\$53,544
3	Q3+ Entry	\$55,948
4		\$58,133
5		\$61,794
6	Q1 Maximum	\$61,794

7		\$61,794
8	Q2 Maximum	\$61,794
9		\$63,579
10		\$65,418
11		\$67,323
12	Q3 Maximum	\$69,678
13	Q3+ Maximum	\$73,257

### Translation to new scale (Early Childhood Teacher/Kaiako)

From 1 March 2019, the first step in the Early Childhood Teacher/Kaiako scale was removed. Employees translated from the 1 July 2017 scale to the 1 March 2019 scale as follows:

Position on 1 July 2017 scale	New position on 1 March 2019 scale
Step 1	Step 1
Step 2	Step 1
Step 3	Step 2
Step 4	Step 3
Step 5	Step 4
Step 6	Step 5
Step 7	Step 6
Step 8	Step 7
Step 9	Step 8
Step 10	Step 9
Step 11	Step 10
Step 12	Step 11
Step 13	Step 12
Step 14	Step 13

### Short Term Relievers

Note: In the case of the first five steps of this scale, employees shall progress to the next step in the scale when they have worked 2080 hours since the anniversary of their commencement of employment, provided that at least 12 months has elapsed since the anniversary of the commencement of their employment.

Step	Effective from 1 January 2022 \$ per hour	
1	\$24.69	Q1, Q2, Q3 Entry
2	\$25.74	
3	\$26.90	Q3+ entry
4	\$27.95	
5	\$29.71	
6	\$29.71	

It should be noted that progression on the scale was frozen during the term of the 28 October 2015 collective agreement and thus progression for employees who were covered by that agreement will not correlate to the number of steps that their service would otherwise suggest.

Unqualified / in training short term relievers are paid on the unqualified / in training early childhood teacher / kaiako scale.



### In Training Assistant Supervisor

Years of service	Effective from 1 January 2022: \$ per hour
1	\$21.60
2	\$22.00

### Unqualified Early Childhood Teacher/Kaiako

Effective from 1 January 2022: \$ per hour
\$20.40

### In Training Early Childhood Teacher/Kaiako

Years of Service	Effective from 1 January 2022: \$ per hour
1	\$21.00
2	\$21.20
3	\$21.40
4	\$21.60

#### (e) Classification of employees - out-of-school care

- (i) **Supervisor:** is an employee whose normal duties include administration work, the care of children in the programme, the supervision of the staff, and who has responsibility for the coordination and the daily routines of the programme.
- (ii) **Qualified:** is an employee employed as a supervisor who has relevant experience and a teaching qualification (a Diploma of Teaching or its equivalent) or a relevant tertiary qualification, for example in Physical Education, Social Work, Fine Arts, Science, Music, Māori.
- (iii) **Assistant supervisor:** is an employee whose duties include substantial responsibility for significant aspects of the normal duties of the supervisor, as well as the care of children in the programme, and who carries out the supervisor's duties in their absence.
- (iv) **Out-of-school care employee:** is an employee engaged in the care of children in the programme.
- (v) **Unqualified:** is an employee who has no relevant experience or qualifications recognised by the employer.
- (vi) **Experienced:** is an employee holding previous relevant experience, recognised by the employer, or a qualification requiring a knowledge of child development (0-14 years), recognised by the employer.

**(f) Wages schedule - Out-of-School Care**

- (i) The minimum wages payable to employees covered by this agreement are set out in the schedule sub-paragraph (iv) below.
- (ii) **Progression:** An out-of-school care employee shall be paid on the appropriate scale and step having regard to their previous experience and qualifications held, and shall progress through the wage scale after each 12 months continuous service provided that an employee is employed for more than 10 hours per week. Where an employee is employed for 10 hours or less per week, they shall progress through the wage scale after each 18 months continuous service. It should be noted that progression on the scale was frozen during the term of the 28 October 2015 collective agreement and thus progression for employees who were covered by that agreement will not correlate to the number of steps that their service would otherwise suggest.
- (iii) **Higher duties:** where an employee is required to act in a higher position for one or more days in any one week, they shall be paid on the higher scale as determined by their years of service.

**Out of School Care Supervisor**

<b>Years of Service</b>	<b>Qualified - Effective from 1 January 2022: \$ per hour</b>	<b>Experienced - Effective from 1 January 2022: \$ per hour</b>
1	\$22.45	\$21.00
2	\$22.96	\$21.20
3	\$23.67	\$21.40
4	\$24.55	\$21.60
5	\$25.28	\$21.80
6	\$26.14	\$22.00
7	\$27.00	\$22.16

**Out of School Care Assistant Supervisor**

<b>Years of Service</b>	<b>Effective from 1 January 2022: \$ per hour</b>
1	\$20.50
2	\$20.60
3	\$20.70
4	\$20.80

**Out of School Care Employee/Kaimahi**

<b>Effective from 1 January 2022 \$ per hour</b>
\$20.00

**(g) Classification and Wages Schedule of Administrative employees**

- (i) The minimum wages payable to administrative employees covered by this agreement are set out below.
- (ii) **Administrative employee:** An administrative employee is an employee whose position involves a general range of administrative duties. The position may include centre finance, centre roll management, dealing with correspondence, data entry, and secretarial duties.
- (ii) **Progression:** An administrative employee shall be paid on the appropriate step having regard to their previous experience and qualifications held and shall progress through the wage scale after each 12 months continuous service provided that an employee is employed for more than 10 hours per week. Where an employee is employed for 10 hours or less per week, they shall progress through the wage scale after each 18 months continuous service. It should be noted that progression on the scale was frozen during the term of the 28 October 2015 collective agreement and thus progression for employees who were covered by that agreement will not correlate to the number of steps that their service would otherwise suggest.

**Administrative employee (\$ per hour)**

From 1 March 2010 clerical positions will be graded by the employer according to the level of skill, experience and responsibility which are required by the classifications in 6(g)(v)

- Any employee performing a mix of similar duties across two or more grades within one class shall be placed in the grade which reflects the substantive part of the job.
- Any employee employed for two or more distinct positions shall be placed in the appropriate grade for each position.

- (iii) Classification (from 1 March 2010)

**Grade A:** The position is closely supervised. It involves duties and tasks which are specified and clear and are carried out in accordance with well-defined procedures. The duties must be defined in detail, be free from ambiguity and give relatively little scope for discretion.

Note: Close supervision is not just about physical proximity. It is about little or no scope for any discretion about what the person is to do or how they do it.

**Grade B:** The position involves a range of duties for which additional knowledge, skills and experience are required to meet the needs of the centre. The position allows some scope for discretion on how and when the tasks are completed and is likely to involve periods without supervision.

**Grade C:** The position involves a range of duties for which a high level of skill, responsibility and specialist knowledge is required. It may include supervision of other non-teaching staff, centre roll management including enrolments and financial responsibility, in particular payroll. Where the position does not involve supervision of staff, it may involve management of specialist equipment or programmes which make a significant contribution to the running of the centre.

- (iv) Movement between grades shall occur by appointment to an established position, or by re-grading of a position where the requirements of the position have altered substantially.

### **Administrative employee**

<b>Step</b>	<b>Effective from 1 January 2022 \$ per hour</b>	
1	\$20.40	<b>Entry Grade A</b>
2	\$20.50	
3	\$20.60	
4	\$20.70	<b>Entry Grade B</b>
5	\$20.85	
6	\$21.94	<b>Top of Grade A</b>
7	\$23.03	
8	\$24.12	<b>Entry Grade C</b>
9	\$25.21	<b>Top of Grade B</b>
10	\$26.31	
11	\$27.40	
12	\$28.49	<b>Top of Grade C</b>

## **Part 7**

### **Hours of Work - Ngā haora mahi**

#### **(a) Hours of work – positions of leadership**

- (i) The ordinary hours of work for senior teachers, head teachers, assistant head teachers, home based team leaders, and home based visiting teachers shall not exceed 40 per week or 8 per day, to be worked from Monday to Friday inclusive.
- (ii) There may, however, be occasions from time to time when employees in positions of leadership are required to work outside or in addition to the ordinary hours of work to fulfil the requirements of their position. As salaried employees, there is an expectation that some additional hours will be worked from time to time without additional payment. In the case of additional time of one hour or more being required on any one day, either time in lieu, to be taken at a mutually agreed time, or additional payment at the ordinary rate of pay will apply, as agreed between the employer and employee. If agreement is not reached as to which will apply, time in lieu will apply. Overtime does not apply to employees in positions of leadership.

#### **(b) Hours of work – qualified and certificated teachers**

- (i) The ordinary hours of work for qualified and certificated teachers shall not exceed 40 per week or 8 per day, to be worked from Monday to Friday inclusive between the hours of 7am and 6pm.

There may, however, be occasions from time to time when qualified and certificated teachers are required to work outside or in addition to the ordinary hours of work to fulfil the requirements of their position. As salaried employees,

there is an expectation that some additional time will be worked from time to time without additional payment. In the case of additional time of more than 30 minutes being required on any one day, either time in lieu, to be taken at a mutually agreed time, or additional payment will apply, as agreed between the employer and employee. If agreement is not reached as to which will apply, additional payment for hours worked in excess of ordinary hours will apply on the following basis:

Subject to (ii) above:

Time worked in excess of ordinary hours will be paid at the rate of ordinary time per hour worked over 8 per day or 40 per week. Overtime is calculated on a daily basis.

**(c) Hours of work – other employees only**

The ordinary hours of work shall not exceed eight per day nor be less than two per day from Monday to Friday, to be worked between the hours of 7.00 am and 6.00 pm.

**(d) Non-contact time**

- (i) All early childhood teachers/kaiako are entitled to 12.5% of the total ordinary hours for which they are employed each week to be worked as non-contact time (rounded to the nearest half hour). Such time may be accumulated to a maximum of five hours.

The following examples are provided to assist interpretation:

40 total hours: 12.5% = 5 hours. 35 hours contact and 5 hours non-contact per week.

10 total hours: 12.5% = 1.25 hours (rounds to 1.5 hours). 8.5 hours contact and 1.5 hours non-contact per week.

- (ii) Non-Contact time primarily includes such work as assessment, learning portfolios, planning, parent contact, preparation of activities and administration.
- (iii) An early childhood teacher's/kaiako availability to the children in cases of accident or emergency will not be diminished during this period.
- (iv) Where an early childhood teacher/kaiako is required in an emergency to work in excess of 35 child contact hours per week, the non-contact time not utilised shall be carried forward to be utilised within a month, or, where the employer elects to do so, overtime shall apply as in sub clause (b) of Part 7 or sub clause (a) and (b) of Part 8.

- (e)** All hours of work shall be continuous from the time of starting each day without any breaks other than a rostered paid ten minute morning and afternoon refreshment break daily for each employee and a rostered one hour lunch break daily between the hours of 11.00 a.m. and 2.30 p.m. for each employee. No employee shall be required to work longer than three hours without a refreshment break or five hours without a meal break. The lunch break may be reduced to not less than 30 minutes, by mutual agreement between the employer and the employee, or to meet an emergency at the centre.

- (f)** No employee shall be required to work other than their contracted hours unless they are willing. It is expected that no child will be left unattended.

## **(g) On-Call Provisions – Home-based early childhood employees**

On-call means that an employee is required to be available to respond to emergencies outside the employee's normal hours of work.

Any Home-based early childhood Team Leader or Visiting Teacher shall be paid the equivalent of two hours at the applicable rate of pay, or 2/2080ths of the applicable annual salary, for being on-call for a full week, or a fifth thereof for every day of being on-call.

## **Part 8**

### **Overtime – Haora tuwhene - Waged employees only**

Where waged employees work time in excess of the hours of work specified in 7(c), the additional time shall be deemed overtime and paid as follows:

- (a)** first three hours - time and a half;
- (b)** over three hours - double time after 9.00 p.m. and before 7.00 a.m.; or after midday Saturday and before 7.00 a.m. Monday; or on a public holiday.

The amount of time calculated as overtime shall be rounded up to the quarter hour.

These provisions do not apply to positions of leadership or qualified and certificated teachers, who are covered by the provisions outlined in Part 7.

## **Part 9**

### **Call-backs - Ngā karanga o muri**

An employee who is called back to work after having completed the day's work and having left the place of employment, or is called to work before the normal time of commencing work and does not continue working until such commencing time, shall be paid on a gate-to-gate basis at time and a half. The minimum payment shall be equivalent to two hours ordinary time.

## **Part 10**

### **Terms of Employment - Ngā whakataunga mo te mahi**

#### **(a) Termination**

Employment can be terminated by either party giving four weeks written notice, except where the employer and employee agree to a shorter period of notice. No notice is given in the case of dismissal for serious misconduct.

#### **(b) Wages and salary on termination**

On termination of employment the employer shall pay the employee 8% (or 10% if eligible for 5 weeks annual leave) of gross earnings in the period since the employee's last anniversary of commencement, less any pay received during leave taken in advance of entitlement as holiday pay, in accordance with the Holidays Act 2003.

**(c) Payment of wages and salary**

Wages and salary shall be paid weekly or fortnightly by way of direct credit or by cheque no later than Thursday or the working day immediately preceding a holiday.

**(d) Overpayment of and deductions from wages or salary**

- (i) It is the responsibility of both the employer and the employee to ensure that payments are correct.
- (ii) Where an overpayment does occur, the recovery of the overpayment shall be in a manner agreed between the employer and the employee concerned or, where the overpayment arose as a result of a previous period of employment between the former employer and the employee concerned.
- (iii) Nothing in this clause shall prevent the employer from pursuing any other remedies available in law to recover overpayments. The employer should, however, endeavour to ensure that the employee is not caused undue hardship as a result of any such recovery.
- (iv) The employer may make a deduction from salary/wages for time lost due to sickness, accident, default or leave without pay, or for any other debt owed by the employee to the employer. A deduction in the case of a debt will be discussed between the employer and employee with a view to agreeing a reasonable timeframe for the repayment which does not cause undue hardship for the employee but repays the debt in a timely fashion. A minimum of one pay period's notice of the deduction shall be given by the employer. If the employee's employment terminates before full repayment is made, any balance shall be deducted from the employee's final pay.

**(e) Pay slip**

A pay slip shall be supplied whenever the take-home pay of the employee changes or at the request of the individual employee.

**(f) Record of service**

Each employee on leaving or being discharged from her/his employment shall, on request, be given within seven days a certificate in writing signed by the employer and stating the position held and the length of service.

**(g) Abandonment of employment**

Where an employee is absent from work for more than three working days without notification to the employer, s/he shall be deemed to have terminated her/his employment provided that the employer has made all reasonable efforts to contact the employee during this period.

**(h) Trial period**

No employment agreement applicable to employees covered by this Collective Employment Agreement will contain trial periods pursuant to sections 67A and 67B of the Employment Relations Act 2000, and any transaction pursuant to those provisions will have no effect with respect to persons covered by this agreement.

## Part 11

### Holidays - Ngā hararei

#### (a) Public holidays

- (i) The employee shall be entitled to the following paid public holidays in accordance with the Holidays Act: Christmas Day, Boxing Day, New Year's Day, 2nd January, Good Friday, Easter Monday, the birthday of the reigning sovereign, Labour Day, Provincial Anniversary, Waitangi Day, Anzac Day and Matariki where they fall on a day that would otherwise be a working day for the employee.

In the case of Christmas Day, Boxing Day, New Year's Day, January 2, Waitangi Day and Anzac Day:

- If the public holiday falls on a Saturday or Sunday and it would not otherwise be a working day for the employee, the public holiday is transferred to the following Monday (or Tuesday in the case of Boxing Day or January 2 falling on a Sunday).
- If the public holiday falls on a Saturday or Sunday, and it would otherwise have been a working day for the employee, the holiday is recognised for that employee as falling on the traditional day.
- No employee will have the holiday recognised as falling on more than one day as per section 45A of the Holidays Act.

(The above is a summary of sections 45 and 45A of the Holidays Act)

- (ii) If an employee is required to work on any part of a public holiday the payment shall be the portion of the employee's relevant daily pay that relates to the time actually worked on the day plus half that amount again. Provided that any time worked in excess of three hours on that day will be paid at double time in accordance with the overtime payment set down in clause 8(b) in the case of waged employees. In addition an alternative holiday will be granted in lieu of the holiday and will be paid at the employee's relevant daily pay.
- (iii) A part-time early childhood teacher/kaiako shall be entitled to payment for the holiday where the holiday falls on a day which would otherwise be a working day for that teacher.
- (iv) A part year early childhood teacher/kaiako whose ordinary hours of work fall on a public holiday shall be paid for the number of hours usually worked on that day. For holidays that fall outside their work period but on a day normally worked, they shall be paid on a pro-rata basis calculated in relation to the number of weeks actually worked in the calendar year as a percentage of 52 for all public holidays.

#### (b) Annual holidays

- (i) On completion of 12 months continuous service an employee shall be entitled to annual paid leave of 4 working weeks.
- (ii) Annual leave will continue to accrue while an employee is on
- ACC



- Parental leave
  - Leave for military service
  - Paid sick or bereavement leave
  - Periods of leave without pay of less than four weeks
- (iii) Annual leave may be anticipated or deferred by agreement between the employer and the employee. Where no agreement has been reached to defer annual leave, the employer may give two weeks' notice that annual leave is to be taken.
- (iv) Annual holidays shall be taken at a time agreed by the employer and the employee except where the centre is closed for the Christmas/New Year holiday period. When an employee is required to take their annual holidays during this close down time, five days annual holidays shall remain to be taken at a time/s mutually agreed.

Employees with less than one year's service at the date the centre closes shall be paid holiday pay as provided in the Holidays Act 2003. The employment anniversary date for the purpose of determining future holiday entitlements will then be deemed to be the date the centre closed for the initial close down.

- (v) An employee who has completed three years' continuous service with the same employer shall, at the end of the third year and for subsequent years, be entitled to an annual holiday of five (5) working weeks instead of four (4) working weeks.

For example:

An employee who commenced employment on 1 February 2015 becomes entitled to five weeks' holiday on 1 February 2018 and on each subsequent anniversary date.

- (vi) The employer shall allow employees, at least once in every year, to take at least two uninterrupted weeks of annual leave as per the Holidays Act 2003.
- (vii) Where an employee is sick or injured (or their partner or dependant is sick or injured) while on annual leave, the employer may agree that the employee can take the period of sickness or injury as sick leave rather than annual leave.
- (viii) Where an employee suffers a bereavement while on annual leave the employer shall agree that the employee can take the period of bereavement/tangihanga leave rather than annual leave.

**(c) Long service leave**

On completion of ten years' continuous service with the same employer, each employee shall be entitled to a one-off provision of one week's long service leave in addition to their annual leave entitlement. The timing of this leave shall be by agreement between the employer and the employee. However, such leave shall be taken within twelve months of the entitlement falling due.

This entitlement must be taken within the year it falls due. This leave can by mutual agreement be deferred to the next calendar year. If it is not taken within this timeframe, the leave will be forfeited.

## **Part 12**

### **Sick and Related Leave - Whakaaetanga turoro me etahi atu e orite ana**

#### **(a) Sick leave**

- (i) After two week's continuous service employees shall be entitled to sick leave of 12 working days per year, provided that part-time and fixed term employees shall be entitled to sick leave calculated on a pro-rata basis according to the number of days worked per week to a minimum of ten (10) working days, from their next anniversary on or after 24 July 2021.
- (ii) Sick leave can be used when an employee is sick or injured, or when the employee's spouse/partner or a person depending on the employee for care is sick or injured.
- (iii) Sick leave shall accumulate up to 62 days.
- (iv) If the period of absence on sick leave exceeds three days, the employee may be required to provide proof of the injury or illness.
- (v) Sick leave includes attendance at doctor, dentist and hospital appointments.

#### **(b) Infectious diseases**

When an early childhood teacher/kaiako contracts an infectious disease, as defined in the Schedule 1 of the Health Act 1956, or where a teacher/kaiako is excluded from the workplace under the Education (Early Childhood Services) Regulations 2008 (or any subsequent legislation in place thereof) from attending work, special paid leave of up to five (5) days in any one year shall be allowed for the period of infection. Such leave shall not be offset against any entitlement under sub clause (a) or (c) of this clause.

#### **(c) Family / whanau leave**

- (i) Employees may utilise their sick leave entitlement to attend to the medical needs of a partner or dependant.

#### **(d) Leave on accident compensation**

Any employee suffering a personal injury shall be granted leave without pay in respect of any period in which they are eligible to receive compensation for lost earnings pursuant to the provisions of the employers worker's accident insurance policy and/or the Accident Insurance Act 1998 (or any subsequent legislation in place thereof) subject to:

- (i) a maximum of 12 months in cases of a work related personal injury;
- (ii) a maximum of 3 months in other cases.

The employer, the employee and their union representative and/or nominated support person shall explore options available to the employee prior to the expiry of the leave without pay granted under (i) or (ii) of this clause. The parties will reach agreement on the appropriate option for the employee which may be additional leave without pay granted at the employer's discretion.

**(e) Health and safety**

- (i) The parties to the agreement are subject to the provisions of the Health and Safety at Work Act 2015.
- (ii) The parties to the agreement are committed to the observance of safe working practices and to the good health and safety of all employees and those under their care.
- (iii) The employer has the responsibility to ensure work premises are safe. The employee has the responsibility to notify the employer of any hazard on the work premises of which they become aware as soon as practicable.
- (iv) Where an employee's health and safety are shown to be at risk through the course of their duties, the employer shall, in consultation with the appropriate health and safety authorities, take such steps as necessary to provide protection for the employee.
- (v) In situations where employees may be at increased risk of acquiring Hepatitis B because of the nature of their job, the situation shall be assessed by the Medical Officer of Health on an individual basis to decide if immunisation would be appropriate.

**(f) Long term sick leave**

- (i) An employee with 12 months or more service with the same employer, who has no sick leave entitlement left, shall be granted unpaid sick leave up to three consecutive months on production of a medical certificate from a registered medical practitioner.
- (ii) The employer and the employee and their union representative and/or nominated support person shall explore the options available to the employee on completion of the unpaid sick leave entitlement granted under this clause. The parties will reach agreement on the appropriate option for the employee which may be an additional sick leave entitlement granted at the employer's discretion.
- (iii) An employee who has been on long term sick leave shall be entitled to return to the same position and rate of pay they were employed in when long term sick leave commenced. Employees shall maintain any service entitlement accrued before the leave commenced.

**Part 13  
Special Leave - Whakaaetanga motuhake**

**(a) Bereavement/tangihanga leave**

An employee shall be entitled to five days' leave without loss of pay on each occasion on the death of the employee's partner, child (including step and whangai), father, mother, brother, sister, mother-in-law, father-in-law, grandparent or grandchild. Bereavement leave may also be taken in the case of an employee, or their partner, suffering a miscarriage or stillbirth, as set out in the Holidays Act.

An employee shall be entitled to one day's leave without loss of pay on each occasion on the death of any other person where the employer accepts, having regard to

relevant factors such as those set out below, that the employee has suffered a bereavement. Relevant factors include:

- The closeness of the association between the employee and the deceased person
- whether the employee has to take significant responsibility for all or any of the arrangements for the ceremonies relating to the death
- any cultural responsibilities of the employee in relation to the death.

Additional bereavement leave with or without pay, may be granted at the employer's discretion.

**(b) Parental leave**

An employee with 12 months service at the time of commencing leave is to be granted parental leave up to 12 months as the employee requires (an employee with six months service is entitled to up to six months leave). Parental leave shall be granted subject to the following conditions:

- (i) Parental leave shall be granted to the employee as leave without pay.
- (ii) An application for parental leave must be made at least three months before the employee intends to commence parental leave. Whenever practicable a longer notice period is desirable.
- (iii) The employee concerned must specify the length of time required for leave. It is the employer's responsibility to ensure that existing staff/child ratios in the centre remain the same during the period of parental leave by employing a reliever or relievers where necessary.
- (iv) If an employee on parental leave decides to resign, notice of that decision must be given at least one month before the leave period expires.
- (v) If an employee returns to their employment after a break in service for parental leave, they shall maintain any service entitlements to sick leave and service pay accrued before their service was broken, or any other service entitlement under this agreement including service entitlement under clause 6.
- (vi) An employee returning to employment after parental leave shall be entitled to return to an equivalent position in the same centre.
- (vii) All the parental leave provisions under sub-clause (b) of this clause shall also apply to employees employed for less than 15 hours per week.
- (viii) All parental leave provisions under sub-clause (b) of this clause shall also apply to employees who elect or are required to care in the role of parent or guardian for a child under 12 months of age for whom the employee is not a natural or adoptive parent.
- (ix) Parental leave shall apply also to employees male and female, on adopting a child under the age of six years.

**Note:** This clause must be read in light of the Parental Leave and Employment Protection Act 1987.

**(c) Partner's leave**

Two weeks unpaid leave shall be provided where an employee wishes to remain at home for the purposes of any of the following:

- (i) being present at the birth of their partner's child;
- (ii) to provide support for their partner and/or child in the immediate post-natal period.

Provided that the provisions in this clause shall also apply in the case of adoption from the date the child is under the care of the employee's partner.

**(d) Professional development leave**

- (i) Employees shall be granted a minimum of two working days and a maximum of seven working days per year as negotiated between the employer and employee paid professional development leave to enable them to:

- Gain and maintain requirements of being a certificated teacher;
- Attend in-service courses, training courses, hui, meetings, seminars, or conferences (other than union meetings/seminars/ training courses/conferences) directly related to their work
- Fulfil course requirements for study directly related to their work.

Permanent part-time employees shall be entitled to professional development leave calculated on a pro-rata basis according to the number of days worked per week to a minimum of 2 days in each year.

Professional development leave cannot be accumulated and must be taken in the leave year in which the employee becomes entitled to it.

- (ii) Employees shall be granted a maximum of 3 days per year over and above the entitlement in clause 13(d) (i) to attend courses where the cost of relievers is paid by the training provider.

**(iii) Time off in lieu**

Where an employee is required by the employer to attend a meeting, hui, conference or course, the employee shall be granted time off in lieu for the hours of attendance when the course falls on a day of the week not normally worked by the employee. The timing of time off in lieu shall be by agreement between the employer and the employee.

**(iv) Examination leave**

An employee shall be entitled to paid leave to sit examinations for a course or courses which the employer has agreed is/are directly related to her/his work, provided that an employee's right to professional development leave shall not be affected.

- (v) Unpaid examination leave may be granted to an employee to sit examinations not directly related to her/his work.

**(e) Leave without pay**

An employer may grant leave without pay for up to one year upon application by an employee. Periods of leave without pay totalling more than four weeks in any one year shall not count towards service entitlements. Leave without pay is granted at the employer's discretion and is not an entitlement.

**(f) Employment Relations Education Leave**

The employer shall grant paid leave to employees to attend employment related education courses in accordance with the provisions of Appendix A of this agreement. If the Employment Relations Act is repealed, these clauses will no longer apply and will revert to the clause 10(f) – Paid Education Leave – arrangements as per the Consenting Parties Early Childhood Collective Employment Contract 1999-2001.

**(g) Training provisions for out of school care employees/kaimahi**

(i) An out-of-school care employee/kaimahi will be encouraged to enrol in training courses recognised by the employer as appropriate to out-of-school care programmes.

Where the course is approved by the employer, the employer shall pay 50% of the course fee for one course per employee per year, at the time of enrolment.

(ii) Employers will ensure that all out-of-school care employees/kaimahi hold a current First Aid certificate. Any costs incurred in completing the training for this certificate shall be met by the employer.

**(h) Court leave**

An employer shall grant up to five days paid leave on normal pay when an employee is required for jury/witness service, provided that the employer receives evidence of summons as soon as practicable. The employee will provide evidence of hours attended and will be available for work as soon as they are not required by the Court. Any Court fees received whilst on paid leave are remitted to the employer.

## **Part 14**

### **Reimbursing Allowances - Ngā tāpenga utu mo te whakahoki atu**

**(a) Motor vehicle running expenses**

Any employee who has the approval to use her/his car for centre purposes, or is required to relieve in another centre owned by their employer, shall be reimbursed in accordance with Inland Revenue Department mileage rates.

**(b) Clothing reimbursement**

Employees, with the exception of salaried teachers/kaiako, shall receive \$1.50 per day as reimbursement for clothing purchased except where a uniform is provided by the employer.

**(c) Professional development expenses**

Employers shall reimburse any fees, subscriptions and expenses relating to courses, meetings or conferences which are agreed between the employer and employee

pursuant to sub-clause (d) of part 13. Travel and accommodation expenses will be at the discretion of the employer.

**(d) Meal allowance**

Subject to clause 8, an employee who is required to work after 6.00 pm or after 1.5 hours overtime on any Monday to Friday, or after 1.00 pm on Saturday, Sunday or a holiday, shall be provided with a suitable meal by the employer or shall be given a meal allowance of \$10.00.

**(e) First Aid certificate**

Where permanent early childhood teachers/kaiako complete or renew First Aid certificates, the employer shall meet any costs incurred. Where an employee has allowed their first aid certification to lapse, the employee shall be responsible for the difference in cost between the first aid refresher and full comprehensive course costs of becoming certified again. This shall not apply if the employee was unable to maintain their certification through no fault of the employee's own (e.g. lack of available maintenance training).

## **Part 15**

### **Teacher Certification - Kairēhita kaiako**

- (a)** It is understood that fully certificated teachers have an obligation as outlined in their professional Code of Ethics to mentor and support beginning teachers.

The employer shall ensure that an induction and mentoring programme is available to each teacher working towards full certification in their employ, including the equivalent of 4 days paid release per annum for 2 years for each teacher working towards full certification to be utilised by the provisionally certificated teacher and /or their certification mentor by mutual agreement, with the approval of the employer.

An allowance is payable to each tutor teacher responsible for overseeing the advice and guidance programme of \$200 per annum. Where a tutor teacher is responsible for tutoring more than one provisionally certificated teacher in the same service the employer shall only be required to pay one allowance to that tutor teacher.

- (b)** The employer shall reimburse the cost of initial teacher certification and of the renewal of practicing certificates for all certificated teachers in their employ on the understanding that teachers actively maintain their practicing certificates.

## **Part 16**

### **Staff Meetings - Ngā hui a ngā kaimahi**

Staff meetings may be held within opening hours or outside of opening hours.

In the case of salaried employees, attendance at regular staff meetings will either be included in the employee's usual hours of work, or the employee will be entitled to time off in lieu if the staff meeting is in addition to the employee's usual hours of work.

In the case of waged employees, if staff meetings are held outside or in excess of the hours of work specified in Part 7(c), additional payment/overtime will apply as applicable.

## **Part 17**

### **Union Rights – Mana uniana**

#### **(a) Worksite representatives**

- (i) The NZEI Te Riu Roa members may meet to elect a worksite representative; the timing of the meeting shall be as agreed with the employer and shall not exceed half an hour.
- (ii) The employer will provide an opportunity for the worksite representative to contact new staff as part of an orientation process to discuss NZEI Te Riu Roa membership.
- (iii) The employer recognises that the worksite representative may from time to time undertake their responsibilities at work, such as assisting a fellow employee in a disciplinary meeting or participating in collective bargaining. Arrangements will be agreed between the worksite representative and their employer and both parties will balance the workplace representative's primary responsibility as an employee with their responsibilities as a worksite representative.
- (iv) An employee elected by the centre employees and endorsed by NZEI Te Riu Roa as a worksite representative shall be granted up to five days leave per year to attend to authorised union business. The worksite representative may apply for such leave to be paid.

#### **(b) Right of Entry**

In accordance with the Employment Relations Act 2000, a representative of the union shall be entitled to enter a workplace at all reasonable times for purposes related to the employment of its members and to the union's business. The representative will exercise this right in a reasonable way, having regard to the normal operations of the workplace and will comply with any reasonable procedures and requirements relating to health and safety or security.

#### **(c) Union Noticeboard**

The employer shall make available notice board space in an agreed place for the display of official union notices.

#### **(d) Union Meetings**

NZEI Te Riu Roa may hold up to two meetings for union members during working hours per calendar year in which case payment for the first two hours of such meetings shall be made at ordinary hourly rates. Provided, that the employer and the union may agree to hold the meeting outside normal working hours.

#### **(e) Union Membership**

- (i) An employer shall provide information to NZEI about new employees in accordance with s.62A of the Employment Relations Act unless the new employee objects to the employer doing so.
- (ii) The employer and the union agree that all reasonable steps will be taken to ensure that employees are informed of and given the opportunity to become members of the union.



- (iii) The employer shall deduct union subscriptions from the wages payable to existing union members as authorised by the union member and the union.

The union may make alternative subscription arrangements with new members.

Union subscriptions deducted shall be deducted at fortnightly or monthly intervals. Employers may deduct an administration fee of no more than 2.5%.

## **Part 18**

### **Professional Development Plans – Mahere whakawhanaketanga ngaio**

The parties agree that employers will put in place annual professional development plans with employees.

The purpose of a professional development plan would be to identify and plan to achieve appropriate professional development for the employee, taking into consideration the employee's identified appraisal goals and the employer's objectives, resources, and strategic plan.

Such plans will be developed at the time of the annual appraisal process when objectives are being discussed for the next year, or may take place at a different time as agreed between the employer and employee.

## **Part 19**

### **Changes to Operating Model**

#### **(a) Principles of Change**

The parties bound by this agreement recognise and agree that:

- (i) Change may be brought about by changes in the operating environment of the Early Childhood Education sector, changing community needs, or by the organisation looking for ways by which improvement to quality and delivery of service may be achieved;
- (ii) In order to achieve quality early childhood education, the needs and interests of employees, children, families/whanau, community and the employer must all be considered.
- (iii) There are positive ways in which the process of change can be approached and utilised to the benefit of all. Planning, prior to and during change, is recognised as an important part of any managed approach.
- (iv) The employer has the right to plan, manage, organise and finally decide on the operation of the centre/service. However, effective and successful changes to the organisation benefit from the involvement of employees. This includes timely and appropriate consultation.

#### **(b) Consultation**

Where the employer wishes to consider changes to the operation of a centre/service, including but not limited to licence type, hours of operation or staffing structure they will provide employees with a genuine opportunity to be involved. The employer will

consult with affected and potentially affected employees prior to making any final decision about change. The employees may seek the involvement of NZEI Te Riu Roa. Where the proposed change will, or is likely to, affect the employee's employment and/ or conditions of employment, the employer must consult with NZEI Te Riu Roa as per the requirements of section 4 (4) (c) of the Employment Relations Act 2000.

## **Part 20**

### **Redundancy - Utu whakamutu mahi**

(a) Where the services of an employee/s are no longer required on grounds of redundancy whether by a reduction in child numbers; by closure of the centre; or by any other reason, the employer shall notify the union prior to giving the employee/s not less than one month's notice of redundancy.

(b) The period of notice is to allow time for discussion between the employer and the employee/s of the reasons for the possible redundancy and to determine whether there is any alternative to redundancy.

(c) **Redeployment**

As an alternative to redundancy, the employer may offer redeployment to a suitable alternative position within their employ. In the event that a reasonable offer of employment is made, the employer's responsibilities under these provisions shall be fulfilled and no redundancy payment shall be payable.

The offer of a position:

- (i) in the same location or within reasonable commuting distance; and
- (ii) with substantially similar terms and conditions of employment; and
- (iii) with comparable duties and responsibilities shall constitute a reasonable offer for the purpose of this provision .

However, an offer of suitable alternative employment, that involves reduced earnings, may be acceptable to the employee. In such circumstances the employer shall pay compensation for loss of earnings to the employee as set out in clause 20(d) on a pro-rata basis.

(d) If no alternative to redundancy is arrived at, the employer shall give notice to the affected employee/s in accordance with clause 10(a) and the employer shall pay redundancy pay calculated as follows:

4 weeks' pay for the first year of service with the same employer and thereafter 2 weeks' pay for every year or part year of service with the same employer to a maximum of 13 weeks. Refer to Appendix B(b).

(e) During the period of notice the employer will give assistance in the preparation of curriculum vitae if requested and allow the affected employee/s reasonable paid time to attend interviews.

(f) **Sale, Transfer or Contracting Out**

Where the employer is contracting out, selling or transferring all or part of the business, including the part of the business where the employee is employed, the following provisions will apply:

- (i) Where practicable, the employee will be consulted about any proposal to sell all or part of the business or to contract out or transfer work before a final decision is made.
- (ii) If the employer decides to proceed with the proposed restructure, it will negotiate with the new contractor/service provider with a view to endeavouring to have the new employer offer the employee employment on the same or similar terms and conditions and recognising service as continuous. The employee will be advised of timeframes for such negotiation, and for the acceptance of any offer of employment or of any application and interview process, as soon as possible.
- (iii) The employee is entitled to choose whether or not to accept employment with the contractor/service provider. In the event that the contractor/service provider offers the employee employment in terms of sub clause (ii) above, no redundancy situation will arise, and the employee will not be entitled to receive redundancy compensation, whether or not the employee chooses to accept the offer of employment. The employee will be entitled to one month's notice of termination of employment with the employer (which is not in addition to any other notice period specified within this agreement).
- (iv) In the event that the contractor/service provider is not prepared to offer the employee employment in terms of sub clause (ii) above, or offers employment on lesser terms and conditions and/or without recognition of the employee's service, the employee will receive one month's notice of termination (which is not in addition to any other notice period specified in this agreement) and redundancy compensation under this clause.

## **Part 21**

### **Working Facilities - Ngā whakaurunga mahi**

- (a) No employer shall require any employee to lift, carry or move any load so heavy that its lifting, carriage or movement would be likely to injure her/him.
- (b) The employer shall provide a private and adult-sized toilet for use by employees employed in each centre.
- (c) The employer shall provide and maintain, for the use of employees, adequate, suitable and conveniently accessible facilities for washing (including soap and clean towels, or other suitable means of cleaning and drying), and shall keep those facilities in a clean and orderly condition.
- (d) The employer shall provide and maintain, for the use of employees, adequate and suitable accommodation for clothing not worn during working hours; and shall also provide such arrangements as are reasonably practicable for the drying of such clothing.
- (e) The employer shall provide and maintain for the use of employees whose work is done standing, suitable facilities for sitting, sufficient to enable them to take advantage of any opportunity for resting that may occur in the course of their employment.

- (f) Where a centre employs an employee for five hours or more per day the employer shall provide, maintain and keep clean a suitable place for the use of employees to rest when indisposed, during breaks and/or for eating meals.

## **Part 22**

### **Time and Wages Record - Ngā utu me te puka wā mahi**

- (a) The employer shall at all times keep a record showing in the case of each employee covered by this agreement:
- (i) the name of the employee;
  - (ii) the employee's age, if under 20 years of age;
  - (iii) the employee's postal address;
  - (iv) the kind of work on which the employee is usually employed;
  - (v) the agreement under which the employee is employed;
  - (vi) the classification or designation of the employee under the agreement according to which the employee is paid;
  - (vii) the hours between which the employee is employed on each day, and the days of the employee's employment during each week; and
  - (vi) the wages paid to the employee each week and the method of calculation.
- (b) The wages and time record in use for the time being, or similar document that at any time during the preceding six years was in use, shall at all times be open for inspection by an authorised representative of the union.

## **Part 23**

### **Complaints, Competency and Discipline**

(a) **General principles**

The following principles shall be used in addressing complaints against employees and matters of discipline and competence to ensure that such matters can, in the interests of the parties, be fully and fairly addressed. Many complaints will be able to be resolved by discussion between the employer and the employee concerned without the need to take the matter any further. Employers should, wherever appropriate, seek to resolve complaints in this manner in the first instance. Questions of competence, conduct and/or discipline should be handled in a manner which as far as possible protects the mana and dignity of the employee concerned. Employees may seek whanau, family, professional and/or NZEI Te Riu Roa support in relation to such matters.

(b) **Discussions in a Māori context**

- (i) The employee must be advised of the specific matter(s) causing concern. The employee and the employer may, depending on the nature of the complaint,

agree to attempt to deal with a complaint by it being heard in a Māori context and manner.

- (ii) A Māori context and manner relates to the following:
- meetings can be held on marae;
  - there is face to face engagement;
  - there can be whanau support for all involved; and
  - guidance and advice is often provided by kaumatua and kuia for all involved.
- (iii) Should the employee and employer, or their representatives on their behalf, agree to a resolution of the matter then this shall be recorded in writing and signed by both parties and/or their representatives on their behalf. A copy of the agreement will be placed on the employee's personal file.
- (iv) This is a discretionary option and either party may withdraw at any time, and nothing in this section prevents the employer or the employee deciding at any time that any or all of the procedures in sub clause (c) or sub clause (d) will be used. Where either party decides to withdraw from this process such a decision will not of itself give rise to any claim of procedural deficiency or unfairness. The decision to withdraw from this process and/or for the employer to use any or all the procedures in sub clause (c) or sub clause (d) will be notified in writing to the other party.

**(c) Competency**

- (i) Where there are matters of competency, which are causing concern in respect of any employee, the employer shall advise the employee in writing of the concern(s) and shall put in place appropriate assistance and personal guidance to assist that employee.
- (ii) When this assistance and guidance has not remedied the situation, the following provisions should govern the action to be taken:
- The employee be advised in writing of the:
    - specific matter(s) causing concern;
    - the corrective action(s) required to address the matter(s);
    - the timeframe within which this action(s) must be undertaken - and the competency matter(s) addressed; and
    - their right to seek representation at any stage.
  - The timeframe should be determined by the employer, or delegated person, and be relevant to the matter(s) causing concern. In setting this timeframe the employer may take into account previous opportunities given to the employee to address the competency matter(s) causing concern;
  - The process and results of any evaluation are to be recorded in writing, sighted and signed by the employee;
  - A copy of any written report to the employer or to the Teaching Council of Aotearoa New Zealand made by any person or persons undertaking the evaluation shall be given to the employee;
  - No action shall be taken on a report until the employee has had a reasonable time to comment (in writing or orally or both);

- If the above steps fail to resolve the matter of concern, the employer may, where justified, dismiss the employee without the need to follow the disciplinary procedures outlined in (d).

**(d) Disciplinary Procedures**

- (i) Where an employer has a complaint(s) regarding an employee's conduct of duties, treatment of a child or any other matter except competency, the employer shall:
  - investigate forthwith the facts of the complaint(s), including discussing the complaint(s) with the employee concerned;
  - immediately advise the employee in writing of the particulars of the complaint(s);
  - advise the employee in writing that the disciplinary procedure in the agreement is being followed.
- (ii) After allowing reasonable time for the situation to be resolved, where the employer has reason to believe there have been further instances of the complaint(s), the employer shall:
  - advise the employee in writing of the particulars of the repeated incident;
  - allow the employee sufficient time to contact a union representative to discuss the allegations made;
  - meet with the employee and a union representative to discuss the complaint(s) and give proper consideration to the employee's side of the story and/or any explanation made;
  - advise the employee that their employment is at risk, if appropriate.
- (iii) After and within a reasonable period, where the employer has reason to believe there have been further instances of the complaint(s), the employee shall be liable to dismissal. Where a dismissal occurs, the employer will advise the union.
- (iv) Should there be a period of six to twelve months (depending on severity) or more between or after warnings, a further complaint against an employee shall be deemed to be her/his first offence under the disciplinary procedure.

**(e) Suspension**

- (i) If an allegation is deemed sufficiently serious an employee may be either suspended with or without pay, or transferred temporarily to other duties.
- (ii) The employer shall not suspend an employee without first allowing the employee a reasonable opportunity to make submissions about whether suspension is appropriate in the light of the allegations. However, where the employer is satisfied the welfare and safety of any child or another employee warrants it, immediate suspension may occur.

- (iii) The employer shall use its best endeavours to ensure that the period of suspension is kept to the minimum possible time consistent with ensuring that the allegations are properly investigated.
- (iv) If the allegation that led to suspension is without substance the employee shall be reinstated effective from the date of suspension.

**(f) Instant Dismissal**

Nothing in this clause prevents dismissal without notice in the case of serious misconduct.

## **Part 24 Employment Relationship Problems**

### **What is an Employment Relationship Problem?**

It is a problem between employee and employer. For example, it might be a personal grievance or a dispute about a provision in an employment agreement.

### **Resolving an Employment Relationship Problem**

The employee and employer should first make a reasonable effort to discuss the problem and settle it by mutual agreement. (If it is a personal grievance, it must first be raised with the employer **within 90 days** - Personal Grievances are explained further below.)

An employee (or employer) has the right to be represented at any stage.

When a problem arises, union members should contact their local NZEI Te Riu Roa field officer for advice and representation.

Employers should contact an adviser/representative of choice.

### **Personal Grievances**

A personal grievance is a particular type of employment relationship problem that normally must be raised with the employer within 90 days of the grievance arising.

An employee may have a personal grievance where:

- They have been dismissed without good reason, or the dismissal was not carried out properly.
- They have been treated unfairly.
- Their employment or a condition of their employment has been affected to their disadvantage by an unjustified action of their employer.
- They have experienced sexual or racial harassment, or have been discriminated against because of their involvement in a union or other employee organisation, or have suffered duress over membership or non-membership of a union or other employee organisation.
- They have been discriminated against in terms of the prohibited grounds of discrimination under the Human Rights Act 1993.

Note: The full meaning of the terms personal grievance, discrimination, sexual harassment, racial harassment, and duress, shall be the meaning given by sections 103 to 110 inclusive of the Employment Relations Act 2000 only. For ease of access these are attached at the end of this agreement as Appendix D.

As with other employment relationship problems, the parties should always try to resolve a personal grievance through discussion.

Either party can refer a personal grievance to the Employment Relations Service of the Ministry of Business Innovation and Employment for mediation assistance, or to the Employment Relations Authority.

If the problem relates to a type of discrimination that can be the subject of a complaint to the Human Rights Commission under the Human Rights Act 1993, the person can either take a personal grievance, or complain to the Human Rights Commission, but not both. If in doubt, advice should be sought before deciding.

### **Services Available**

To help resolve employment relationship problems, the Ministry of Business Innovation and Employment provides:

#### ***An Information Service***

- This is free. It is available by contacting the Ministry of Business Innovation and Employment or by phoning toll free 0800 20 90 20. The Ministry's Employment Relations Service internet address is <https://www.employment.govt.nz/>

#### ***Mediation Service***

- The Mediation Service is a free and independent service available through the Ministry of Business Innovation and Employment.
- This service helps to resolve employment relationship problems and generally to promote the smooth conduct of employment relationships.
- Mediation is a mutual problem solving process, with the aim of reaching an agreement, assisted by an independent third party.
- If the parties can't reach a settlement they can ask the mediator, in writing, to make a final and binding decision.
- A settlement reached through mediation and signed by the mediator at the request of the parties is final, binding and enforceable. Neither party can then take the matter any further and, either party can be made to comply with the agreed settlement by court order.
- If the problem is unresolved through mediation either party may apply to have the matter dealt with by the Employment Relations Authority.



### ***The Employment Relations Authority***

- This Authority is an investigative body that operates in an informal way. It looks into the facts and makes a decision on the merits of the case and not on the legal technicalities.
- Either an employer or an employee can refer an unresolved employment relationship problem to the Authority by filing the appropriate forms.
- The Authority may call evidence, hold investigative meetings, or interview anyone involved. It can direct the parties to try mediation. If mediation is unsuitable or has not resolved the problem, the Authority will make a decision that is binding on all parties. Any party can contest the Authority's decision through the Employment Court.
- **Note:** All employment relationship problems, including personal grievances and any disputes about the interpretation or application of this agreement, must be resolved under Parts 9 and 10 of the Employment Relations Act 2000.

## **Part 25**

### **Reduction of Salaries, Wages and Conditions - Ngā hekenga utu me ngā whakaritenga**

Except as explicitly provided by this agreement, for example in Part 6, no employee coming within the scope of this agreement shall have her/his wages or salary or conditions (except those in the settlement of this agreement relating to Higher duties, Hours of work, Overtime, Tutor Teacher Allowance) reduced by reason of the operation of this agreement.

## **44**

### **Domestic/Family Violence Support**

Employees who experience domestic/family violence can seek support and assistance from their employer.

#### Family violence leave

Family violence leave shall be granted in accordance with the provisions of the Holidays Act 2003 and its amendments.

In accordance with the Holidays Act, an employee who is experiencing family violence is eligible for family violence leave after six months current continuous service with their employer; the entitlement is to up to 10 days leave in each subsequent 12 month period. The employer may require evidence that the employee is affected by family violence. This section is added to provide general information about the entitlement provided by the Act and does not replace the provisions of the Act.

#### Flexible working arrangements

In accordance with the Employment Relations Act 2000, an employee affected by family violence may request a short-term (two months or less) variation of their employment arrangements to assist the employee to deal with the effects of family violence.

## Schedule A – Pukapuka a piti A

### All Employers party to the Early Childhood Collective Agreement 2021-2022

Centre Owner - Party to ECECA	Worksite Name
Adelaide Early Childcare Centre	Adelaide Early Childcare Centre
Alexandra Childcare Centre (1995) Incorporated	Kopuwai Early Learning Centre
Andersons Bay Community Kindergarten Incorporated	Anderson Bay Community Kindergarten
Aranui Wainoni Community Child Care Centres Association Incorporated	E Tipu E Rea Early Learning Centre
Aro Valley Preschool Cooperative Incorporated	Aro Valley preschool
Arrowtown Pre-School	Arrowtown Early Learning Centre (Durham Street)
	Arrowtown Pre-School (Cotter Ave)
Arthur Burns Preschool	Arthur Burns Preschool
Avonside Early Childhood Centre	Avonside Early Childhood Centre
Bernard Goldwater Educational Trust	Kadimah Preschool
Big Steps Educare Incorporated	Big Steps Educare
Bowen Early Childhood Education Centre	Bowen Early Childhood Education Centre
Bridge Street Early Learning Centre Incorporated	Bridge Street Early Learning Centre
Capital Kids Co-Operative Childcare Centre Incorporated	Capital Kids Co-Operative
Catholic Diocese of Auckland	Marian Early Childhood Centre
Collectively Kids Limited	Collectively Kids Ltd
Coromandel Community Preschool Incorporated	Coromandel Community Preschool
Cotswold Preschool & Nursery Association Incorporated	Cotswold Preschool and Nursery
Cromwell Early Learning Centre	Cromwell Early Learning Centre
Devonport Community Creche	Devonport Community Creche
Dunedin Community Child Care Association Incorporated (Pioneers)	Pioneers Elm Row
	Pioneers Home Central
	Pioneers Koputai
	Pioneers Nursery
	Pioneers Russell Street
Dunedin Hospital Early Childhood Centre Incorporated	Dunedin Hospital Early Childhood Centre
	Waikari Hospital Early Childhood Centre
East Coast Bays Community Creche Incorporated	East Coast Bays Community Creche
Eastern Institute of Technology	Ōtātara Children's Centre
Educational Child Care Centre Inc	Educational Child Care Centre Inc
Family Link Society Incorporated	Family Link Childcare
Finlayson Park Community Education Trust	Finlayson Park Childcare Centre
First Years Pre-School Inc	First Years Preschool Incorporated
Geraldine Pre-School Inc	Geraldine Pre-School
Gisborne Awapuni Under Fives Preschool	Awapuni Under Fives Community Preschool
Glenavon Early Childhood Centre Incorporated	Glenavon Early Childhood Centre
Glenfield Community Centre Incorporated	Glenfield Early Learning Centre
Golden Kids Incorporated	Golden Kids Inc. Early Learning Centre
Gracefield Early Childhood Centre Incorporated	Gracefield Early Childhood Centre
Highbury Community House Incorporated	Highbury House Early Learning Centre

Hill Street Early Childhood Centre Incorporated	Hill Street Early Childhood Centre
Islington Early Childhood Centre Incorporated	Islington Early Childhood Centre
Karori Childcare Centre Incorporated	Karori Childcare Centre
Karori Kids	Karori Kids
Kelston Community Trust	Kelston Early Childhood Centre
Kids' Environment Incorporated	Kids' Environment
Kidzone Public Servants Newtown Childcare Centre Society Inc	Kidzone Public Servants Childcare Centre
Kilbirnie Community Creche Incorporated	Kilbirnie Early Learners
Little Papis Childcare Incorporated	Little Papis Childcare
Lower Hutt Public Service Childcare Centre Incorporated	Nga Tamariki Childcare Centre
Lynfield College Community Childcare Centre Inc	Lynfield College Community Childcare Centre
Mana Montessori Preschool	Mana Montessori Preschool
Marton Junction Community Preschool Management	Marton Junction Community Pre-school
Methven Creche Association Incorporated	Methven Pre-school Learning & Child Care Centre
Moriah Kindergarten Incorporated	Moriah Kindergarten
Newlands Childcare Incorporated	Newlands Childcare
Newtown Community Creche Incorporated	Newtown Early Learning Centre
New Brighton Community Preschool and Nursery Inc	New Brighton Community Pre-School
Northcote Point Community Creche Incorporated	Northcote Point Community Creche
Northland Community Preschool Incorporated	Northland Community Pre-School
Matapu Preschool	Matapu Preschool
Opunake Communities Kindergarten	Opunake Communities Kindergarten
Otago Polytechnic	Polykids (Otago Polytechnic Childcare)
Otago University Childcare Association	Te Pa
	OUCA College Centre – Ropu Tiaki Tamaiti
Pelorus Community Preschool Incorporated	Pelorus Community Preschool
Peninsula Community Pre-School Incorporated	Peninsula Community Preschool
Picton Community Centre (Incorporated)	Picton Community Early Learning Centre
Playhouse Incorporated	Playhouse Childcare Centre
Poly-High Community Childcare Centre Incorporated	Polyhigh Community Childcare Centre
Queen's High Pre-School Trust	Queens High Preschool
Rangi Ruru Girls' School Board of Governors Inc	Rangi Ruru Pre-School
Rangiora High School Nursery Board	Rangiora High School Nursery
Red Hills Community Kindergarten Incorporated	Red Hills Community Kindergarten
Rotorua Girls High School Childcare Trust	Rotorua Girls' High School Childcare Centre
Rutherford Preschool Incorporated	Rutherford Preschool
Rutherford Street Kindergarten Incorporated	Rutherford Street Kindergarten
Southern Cross Campus Foundation Limited	Southern Cross Pre School
St Albans Community Preschool	St Albans Community Preschool
St Andrew's Christian Preschool Management Committee	St Andrews Christian Pre-School
St Mary's Preschool Incorporated	St Marys Pre-School
Sydenham Community Pre-School Incorporated	Sydenham Community Preschool
Te Kaingānui Incorporated	Te Kaingānui Early Education Centre

Te Kohanga Reo o Mana Tamariki	Te Kohanga Reo o Mana Tamariki
Te Reanga Inc. Society	Te Reanga Childcare Centre
The Carol White Family Centre Incorporated	Carol White Family Centre
Trinity Schools Trust Board	Hadlow Preschool
Upper Hutt Child Development Trust	Marlborough St Childcare Centre
Victoria Early Learning Centre Incorporated	Victoria Early Learning Centre
Waiheke Community Childcare Centre Incorporated	Waiheke Community Childcare Centre
Waimate Childcare Centre Incorporated	Waimate Childcare Centre Inc.
Waltham Out of School Hours (WOOSH)	Waltham Out of School Hours (WOOSH)
Wellbeing North Canterbury Community Trust	Karanga Mai Early Learning Centre
Wellington City Rudolf Steiner Kindergarten	Wellington City Rudolf Steiner Kindergarten
Wellington Public Servants' Childcare Centre	Pipitea Childcare Centre
Whangārei Child Care Centre Incorporated	Whangārei Childcare Centre

# Appendix A

## Employment Relations Education Leave

### Interpretation

In this Appendix, unless the context otherwise requires:

**eligible employee** means an employee who is a member of NZEI Te Riu Roa; and

- 1 who is employed by an employer that is:
  - (a) bound by this collective agreement; or
  - (b) bargaining for a collective agreement to replace this collective agreement; and
- 2 who is bound by the collective agreement or would be bound by the collective agreement being bargained for.

**specified date** means 1 April;

**year** means a period of 12 months beginning on 1 April and ending on the close of the last day of March in the following year.

### **NZEI Te Riu Roa to allocate employment relations education leave in accordance with this appendix**

- 1 The maximum number of days of employment relations education leave that NZEI Te Riu Roa is entitled to allocate in a year in respect of an employer's eligible employees is the number of days calculated in accordance with 3, unless the employer agrees to the allocation of additional days.
- 2 The maximum number of days of employment relations education leave that NZEI Te Riu Roa is entitled to allocate in a year to an eligible employee is 5 days, unless the employee's employer agrees to the allocation of additional days.
- 3 Employment relations education leave expires if it is not allocated by the end of the year in respect of which it is calculated under 3, unless the employer agrees that the leave may be carried forward to the next year.

#### **(i) Calculation of maximum number of days of employment relations education leave**

- 1 The maximum number of days of employment relations education leave that NZEI Te Riu Roa is entitled to allocate in respect of an employer is based on the number of full-time equivalent eligible employees employed by the employer as at 1 April in that year, and is determined in accordance with the following table:
- 2 For the purposes of calculating the number of full-time equivalent eligible employees employed by an employer:
  - (a) an eligible employee who normally works 30 hours or more during a week is to be counted as 1;
  - (b) an eligible employee who normally works less than 30 hours during a week is to be counted as one-half.

Full time equivalent eligible employees as at the specified date in a year	Maximum number of days of employment relations education leave that union entitled to allocate
1-5	3
6-50	5
51-280	1 day for every 8 full-time equivalent eligible employees or part of that number
281 or more	35 days plus 5 days for every 100 full-time equivalent eligible employees or part of that number that exceeds 280

(iii) **Notification of employment relations education leave calculated**

- 1 After calculating the maximum number of days of employment relations education leave NZEI Te Riu Roa must before 1 May in each year give the employer concerned a notice containing:
  - the maximum number of days calculated in respect of the employer; and
  - the details of the calculation.
- 2 The employment relations education leave that NZEI Te Riu Roa is entitled to allocate in respect of an employer in any one year shall be reduced by one-twelfth for each complete month after 1 May in which NZEI Te Riu Roa has not complied with (1).

(iv) Allocation of employment relations education leave calculated in respect of another employer:

- 1 NZEI Te Riu Roa may allocate employment relations education leave calculated in respect of an employer to 1 or more eligible employees of another employer only if, and to the extent that, the employers concerned agree, and subject to any terms and conditions agreed with the employers.

(v) Allocation of employment relations education leave to eligible employee:

- 1 Employment relations education leave is allocated to an eligible employee by giving a notice to the employee, and a copy of the notice to the employee's employer, that informs the employee:
  - (a) That NZEI Te Riu Roa has allocated employment relations education leave to the employee; and
  - (b) Of the number of days of employment relations education leave allocated to the employee; and
  - (c) That the employee must take the employment relations education leave by the end of the year in which it is allocated; and
  - (d) of the terms or effect of 7 and 8.

- 2 The allocation of employment relations education leave does not, of itself, entitle the employee to take the leave.
- (vi) Eligible employee proposing to take employment relations education leave:
- 1 An eligible employee proposing to take employment relations education leave must tell their employer:
    - (a) That the employee proposes to take that leave; and
    - (b) The dates on which the employee proposes to take that leave; and
    - (c) The employment relations education that the employee proposes to undertake during that leave.
  - 2 An eligible employee must not take employment relations education leave unless the employee complies with (1) as soon as possible, but in any event no later than 14 days before the first day of such leave.
  - 3 An employer may refuse to allow an eligible employee to take employment relations education leave if the employer is satisfied, on reasonable grounds, that the employee taking employment relations education leave on the dates notified would unreasonably disrupt the employer's business.
  - 4 In (2) day means a day of the week other than a day in the period beginning with 25 December in any year and ending with 5 January in the following year.
- (vii) Eligible employee taking employment relations education leave entitled to ordinary pay:
- 1 An employer must pay to an eligible employee the employee's ordinary pay (as defined in section 4 of the Holidays Act 1981) for every day or part of a day taken by the employee as employment relations education leave.
  - 2 However, an employer is not required to comply with subsection (1) in respect of any day for which the eligible employee is paid weekly compensation under the Accident Insurance Act 1998.

## Appendix B

### Grand-parented provisions

- (a) **Note:** In support of the establishment of the Diploma of Teaching (ECE) or its equivalent as the benchmark qualification in early childhood education, T1 rates have been deleted from all salary scales in the Collective Agreement and Unqualified rates have been deleted from Early Childhood Assistant Supervisor scale.

All T1 rates and UT rates in the Assistant Supervisor scale only apply to existing staff employed prior to 1 November 2002, who will progress through the scale until they reach Year 7 or are reclassified as Q1, Q2 or Q3.

It should be noted that progression on the scale was frozen during the term of the 28 October 2015 collective agreement and thus progression for employees who were covered by that agreement will not correlate to the number of steps that their service would otherwise suggest

#### Early Childhood – Effective 1 July 2007

##### Supervisor

T1	Effective from 1 July 2007 \$ per hour	Effective from 1 April 2021
1	\$16.79	\$20.00
2	\$17.49	\$20.00
3	\$18.18	\$20.00
4	\$18.87	\$20.00
5	\$19.55	\$20.00
6	\$20.26	
7	\$20.91	

#### Assistant Supervisor / Senior Early Childhood Teacher / Kaiako

U/T	Effective from 1 July 2007 \$ per hour	Effective 1 April 2021 \$ per hour
1	\$13.54	\$20.00
2	\$14.23	\$20.00
3	\$14.90	\$20.00
4	\$15.60	\$20.00

#### Assistant Supervisor / Senior Early Childhood Teacher / Kaiako

T1	(Effective from 1 July 2007 \$ per hour	Effective 1 April 2020 \$ per hour
1	\$14.84	\$20.00
2	\$15.52	\$20.00
3	\$16.21	\$20.00
4	\$16.89	\$20.00
5	\$18.10	\$20.00
6	\$18.23	\$20.00
7	\$18.96	\$20.00



## Early Childhood teacher / Kaiako

T1	Effective from 1 July 2007 \$ per hour	Effective 1 April 2021 \$ per hour
1	\$12.98	\$20.00
2	\$13.68	\$20.00
3	\$14.34	\$20.00
4	\$15.08	\$20.00
5	\$15.77	\$20.00
6	\$16.48	\$20.00
7	\$17.13	\$20.00

- (b) Employees who were members of NZEI Te Riu Roa as at 26 November 2013 of this agreement shall be entitled to the following redundancy compensation formula instead of the formula provided in clause 20(d), provided they remain members of the union:

4 weeks' pay for the first year of service with the same employer and thereafter 2 weeks' pay for every year or part year of service with the same employer to a maximum of 24 weeks.

This is not available to employees who are not NZEI Te Riu Roa members (see Part 2 (a)).

## Appendix C

### Extract From Employment Relations Act 2000

#### 103 Personal grievance

- (1) For the purposes of this Act, **personal grievance** means any grievance that an employee may have against the employee's employer or former employer because of a claim—
- (a) that the employee has been unjustifiably dismissed; or
  - (b) that the employee's employment, or 1 or more conditions of the employee's employment (including any condition that survives termination of the employment), is or are or was (during employment that has since been terminated) affected to the employee's disadvantage by some unjustifiable action by the employer; or
  - (c) that the employee has been discriminated against in the employee's employment; or
  - (d) that the employee has been sexually harassed in the employee's employment; or
  - (da) that the employee has been treated adversely in the employee's employment on the ground that the employee is, or is suspected or assumed or believed to be, a person affected by family violence; or
  - (e) that the employee has been racially harassed in the employee's employment; or
  - (f) that the employee has been subject to duress in the employee's employment in relation to membership or non-membership of a union or employees organisation; or
  - (g) that the employee's employer has failed to comply with a requirement of [Part 6A](#); or
  - (h) that the employee has been disadvantaged by the employee's employment agreement not being in accordance with [section 67C](#), [67D](#), [67G](#), or [67H](#); or
  - (i) that the employee's employer has contravened [section 67F](#) or [67G\(3\)](#); or
  - (j) that the employee's employer has, in relation to the employee,—
    - (i) engaged in adverse conduct for a prohibited health and safety reason; or
    - (ii) contravened [section 92](#) of the Health and Safety at Work Act 2015 (which prohibits coercion or inducement).
- (2) For the purposes of this Part, a representative, in relation to an employer and in relation to an alleged personal grievance, means a person—
- (a) who is employed by that employer; and**
  - (b) who either—**
    - (i) has authority over the employee alleging the grievance; or
    - (ii) is in a position of authority over other employees in the workplace of the employee alleging the grievance.
- (3) In subsection (1)(b), unjustifiable action by the employer does not include an action deriving solely from the interpretation, application, or operation, or disputed interpretation, application, or operation, of any provision of any employment agreement.
- (4) For the purposes of [sections 103B](#), [115A](#), and [123A](#), the provisions of this Act that describe, define terms relating to, and provide for the application of the grounds for a personal grievance under subsection (1) apply with all necessary modifications as if—
- (a) references to the employer were references to the controlling third party; and
  - (b) references to the employee's employment included work the employee has performed under the control or direction of a controlling third party.

Compare: 1991 No 22 s 27

Section 103(1)(da): inserted, on 1 April 2019, by [section 8](#) of the Domestic Violence—Victims' Protection Act 2018 (2018 No 21).

Section 103(1)(da): amended, on 1 July 2019, by [section 259\(1\)](#) of the Family Violence Act 2018 (2018 No 46).

Section 103(1)(f): amended, on 14 September 2006, by [section 7\(1\)](#) of the Employment Relations Amendment Act 2006 (2006 No 41).

Section 103(1)(g): added, on 14 September 2006, by [section 7\(2\)](#) of the Employment Relations Amendment Act 2006 (2006 No 41).

Section 103(1)(g): amended, on 10 September 2008, by [section 7\(1\)](#) of the Employment Relations (Breaks, Infant Feeding, and Other Matters) Amendment Act 2008 (2008 No 58).

Section 103(1)(h): replaced, on 1 April 2016, by [section 10](#) of the Employment Relations Amendment Act 2016 (2016 No 9).

Section 103(1)(i): inserted, on 1 April 2016, by [section 10](#) of the Employment Relations Amendment Act 2016 (2016 No 9).

Section 103(1)(i): amended, on 17 December 2016, by [section 44](#) of the Statutes Amendment Act 2016 (2016 No 104).

Section 103(1)(j): inserted, on 4 April 2016, by [section 5](#) of the Employment Relations Amendment Act 2015 (2015 No 73).

Section 103(4): inserted, on 27 June 2020, by [section 5](#) of the Employment Relations (Triangular Employment) Amendment Act 2019 (LI 2019 No 36).

### **103A Test of justification**

- (1) For the purposes of [section 103\(1\)\(a\)](#) and (b), the question of whether a dismissal or an action was justifiable must be determined, on an objective basis, by applying the test in subsection (2).
- (2) The test is whether the employer's actions, and how the employer acted, were what a fair and reasonable employer could have done in all the circumstances at the time the dismissal or action occurred.
- (3) In applying the test in subsection (2), the Authority or the court must consider—
  - (a) whether, having regard to the resources available to the employer, the employer sufficiently investigated the allegations against the employee before dismissing or taking action against the employee; and
  - (b) whether the employer raised the concerns that the employer had with the employee before dismissing or taking action against the employee; and
  - (c) whether the employer gave the employee a reasonable opportunity to respond to the employer's concerns before dismissing or taking action against the employee; and
  - (d) whether the employer genuinely considered the employee's explanation (if any) in relation to the allegations against the employee before dismissing or taking action against the employee.
- (4) In addition to the factors described in subsection (3), the Authority or the court may consider any other factors it thinks appropriate.
- (5) The Authority or the court must not determine a dismissal or an action to be unjustifiable under this section solely because of defects in the process followed by the employer if the defects were—
  - (a) minor; and
  - (b) did not result in the employee being treated unfairly.

Section 103A: substituted, on 1 April 2011, by [section 15](#) of the Employment Relations Amendment Act 2010 (2010 No 125).

### **103B Joining controlling third party to personal grievance**

- (1) This section applies if—
  - (a) an employee has—
    - (i) raised a personal grievance in accordance with [section 114](#); and
    - (ii) applied to the Authority to resolve a personal grievance with the employee's employer; and
  - (b) the personal grievance relates to an action that is alleged to have occurred while the employee was working under the control or direction of a controlling third party.

- (2) The employee or the employer, or both, may apply to the Authority or the court to join the controlling third party to the proceedings to resolve the personal grievance.
- (3) The Authority or the court must grant the application to join a controlling third party if the Authority or the court is satisfied—
  - (a) that the requirement to notify the controlling third party in accordance with [section 115A](#) has been complied with; and
  - (b) that an arguable case has been made out—
    - (i) that the party to be joined to the proceedings is a controlling third party; and
    - (ii) that the party's actions caused or contributed to the personal grievance.
- (4) The Authority or the court may, at any stage of the proceedings, of its own motion join a controlling third party to the proceedings by order.
- (5) If the Authority or the court joins the controlling third party to the proceedings, the Authority or the court must consider whether to direct the employer, the employee, and the controlling third party to use mediation services to seek to resolve the personal grievance.

Section 103B: inserted, on 27 June 2020, by [section 6](#) of the Employment Relations (Triangular Employment) Amendment Act 2019 (LI 2019 No 36).

#### 104 Discrimination

- (1) For the purposes of [section 103\(1\)\(c\)](#), an employee is **discriminated against in that employee's employment** if the employee's employer or a representative of that employer, by reason directly or indirectly of any of the prohibited grounds of discrimination specified in [section 105](#), or the employee's union membership status or involvement in union activities in terms of [section 107](#),—
  - (a) refuses or omits to offer or afford to that employee the same terms of employment, conditions of work, fringe benefits, or opportunities for training, promotion, and transfer as are made available for other employees of the same or substantially similar qualifications, experience, or skills employed in the same or substantially similar circumstances; or
  - (b) dismisses that employee or subjects that employee to any detriment, in circumstances in which other employees employed by that employer on work of that description are not or would not be dismissed or subjected to such detriment; or
  - (c) retires that employee, or requires or causes that employee to retire or resign.
- (2) For the purposes of this section, **detriment** includes anything that has a detrimental effect on the employee's employment, job performance, or job satisfaction.
- (3) This section is subject to the exceptions set out in [section 106](#).

Compare: 1991 No 22 s 28(1)

Section 104(1): amended, on 11 June 2019, by [section 31](#) of the Employment Relations Amendment Act 2018 (2018 No 53).

Section 104(1): amended, on 4 April 2016, by [section 6](#) of the Employment Relations Amendment Act 2015 (2015 No 73).

#### 105 Prohibited grounds of discrimination for purposes of section 104

- (1) The prohibited grounds of discrimination referred to in [section 104](#) are the prohibited grounds of discrimination set out in [section 21\(1\)](#) of the Human Rights Act 1993, namely—
  - (a) sex:
  - (b) marital status:
  - (c) religious belief:
  - (d) ethical belief:
  - (e) colour:

- (f) race:
- (g) ethnic or national origins:
- (h) disability:
- (i) age:
- (j) political opinion:
- (k) employment status:
- (l) family status:
- (m) sexual orientation.

(2) The items listed in subsection (1) have the meanings (if any) given to them by [section 21\(1\)](#) of the Human Rights Act 1993.

### **106 Exceptions in relation to discrimination**

- (1) [Section 104](#) must be read subject to the following provisions of the [Human Rights Act 1993](#) dealing with exceptions in relation to employment matters:
- (a) [section 24](#) (which provides for an exception in relation to crews of ships and aircraft):
  - (b) [section 25](#) (which provides for an exception in relation to work involving national security):
  - (c) [section 26](#) (which provides for an exception in relation to work performed outside New Zealand):
  - (d) [section 27](#) (which provides for exceptions in relation to authenticity and privacy):
  - (e) [section 28](#) (which provides for exceptions for purposes of religion):
  - (f) [section 29](#) (which provides for exceptions in relation to disability):
  - (g) [section 30](#) (which provides for exceptions in relation to age):
  - (h) [section 31](#) (which provides for an exception in relation to employment of a political nature):
  - (i) [section 32](#) (which provides for an exception in relation to family status):
  - (j) *[Repealed]*
  - (k) [section 34](#) (which relates to regular forces and Police):
  - (l) [section 35](#) (which provides a general qualification on exceptions):
  - (m) [section 70](#) (which relates to superannuation schemes).
- (2) For the purposes of subsection (1), [sections 24 to 35](#) of the Human Rights Act 1993 must be read as if they referred to [section 104](#) of this Act, rather than to [section 22](#) of that Act. In particular,—
- (a) references in [sections 24 to 29, 31, and 32](#) of that Act to [section 22](#) of that Act must be read as if they were references to [section 104\(1\)](#); and
  - (b) references in [section 30](#) or [section 34](#) of that Act—
    - (i) to [section 22\(1\)\(a\) or 22\(1\)\(b\)](#) of that Act must be read as if they were references to [section 104\(1\)\(a\)](#); and
    - (ii) to [section 22\(1\)\(c\)](#) of that Act must be read as if they were references to [section 104\(1\)\(b\)](#); and
    - (iii) to [section 22\(1\)\(d\)](#) of that Act must be read as if they were references to [section 104\(1\)\(c\)](#).
- (3) Nothing in [section 104](#) includes as discrimination—
- (a) anything done or omitted for any of the reasons set out in paragraph (a) or paragraph (b) of [section 73\(1\)](#) of the Human Rights Act 1993 (which relate to measures to ensure equality); or
  - (b) preferential treatment granted by reason of any of the reasons set out in paragraph (a) or paragraph (b) of [section 74](#) of the Human Rights Act 1993 (which relate to pregnancy, childbirth, or family responsibilities); or

- (c) retiring an employee or requiring or causing an employee to retire at a particular age that has effect by virtue of [section 149\(2\)](#) of the Human Rights Act 1993 (which is a savings provision in relation to retirement ages specified in certain employment contracts).
- (4) Despite [section 104](#), an employee is not discriminated against in that employee's employment simply because the employee's employment agreement or terms and conditions of employment are different from those of another employee employed by the same employer by reason of the employee being a member of a union.
- (5) [Section 104](#) must be read subject to [section 9\(3\)](#).

Section 106(1)(j): repealed, on 5 May 2007, by [section 6\(2\)](#) of the Human Rights (Women in Armed Forces) Amendment Act 2007 (2007 No 16).

Section 106(1)(m): added, on 1 December 2004, by [section 39](#) of the Employment Relations Amendment Act (No 2) 2004 (2004 No 86).

Section 106(2)(a): amended, on 5 May 2007, by [section 6\(3\)](#) of the Human Rights (Women in Armed Forces) Amendment Act 2007 (2007 No 16).

Section 106(4): inserted, on 11 June 2019, by [section 32](#) of the Employment Relations Amendment Act 2018 (2018 No 53).

Section 106(5): inserted, on 11 June 2019, by [section 32](#) of the Employment Relations Amendment Act 2018 (2018 No 53).

### **107 Definition of union membership status or involvement in union activities for purposes of section 104**

- (1) For the purposes of [section 104](#), involvement in union activities means that, within the 18 months before the action complained of, the employee—
  - (a) was an officer of a union or part of a union, or was a member of the committee of management of a union or part of a union, or was otherwise an official or representative of a union or part of a union; or
  - (b) had acted as a negotiator or representative of employees in collective bargaining; or
  - (ba) had participated in a strike lawfully; or
  - (c) was involved in the formation or the proposed formation of a union; or
  - (d) had made or caused to be made a claim for some benefit of an employment agreement either for that employee or any other employee, or had supported any such claim, whether by giving evidence or otherwise; or
  - (e) had submitted another personal grievance to that employee's employer; or
  - (f) had been allocated, had applied to take, or had taken any employment relations education leave under this Act; or
  - (g) was a delegate of other employees in dealing with the employer on matters relating to the employment of those employees.
- (2) For the purposes of [section 104](#), union membership status means that, within the 18 months before the action complained of, the employee—
  - (a) was a member of a union; or
  - (b) intended to join a union.

#### **(2) [Repealed]**

Compare: 1991 No 22 s 28(2)

Section 107 heading: amended, on 11 June 2019, by [section 33\(1\)](#) of the Employment Relations Amendment Act 2018 (2018 No 53).

Section 107(1): amended, on 11 June 2019, by [section 33\(2\)](#) of the Employment Relations Amendment Act 2018 (2018 No 53).

Section 107(1)(ba): inserted, on 1 December 2004, by [section 40](#) of the Employment Relations Amendment Act (No 2) 2004 (2004 No 86).

Section 107(2): inserted, on 11 June 2019, by [section 33\(3\)](#) of the Employment Relations Amendment Act 2018 (2018 No 53).

Section 107(2): repealed, on 4 April 2016, by [section 7](#) of the Employment Relations Amendment Act 2015 (2015 No 73).

## 108 Sexual harassment

- (1) For the purposes of [sections 103\(1\)\(d\)](#) and [123\(d\)](#), an employee is sexually harassed in that employee's employment if that employee's employer or a representative of that employer—
- (a) directly or indirectly makes a request of that employee for sexual intercourse, sexual contact, or other form of sexual activity that contains—
    - (i) an implied or overt promise of preferential treatment in that employee's employment; or
    - (ii) or overt threat of detrimental treatment in that employee's employment; or
    - (iii) an implied or overt threat about the present or future employment status of that employee; or
  - (b) by—
    - (i) the use of language (whether written or spoken) of a sexual nature; or
    - (ii) the use of visual material of a sexual nature; or
    - (iii) physical behaviour of a sexual nature,—directly or indirectly subjects the employee to behaviour that is unwelcome or offensive to that employee (whether or not that is conveyed to the employer or representative) and that, either by its nature or through repetition, has a detrimental effect on that employee's employment, job performance, or job satisfaction.
- (2) For the purposes of [sections 103\(1\)\(d\)](#) and [123\(d\)](#), an employee is also sexually harassed in that employee's employment (whether by a co-employee or by a client or customer of the employer), if the circumstances described in [section 117](#) have occurred.

Compare: 1991 No 22 s 29

## 108A Adverse treatment in employment of people affected by family violence

- (1) For the purposes of [sections 103\(1\)\(da\)](#) and [123\(1\)\(d\)](#), an employee is treated adversely in the employee's employment on the ground that the employee is, or is suspected or assumed or believed to be, a person affected by family violence if, on the ground that the employee is, or is suspected or assumed or believed to be, a person affected by family violence (as that term is defined in [section 69ABA](#)), that employee's employer or a representative of that employer—
- (a) dismisses that employee, in circumstances in which other employees employed by that employer on work of that description are not or would not be dismissed; or
  - (b) refuses or omits to offer or afford to that employee the same terms of employment, conditions of work, fringe benefits, or opportunities for training, promotion, and transfer as are made available for other employees of the same or substantially the same qualifications, experience, or skills employed in the same or substantially similar circumstances; or
  - (c) subjects that employee to any detriment, in circumstances in which other employees employed by that employer on work of that description are not or would not be subjected to such detriment; or
  - (d) retires that employee, or requires or causes that employee to retire or resign.
- (2) Subsection (1) applies regardless of how long ago the family violence occurred or is suspected or assumed or believed to have occurred, and even if the family violence occurred or is suspected or assumed or believed to have occurred before the person became an employee.

Section 108A: inserted, on 1 April 2019, by [section 9](#) of the Domestic Violence—Victims' Protection Act 2018 (2018 No 21).

Section 108A heading: amended, on 1 July 2019, by [section 259\(1\)](#) of the Family Violence Act 2018 (2018 No 46).

Section 108A(1): amended, on 1 July 2019, by [section 259\(1\)](#) of the Family Violence Act 2018 (2018 No 46).

Section 108A(2): amended, on 1 July 2019, by [section 259\(1\)](#) of the Family Violence Act 2018 (2018 No 46).

### **109 Racial harassment**

- (1) For the purposes of [sections 103\(1\)\(e\)](#) and [123\(d\)](#), an employee is racially harassed in the employee's employment if the employee's employer or a representative of that employer uses language (whether written or spoken), or visual material, or physical behaviour that directly or indirectly—
- (a) expresses hostility against, or brings into contempt or ridicule, the employee on the ground of the race, colour, or ethnic or national origins of the employee; and
  - (b) is hurtful or offensive to the employee (whether or not that is conveyed to the employer or representative); and
  - (c) has, either by its nature or through repetition, a detrimental effect on the employee's employment, job performance, or job satisfaction.

### **110 Duress**

- (1) For the purposes of [section 103\(1\)\(f\)](#), an employee is subject to duress in that employee's employment in relation to membership or non-membership of a union or employees organisation if that employee's employer or a representative of that employer directly or indirectly—
- (a) makes membership of a union or employees organisation or of a particular union or employees organisation a condition to be fulfilled if that employee wishes to retain that employee's employment; or
  - (b) makes non-membership of a union or employees organisation or of a particular union or employees organisation a condition to be fulfilled if that employee wishes to retain that employee's employment; or
  - (c) exerts undue influence on that employee, or offers, or threatens to withhold or does withhold, any incentive or advantage to or from that employee, or threatens to or does impose any disadvantage on that employee, with intent to induce that employee—
    - (i) to become or remain a member of a union or employees organisation or a particular union or employees organisation; or
    - (ii) to cease to be a member of a union or employees organisation or a particular union or employees organisation; or
    - (iii) not to become a member of a union or employees organisation or a particular union or employees organisation; or
    - (iv) in the case of an employee who is authorised to act on behalf of employees, not to act on their behalf or to cease to act on their behalf; or
    - (v) on account of the fact that the employee is, or, as the case may be, is not, a member of a union or employees organisation or of a particular union or employees organisation, to resign from or leave any employment; or
    - (vi) to participate in the formation of a union or employees organisation; or
    - (vii) not to participate in the formation of a union or employees organisation.
- (2) In this section and in [section 103\(1\)\(f\)](#), employees organisation means any group, society, association, or other collection of employees other than a union, however described and whether incorporated or not, that exists in whole or in part to further the employment interests of the employees belonging to it.



## **110A Adverse conduct for prohibited health and safety reason**

- (1) For the purposes of this Part, an employer engages in adverse conduct for a prohibited health and safety reason if the employer or a representative of the employer, for a prohibited health and safety reason,—
  - (a) dismisses an employee; or
  - (b) refuses or omits to offer or afford to the employee the same terms of employment, conditions of work, fringe benefits, or opportunities for training, promotion, and transfer as are made available to other employees of the same or substantially similar qualifications, experience, or skills employed in the same or substantially similar circumstances; or
  - (c) subjects the employee to any detriment in circumstances in which other employees employed by the employer in work of that description are not or would not be subjected to such detriment; or
  - (d) retires the employee, or requires or causes the employee to retire or resign.
- (2) For the purposes of subsection (1), conduct described in that section is engaged in for a prohibited health and safety reason if it is engaged in for a reason described in [section 89](#) of the Health and Safety at Work Act 2015.
- (3) An employer may be found to have engaged in adverse conduct for a prohibited health and safety reason only if the prohibited health and safety reason was a substantial reason for the conduct.
- (4) For the purposes of subsection (3), a prohibited health and safety reason is presumed to be a substantial reason for the conduct unless the employer proves, on the balance of probabilities, that the reason was not a substantial reason for the conduct.
- (5) It is a defence to an action for a personal grievance under [section 103\(1\)\(j\)\(i\)](#) if the employer proves that—
  - (a) the conduct was reasonable in the circumstances; and
  - (b) a substantial reason for the conduct was to comply with the requirements of the [Health and Safety at Work Act 2015](#) or other relevant health and safety legislation (as defined in [section 16](#) of that Act).
- (6) For the purposes of this section,—
  - (a) an employer also engages in adverse conduct if the employer or a representative of the employer, in relation to the employee,—
    - (i) organises to take any action referred to in subsection (1) or threatens to organise or take that action; or
    - (ii) requests, instructs, induces, encourages, authorises, or assists another person to engage in adverse conduct for a prohibited health and safety reason:
  - (b) detriment includes anything that has a detrimental effect on the employee's employment, job performance, or job satisfaction.

Section 110A: replaced, on 4 April 2016, by [section 8](#) of the Employment Relations Amendment Act 2015 (2015 No 73).

Section 110A(5): amended, on 31 March 2017, by [section 5](#) of the Regulatory Systems (Workplace Relations) Amendment Act 2017 (2017 No 13).

**SIGNED BY THE PARTIES TO THE BARGAINING**

**For NZEI Te Riu Roa**

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Bella Pardoe

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Dated

**For Te Rito Maioha Early Childhood New Zealand represented employers**

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Kathy Wolfe

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Dated