

The right to work

International instruments

The right to work is a fundamental human right, strongly established in international law and firmly rooted in the foundation of universal human rights. New Zealand has in the past 60 years played an important and effective role in calling for stronger commitment to human rights.

New Zealand has ratified the majority of the international conventions that relate to the right to work.

International instruments such as core labour standards set by the International Labour Organisation (ILO) and United Nations (UN) Conventions are one way in which employment rights are universally realised.

The Convention on the Rights of Persons with Disabilities (CRPD), the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), the Convention on the Rights of the Child (UNCROC), the Declaration on the Rights of Indigenous Peoples (UNDRIP) and the International Convention on the Elimination of All forms of Racial Discrimination (CERD) set out the employment rights specific to each of these constituent groups.

Core ILO standards

International labour standards are primarily tools for governments which, in consultation with employers and workers, seek to draft and implement labour law and social policy in line with internationally accepted standards.

New Zealand has ratified six of the eight fundamental ILO Conventions, including those relating to equal pay, child labour, collective bargaining and banning discrimination. It has yet to ratify the conventions on Freedom of Association and Protection of the Right to Organise (C87) and Minimum Age (C138).

In June 2011 the New Zealand government voted in favour of adopting international standards aimed at improving the working conditions of tens of millions of domestic workers worldwide. The new ILO standard sets out that domestic workers around the world who care for families and households, must have the same basic labour rights as those available to other workers: reasonable hours of work, weekly rest of at least 24 consecutive hours, a limit on in-kind payment, clear information on terms and conditions of employment, as well as respect for fundamental principles and rights at work including freedom of association and the right to collective bargaining.

The ILO also assists countries to implement “decent work” agendas at national level. The ILO suggests that national specialised bodies be set up to assist individuals with the right to work, and that specific legal provision on non-discrimination and equality in the workplace be implemented. It also suggests that governments establish new approaches such as active labour market policies – to close the gender pay gap.

International Covenant on Economic, Social and Cultural Rights

The International Covenant on Economic, Social and Cultural Rights (ICESCR) contains the most comprehensive provisions on the right to work. In Articles 6-8, the Covenant defines the core elements of the right to work.

Equal employment opportunities are specifically referenced in ICESCR Article 7(c), which states that everyone has equal opportunity to be promoted, subject to no considerations other than those of seniority and competence.

The Covenant further states that everyone has the right to the enjoyment of just and favourable conditions of work which ensure in particular fair wages and equal remuneration for work of equal value without distinction of any kind. Specifically, women should be guaranteed conditions of work not inferior to those enjoyed by men, with equal pay for equal work.

It also allows for safe and healthy working conditions, including rest, leisure and reasonable limitation of working hours and periodic holidays with pay, as well as remuneration for public holidays; and the right of everyone to form trade unions and join the trade union of their choice.

The Covenant can be found at <http://www2.ohchr.org/english/law/cescr.htm#art7>.

Convention on the Rights of Persons with Disabilities

The Convention on the Rights of Persons with Disabilities (CRPD) is the most modern application of the right to work, and outlines a number of key areas governing employment for disabled people. The New Zealand Government ratified the CRPD in 2008.

The CRPD recognises the right of disabled people to work on an equal basis with others. It affirms that State parties have the responsibility to safeguard and promote the realisation of the right to work by taking appropriate steps, for example through legislation.

Article 27 of the CRPD relates to work and employment and states that disabled people have “the right to the opportunity to gain a living by work freely chosen or accepted in a labour market and work environment that is open, inclusive and accessible to people with disabilities”.

Furthermore the CRPD states that disabled people should be employed in the public sector; that the private sector should actively promote the employment of disabled people including through affirmative-action programmes, incentives and other measures; and that reasonable accommodation should be provided to disabled people in the workplace.

The Convention can be found at <http://www2.ohchr.org/english/law/disabilities-convention.htm#27>.

Convention on the Elimination of all forms of Discrimination Against Women

The Convention on the Elimination of all forms of Discrimination Against Women (CEDAW) states women have the right to equal pay for work of equal value, the same employment opportunities as men, and protection from dismissal because of pregnancy. New Zealand ratified CEDAW in 1985.

Article 11 of CEDAW provides the most explicit reference to women’s participation in employment. The Convention says States Parties shall take all appropriate measures to eliminate discrimination against women in the field of employment in order to ensure, on a

basis of equality of men and women, the same rights, in particular the right to free choice of profession and employment, the right to promotion, job security and all benefits and conditions of service and the right to receive vocational training and retraining, including apprenticeships, advanced vocational training and recurrent training.

In addition the Convention states that women have the right to equal remuneration, including benefits, and to equal treatment in respect of work of equal value, as well as equality of treatment in the evaluation of the quality of work.

In 2007, the CEDAW Committee recommended that New Zealand enact comprehensive laws guaranteeing women's substantive equality at work with men in both the public and private sectors.

The Committee further recommended that New Zealand include adequate sanctions for any acts of discrimination against women, and ensure that effective remedies are available to women whose rights have been violated. Concerns about private sector practices relating to gender equality were also raised by the Committee. Currently, there is no compulsion such as the 'good employer' obligation for the public sector imposed on the private sector in New Zealand.

The Convention can be referenced at <http://www2.ohchr.org/english/law/cedaw.htm>.

Convention on the Rights of the Child

The Convention on the Rights of the Child (UNCROC) ensures that children have the right to a minimum working age, regulation of hours of employment, and protection from workplace exploitation. New Zealand has ratified UNCROC, but with reservations, one of which is reserving the right not to legislate further or take additional measures as may be envisaged by Article 32(2), which relates to child employment.

Article 32 recognises the right of the child to be protected from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral or social development. It also says that States Parties should provide for a minimum age or minimum ages for admission to employment; and provide for appropriate regulation of the hours and conditions of employment. The Convention can be found at <http://www2.ohchr.org/english/law/crc.htm#art32>.

Declaration on the Rights of Indigenous Peoples

The Declaration on the Rights of Indigenous Peoples (UNDRIP or 'the Declaration') was adopted by the General Assembly of the United Nations in 2007. Though New Zealand initially voted against the Declaration, in 2010 the Government revised its position and now supports it.

Article 17 specifically states that indigenous peoples have the right not to be discriminated against in matters connected with employment. Under the Declaration indigenous peoples have the right, without discrimination, to the improvement of their economic and social conditions, including, inter alia, in the areas of education, employment, vocational training and retraining.

The Declaration also protects indigenous children from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral or social development.

The full Declaration can be found at <http://www2.ohchr.org/english/issues/indigenous/declaration.htm>.

International Convention on the Elimination of all forms of Racial Discrimination

The International Convention on the Elimination of all forms of Racial Discrimination (CERD) mirrors the general principles of other international instruments in relation to non-discrimination in employment.

Article 5(e) of the CERD relates to employment and in particular states people have the right to work, to free choice of employment, to just and favourable conditions of work, to protection against unemployment, to equal pay for equal work, to just and favourable remuneration, and the right to form and join a trade union.

The Convention can be found at <http://www2.ohchr.org/english/law/cerd.htm#art5>

What the Commission has done

The Commission actively supports the development of international human rights law, labour standards and United Nations Conventions that relate to equal employment opportunities. The Commission has become more involved in the Treaty reporting process, monitoring the outcomes and integrating them into its work.

For example, the Commission's fourth New Zealand Census of Women's participation considers the progress of women's participation in relation to its CEDAW obligations. Other major conventions the Commission reports on include UPR, CERD, CRPD and ICESCR.

The Commission has consistently urged ratification of the two core ILO standards: 87 – Freedom of Association and Protection of the Right to Organise and 138 – Minimum Age.

The Commission supports an ILO standard for domestic workers.