

Vulnerable employee protections extended to security officers from 1 July 2021

From 1 July 2021, employees who provide certain types of security services will be protected as “vulnerable employees” under Part 6A of the Employment Relations Act 2000. This means their job will be protected even where the work they do is transferred to another business (for example, if their current employer sells off or outsources the part of the business they work in).

The Part 6A protections have been in place for several years. However, this is the first time the protections have been extended to a new category of employee.

What type of security staff will now be protected?

Employees will be protected if they:

- a. guard real or personal property belonging to another person;
- b. monitor in real time, from any part of a premises, images from a camera or similar device on the same premises;
- c. provide crowd control services (as defined in section 19 of the Private Security Personnel and Private Investigators Act 2010);
- d. provide escort duty and courtroom custodial duty as those terms are defined in section 3 of the Corrections Act 2004;
- e. provide mobile security patrols;
- f. collect cash from any premises.

The protections in Part 6A will not extend to workers employed by the Government such as court security officers and corrections officers, or to Police. However those protections will apply to some security / escort workers who contract to the Government, such as contracted court security staff.

What are the protections under Part 6A of the Employment Relations Act?

Under Part 6A, certain categories of employees who have traditionally been considered vulnerable due to factors such as the low-paid and low-skilled nature of their work have additional rights where their position is affected by a restructuring process. Currently this protection applies to employees who:

- perform cleaning or food catering services; or
- perform caretaking or laundry services in the education sector; or
- laundry services or orderly services in the health or aged care sectors.

The protection applies if an employer:

- a. sells their business, or the part of the business that a vulnerable employee works in;
- b. contracts out that work to an external provider;
- c. insources the work (by taking work back from an external provider and having its own employees do the work); or
- d. changes the contractor who does the work.

In these cases the vulnerable employee is entitled to choose to transfer their employment to the organisation that will now be doing the work.

Vulnerable employees are entitled to be told of their right to choose to transfer their employment, and when and how they must make their decision. If the vulnerable employee chooses to transfer their employment the new employer must employ the vulnerable employee and must treat their employment as continuous for the purpose of recognising service related entitlements (such as entitlements to sick leave, annual leave and long service leave if applicable).

If the new employer doesn't have sufficient work for the vulnerable worker then they can make the worker redundant, but in that case the worker has a legal right to bargain for and receive "appropriate" redundancy entitlements.

These protections also apply where only part of the vulnerable employee's work is transferring to a new employer, so the worker could end up being employed by more than one employer if they choose to transfer to a new employer.

Conclusion

Organisations that directly engage their own security personnel or who engage with external agencies to provide security services need to be aware of the additional protections these types of employees will now have. Organisations considering making changes to the way they engage security personnel after 1 July 2021 should get advice to ensure they are aware of their legal obligations to potentially affected employees.

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