



Submission

Of the

New Zealand Retailers Association

To the

Transport and Industrial Select Committee

In respect of the

**Employment Relations (Breaks and Infant
Feeding) Amendment Bill**

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Introduction

These submissions are presented by the New Zealand Retailers Association

Background

The Association is the largest trade association representing the retail industry in New Zealand.

Our membership includes the major supermarkets and general merchandise chains, specialised chains, traditional department stores and thousands of owner operators spread throughout the country.

We also act as the Secretariat for a variety of trade groups including plumbing materials suppliers, metal fastener distributors, pet shops, jewellers, equestrian and sports goods dealers and bicycle retailers.

Viewed statistically we represent an industry that has annual sales of over \$60b per annum and which employs 325,000 people (17% of the workforce) in some 49,000 outlets spread throughout the country.

General Submissions

The Association is generally supportive of the wider objectives of the Bill, i.e. to facilitate support for breastfeeding mothers in the workforce and ensure all employees have reasonable rest and meal breaks in their working day.

However, the Association believes these provisions are already supported, **without the need for prescriptive legislation**, and therefore **recommends that the bill not proceed**.

Rationale

There is **no evidence to suggest that legislation is needed** in either area – breastfeeding or breaks.

1. Proposed Amendment - Part 6C Breastfeeding facilities and breaks

Infant feeding or expression of milk will at any time affect a relatively small sector of the workforce. Where breastfeeding provisions are wanted and workable, they are typically negotiated between the parties. There is already a Department of Labour publication 'Breastfeeding in the workplace – A Guide for Employers' to assist with this.

In our experience there are no problems in this area – The Association’s advisors typically handle over 13,000 queries from members per year. We assess that two out of 78,000 queries in the last six years related to breastfeeding. Even then, they related to how to help the mothers, not how to avoid helping them.

Specifically in regards to the bill we wish to note that

- the bill as drafted is specific to breastfeeding rather than infant feeding which includes bottle (be it expressed, or prepared formula milk) as well as breast. While we assume that it was not the intention of those drafting the bill to purposefully exclude and in doing so unfairly treat as different a parent who is unable to feed by natural methods, should the bill proceed this definition should be broadened accordingly.
- The proposed penalties in respect of breaches of the bill’s provisions (\$5,000 for individuals and \$10,000 for a company or other corporation) are inconsistent with those already applicable to changes in working arrangements.

Recommendation: That proposed Part 6C be deleted

2. Proposed Amendment Part 6D - Rest and Meal Breaks

We do get regular calls from members asking about breaks and when we suggest that the parties discuss and agree when breaks are taken, that is exactly what happens and the problem is resolved. Our standard advice to our members on the subject of determining suitable breaks is:

‘Provision of breaks comes down largely to the employer’s overall responsibility to provide a safe and healthy working environment. Sensible breaks will go a long way to preventing an accumulation of fatigue, causing harm. They will also promote morale and productivity. You cannot expect an employee to perform at their best if they do not have reasonable opportunities for rest.

Breaks need to match the work. Things to consider are the physical demands of the job, (ie any heavy lifting, whether the employee is able to move about and vary their movements, stand or sit etc), the length of the shift, and support for sole charge positions.

Once the two parties have reached an agreement for breaks, it becomes legally binding and ideally should be recorded in the employment agreement. When considering what breaks are reasonable for your situation, some key points for general guidance are:

- *Where the working day extends beyond 5 hours, custom and practice suggests that an unpaid meal break of 30 minutes or one hour should be provided near the middle of the shift. For a full day, one or more paid rest breaks of 10-15 minutes should also be provided.*

- *Where the shift exceeds 9 hours, a second unpaid meal break may be appropriate if the working day extends into the evening.*
- *Where the shift is half a day or less, a single paid rest break is appropriate.*
- *For a sole charge position, appropriate arrangements must be made to allow the employee to attend to personal needs and also to ensure the security of both the staff and property.*
- *Unpaid breaks mean that the employee is free to leave the premises. Where the employee remains on pay, they may be called upon to attend to an overflow of customers. But don't overlook the importance of a break away from work.'*

The vast majority of collective agreements provide for breaks and employees on individual agreements typically are provided or negotiate suitable breaks.

Legislation is not required to 'fix' something that works perfectly well already.

We believe that there is no evidence that this is a problem and by legislating to specify a solution there will inevitably be more problems and consequences than can be resolved by a shed full of mediators. To demonstrate, let's take some specific retail examples:

- Take for example an employee who works 1 hour after school each day: is that person to get a ten minute paid rest break during that hour? Is that what is seriously intended?
- Take for example the employee who works 4.5 hours each day; is that person obliged to take a 30 minute unpaid lunch break in the middle of the 4.5 hours? That employee would effectively lose half an hour's pay each day because of this bill.
- Take for example an employee who is scheduled to work 8 hours but has to stay behind because of a late delivery and actually works 8.25 hours. Does that employee claim a ten or fifteen minute paid break for the extra quarter hour? If that break is not taken will the employee be entitled to claim the ten minutes as paid time? Is that really what is intended?
- It is common in retail for an employee to be in sole charge of a shop. In these circumstances the employer and employee agree that breaks will be taken when business is quiet and all such breaks will be paid. Is this bill suggesting that this will no longer be possible? Will the employee have to take an unpaid half hour lunch break? Will the employer therefore have to hire a person for half an hour per day to stand in for that employee? If this was even remotely possible would the stand-in employee have to take a ten or fifteen minute break half way through their half hour work period?

Recommendation: that proposed Part 6D be deleted

Conclusion

We suggest that this well meaning but unfortunate interference is not necessary and will have unintended consequences that will occupy the Department of Labour and the Employment Relations Authority for years to come.

As an alternative why not merely give a guideline through the Department of Labour and require the parties to act fairly and reasonably but allow the parties through an employment agreement to reach their own decisions about breaks.

We recommend this bill not proceed.

We wish to appear to speak to our submissions.

New Zealand Retailers Association
May 2008