Collective bargaining

Collective bargaining is the process used for negotiating collective employment agreements.

Collective bargaining is bargaining done to set up or renew a collective employment agreement between at least one registered union and at least one employer.

Successful collective bargaining can improve productivity in workplaces by building workplace relationships and it can be a cost effective way of agreement employment terms and conditions. Bargaining also provides a way to exchange ideas, promote parties’ common interests, and manage separate interests effectively.

- Collective bargaining generally includes all interactions between the parties negotiating a collective employment agreement. This includes communications and interactions before, during and after negotiation.
- During collective bargaining, both parties must act in good faith.
- Preparation, relationship management, good communication skills and problem-solving skills help with effective bargaining for collective agreements.
- Bargaining requires parties to consider both the long- and short-term issues and balance the views and interests of a wide range of people.
- Bargaining parties are likely to behave tactically in an effort to achieve positions and outcomes that are the most favourable to them. This behaviour is acceptable as long as it’s within reasonable limits.

The Employment Relations Act 2000 sets out rules for collective bargaining

These rules:

- help to give certainty for all parties
- recognise that every bargaining situation is different, and there are many bargaining styles. It's normal that parties will have different views on how to proceed and what is required for their circumstances
- recognise that bargaining for a collective employment agreement can be difficult, even for experienced negotiators, advocates and representatives
- give parties the flexibility to find their own way forward
- state that parties must use their best endeavours to reach a bargaining process agreement that outlines how bargaining should proceed
- state that the duty of good faith underpins collective bargaining and requires that parties to bargaining:
  - are active and constructive in establishing and maintaining a productive employment relationship
  - are responsive and communicative, and use their best endeavours to agree on an effective and efficient bargaining process
  - meet together to consider and respond to proposals to conclude a collective agreement
- state that bargaining parties don’t have to reach a collective agreement if:
  - bargaining has become unnecessarily drawn out and costly, or
  - agreement is unlikely, but
  - it is a breach of the duty of good faith if an employer won’t go into a collective employment agreement because they disagree with bargaining or with being a party to a collective agreement.
- state that a party bargaining for a collective agreement may apply to the Employment Relations Authority for a determination whether bargaining has concluded.

Stages of collective bargaining

There are usually many stages in collective bargaining. In each of these stages, the duty of good faith must be met. These stages can include:
• making the first decisions about bargaining – who, when, what and how
• deciding on proposed coverage
• dealing with bargaining notices
• joining existing bargaining and consolidating bargaining
• entering into a process agreement
• meeting to present, consider and respond to bargaining claims
• continuing to bargain when other issues are at a standstill
• dealing with representatives
• communicating during bargaining
• requesting and disclosing information
• using independent reviewers for information that may be confidential
• resolving problems
• ratifying the agreement.

Best practice bargaining involves thinking about:

• Preparation
  Understanding the issues and the people, and equipping the team for the process.
• Relationship
  Developing a strategy for maintaining the relationship before, during and after negotiations.
• Communication
  Building trust by applying an open communication style.
• Problem-solving
  Exploring options and strategies for reaching agreement.

Communications during bargaining

• **Good faith** applies before, during and after collective bargaining and in relation to all correspondence and communication that relates to the bargaining.
• Generally, communication that relates to direct or indirect bargaining must go through the representative and not directly to the employees represented by the union.
• An employer can still communicate directly with employees while bargaining for a collective employment agreement. This includes communicating about the employer’s proposals for the collective agreement, but any communications must be consistent with the duty of good faith. This includes:
  - unions and employers must not undermine or do anything that is likely to undermine the bargaining process or the bargaining representatives
  - employers can’t bargain directly or indirectly with the employees during collective bargaining unless both the union and employer agree
  - unions and employers must respect the role and authority of each other’s representatives. Any negotiations must always be done by the union and employer representatives officially involved in the bargaining.
• It is helpful if information is clear, accurate and in writing.

Other things to consider:

• Reaching agreement between the parties about the timing, nature and scope of communications (including media releases).
• Agreeing in advance of negotiations on disclosure of information and any independent reviewer arrangements.
• Having someone assigned to assess proposed communications from the point of view of the other bargaining party.
• Making joint communications.

Mediators can help

Experienced and inexperienced negotiators may benefit from help with collective bargaining. Getting advice early can avoid disputes later on. Experienced employment mediators from the Employment Mediation Services are available free of charge to help parties at any stage of the collective bargaining.

Bargaining fee arrangements

In some circumstances, the parties to collective bargaining can agree to a bargaining fee arrangement.

Recognition of Maori and other cultural interests

The Code of Good Faith for collective bargaining states that the bargaining process should take into account tikanga Maori (Maori customary values and practices). If also states that bargaining should take into account any cultural differences or protocols in the
bargaining environment. If bargaining is not going well and a party wants help from the employment mediation service to overcome a road block, they can ask for consideration of tikanga Maori or other cultural practices to be included.

**Initiation of collective bargaining**

An employer or union can initiate bargaining by giving the other parties an initiation of bargaining notice. If a party receives a notice meeting the requirements, they have to enter into bargaining.

**Preparing for bargaining**

Preparing for collective bargaining may include choosing and training the bargaining team, drafting a potential collective agreement, and setting up the bargaining process agreement.

**Preparing your team**

Choosing and training the bargaining team in preparation for collective bargaining.

**Negotiating the agreement**

Negotiations are part of the collective bargaining process. They refer to any form of discussion, either formal or informal, that is used to reach an agreement.

**After the negotiations**

When the bargaining parties have reached agreement, their agreement must be ratified and signed before it is a collective employment agreement.

**Good faith**

Unions and employers who are collective bargaining must deal with each other in good faith.

- [Code of good faith in collective bargaining](#)

**Tools and Resources**

**Collective Employment Agreement Template - DOCX 107KB**

A framework for a collective agreement, plus a range of draft clauses.

---

**Subscribe to our email newsletter**

Receive news and updates each month from Employment New Zealand.

---

Please note that this content will change over time and may be out of date.

© Ministry of Business Innovation and Employment