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The battle over employers' demand for "more flexibility": Attitudes of New Zealand employers

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Abstract

Purpose – The purpose of this paper is to place empirical research on New Zealand employers' attitudes to collective bargaining and legislative change within the context of the long running debate of flexibility.

Design/methodology/approach – A cross-sectional survey design using a self-administered postal questionnaire, covering private sector employers with ten or more staff and including employers within all 17 standard industry classification. To explore particular issues, an additional in-depth interviews were conducted of 25 employers participating in the survey.

Findings – It is found that employers support overwhelmingly recent legislative changes though there are variations across industries and firm sizes. There is also considerable variation in terms of which legislative changes are applied in the workplace. Despite fewer constraints on employer-determined flexibility, there was a rather puzzling finding that most employers still think that employment legislation is even balanced or favouring employees.

Originality/value – Cross-sectional survey findings of New Zealand employer attitudes to legislative changes are few and provide valuable data for policy makers, unions, employers and employment relations researchers. The paper also contributes to a more comprehensive understanding of pressures to increase employer-determined flexibility in many western countries.

Keywords Workplace, Flexibility, Employment legislation, Employee rights, Management attitudes, Collective bargaining, Employer attitudes, Managerial prerogative

Paper type Research paper

Introduction

Since the early 1980s, "more flexibility" has been a catch-cry amongst employers when faced with cost pressures, new technology and changing work arrangements. As "flexibility" can take many forms this has given rise to a variety of flexibility models and typologies which have attempted to describe, analyse and sometimes predict the prevailing forms of flexibility (Atkinson, 1984; Bruhnes *et al.*, 1989). There have also been many comparative analyses of flexibility which have clearly indicated that different patterns dominate across industries and countries (OECD, 2013). This has often prompted suggestions of certain countries or industries having a competitive advantage. In particular, American style flexibility with limited dismissal constraints,

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flexible wages and a low level of collective bargaining was often portrayed as superior and led to accusation of "sclerosis" in European labour markets (Nickell, 2008; *(The) Economist*, 2015). This emphasis on national variations is important as this paper focuses on a particular country: New Zealand employment relations changes and empirical research of New Zealand employers' attitudes to flexibility.

In the next section on flexibility, it is discussed how "more flexibility" has been advocated by international organisations, employer associations and individual employers. This advocacy has often portrayed "more flexibility" as being highly efficient and as a win-win situation for both employers and employees (Bhattacharya *et al.*, 2008; Reilly, 1998). As discussed below, it has become highly contested whether flexibility measures introduced by employers are always efficient in terms of the national economy and whether they provide win-win situations. While international organisations are still promoting the potential positive employment impact of flexibility they have also become more concerned about negative impacts on workers (IMF, 2016). The flexibility section also highlights two other important recent trends. First, flexibility measures have been sought by employees to manage their work life and, for example, employees have had their request for flexible working arrangements enshrined in legislation in several countries, including New Zealand (Masselot, 2014). Second, the concept of "flexicurity" has featured prominently in an attempt to balance flexibility and employee security. Our discussion of "flexicurity" will focus on the Danish variety since it has had a high profile in international debates and it has also started to feature in New Zealand debates.

Following a brief overview of historical New Zealand changes to collective bargaining and employment relations legislation, the focus will be on recent New Zealand employer attitudes to changes in collective bargaining and core legislative employment relations regulations. Based on several surveys of employer attitudes, our research presents some of the key characteristics of attitudes amongst employers. The findings indicates that, while some systematic variations in employer attitudes can be detected, there is a broadly based support for enhancing flexibility through curtailing collective bargaining and legislative-based regulations. While, comparatively, most New Zealand employers have few constraints in terms of their workplace regulation of, for example, working time, wages (including penal and overtime rates) or staffing levels this clearly is not enough. The findings highlight several recent changes to enhance flexibility as well as a particular employer concern with the personal grievance right which allows employees to challenge employer decisions, especially in the area of dismissals.

The rise of flexibility, employee protection and flexicurity

The debate on flexibility started in earnest in the early part of the 1980s as a solution to recession, heightened competition and uncertainty (Pollert, 1988a). Atkinson's (1984) classical model of the flexible firm was matched by various countries thinking about more labour market flexibility as a means to reducing rigidities in the labour market. This was supported by international organisations, such as the Organisation for Economic Co-operation and Development (OECD) and the International Monetary Fund (IMF), where an OECD report from 1986 supported flexibility as a key to economic efficiency and social progress (OECD, 1986). As Pollert (1988b) highlighted there was considerable conceptual confusion where flexibility in employment and flexibility in work was often conflated. Likewise, a clear distinction between micro and macro level analysis was often missing; what kind of flexibility was being analysed: flexible work practices, flexible firms or labour market flexibility? It was normally assumed that micro level changes would lead to better national economic and employment outcomes

(Bruhnes *et al.*, 1989; Rasmussen, 2009). This confusion prompted an avalanche of flexibility typologies in an attempt to categorise and understand the ongoing changes to work and employment practices and to labour market regulation and dynamics (e.g. Rimmer and Zappala, 1988; Rosenberg, 1989; Standing, 1986). While the same confusion has reigned in the New Zealand debate, our empirical research focuses on changes sought by employers to facilitate their ability to implement more organisational level flexibility.

In the new millennium, the pressure for "more flexibility" has continued from employer associations, employers and international organisations. This has had a profound impact on collective bargaining with many OECD countries experiencing a decline or stagnation in collective bargaining coverage and union density (see Table I and Appendix 1). In particular, several English speaking countries have now much lower collective bargaining coverage and union density, compared to the start of the flexibility debate in the early 1980s. While Table I shows a strong decline in collective bargaining coverage and union density, the recent figures from OECD in Appendix 1 – covering all OECD countries during the 2008-2013 period – indicate that the decline has slowed down. These changes have clearly enhanced employers' ability to determine flexibility in their workplace as many workplaces – particularly in the private sector – would have few collective bargaining constraints on managerial decision making. Despite this, the demands for "more flexibility" have continued but have also become more controversial (Lamm *et al.*, 2013; OECD, 2013). While the IMF has continued its quest for "more flexibility" it was also lamenting in its 2016 World Economic Outlook that its advocacy of collective bargaining decentralisation and less sector level bargaining had had limited recent traction amongst European countries (IMF, 2016).

There has also been continuous pressure for labour market reforms to facilitate "more flexibility". This has been a constant theme in OECD's report on national economies and its comparative analyses (e.g. OECD, 2015a). In particular, the OECD has developed an international comparison of national employment protection legislation (see Table II). The so-called strictness of employment protection legislation has a rather narrow scope as the measure's main focus is on constraints on the dismissal of permanent workers, though OECD's analysis also discusses other flexible employment types: fixed-term agreements, agency work and casual employment (OECD, 2016). Importantly, it again places English speaking countries – UK, USA, Canada, Australia and especially New Zealand – as countries with few constraints on employers' decision-making.

Table I.
Union density and collective bargaining coverage in selected OECD countries

Country	Union density	Coverage	Percentage change 1970-2003
USA 2004	12.5	13.8	−11.1
Canada 2004	30.3	32.4	−6.5
France 2003	8.3	95.0	−13.4
Netherlands 2003	22.3	82.0	−14.2
Germany 2003	22.6	63.0	−9.5
UK 2004	28.8	35.0	−15.5
Austria 2002	35.4	99.0	−27.3
Norway 2003	53.3	77.0	−3.5
Finland 2003	74.1	95.0	22.8
Sweden 2003	78.0	92.0	10.3
EU average 2008	25.0	66.0	−11.5
Japan 2003	19.6	23.5	−15.4

Source: Yang (2013) (based on data adapted from Eurofound, 2004; OECD 2008)

	1990	1995	2000	2005	2010	2013
Australia	1.17	1.17	1.42	1.42	1.67	1.67
Canada	0.92	0.92	0.92	0.92	0.92	0.92
Denmark	2.18	2.13	2.13	2.13	2.13	2.20
France	2.34	2.34	2.34	2.47	2.38	2.38
Germany	2.58	2.68	2.68	2.68	2.68	2.68
Japan	1.70	1.70	1.70	1.70	1.37	1.37
New Zealand	1.24	1.24	1.24	1.56	1.56	1.39
Sweden	2.80	2.80	2.65	2.61	2.61	2.61
UK	1.10	1.10	1.26	1.26	1.26	1.10
USA	0.26	0.26	0.26	0.26	0.26	0.26

Note: From 0 (least stringent employment legislation) to 6 (most restrictive employment legislation)
Source: Data gathered from OECD statistics "Strictness of employment protection – individual and collective dismissals (regular contracts)"; information retrieved 27 May 2016 from: https://stats.oecd.org/Index.aspx?DataSetCode=EPL_OV

Table II.
OECD's measure of strictness of employment protection in selected OECD countries

While there is no doubt that many employers can now pursue "more flexibility" in their workplaces this differs considerably across countries and there have been constraints or countermeasures implemented in most OECD countries. In particular, two themes have dominated recent debates: protecting and enhancing individual employee rights and so-called "flexicurity" (see below). Individual employee rights have especially been enhanced in three key areas: anti-discrimination, minimum employment standards and employment protection (Bamber *et al.*, 2011). Anti-discriminatory legislation and legal precedent have constrained employer prerogative in many OECD countries and anti-discriminatory approaches in, for example, recruitment and selection of new staff have become embedded in many firms' employment practices (OECD, 2008; Kramar and Syed, 2012). Minimum employment standards have also been enhanced in many areas – statutory minimum wages, annual leave entitlements, parental and maternity leave. For example, all OECD countries, except the USA, now have mandatory paid annual and public holidays and most OECD countries (26 out of 34 countries) have a form of statutory minimum wage (OECD, 2015a). The introduction of a statutory minimum wage in the UK was a major public policy change and it appears to have become a permanent fixture of UK employment standards (Brown, 2009). Employment protection has been crucial in enhancing dismissal protection of permanent employees, with the personal grievance right of New Zealand employees an interesting example, as highlighted below in our empirical research. However, new forms of employment protection have also been applied to casual, seasonal and agency workers (OECD, 2016).

In the last couple of decades, the concept of flexicurity has risen to prominence (Auer, 2000; *(The) Economist*, 2006; Wilthagen, 1998). The concept tries to amalgamate positive productivity and adjustability aspects of a flexible labour market with increased income protection of employees and opportunities for upskilling and redeployment (Madsen, 2004; Wilthagen and Tros, 2004). The so-called "Golden Triangle" of flexicurity has been promoted in the Netherlands and Denmark since the late 1990s and has been highlighted continuously by the OECD and the European Commission in the new millennium (see Figure 1).

In the debate, there has been a strong emphasis on the "Danish Model" of employment relations and Danish flexicurity (Due *et al.*, 1994; Madsen, 2004; OECD, 2004). In Denmark, the high level of flexibility is associated with the very limited amount of

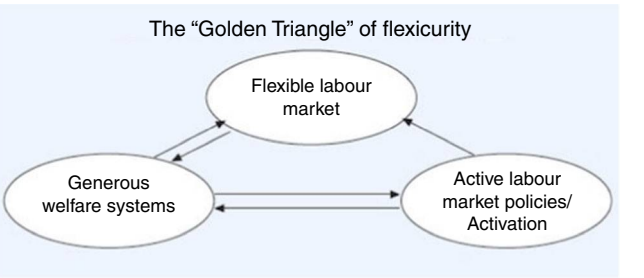
legislative employment regulations with an emphasis on regulation through collective bargaining and close collaboration between employer associations and unions. Though less mentioned in the debate, institutionalised employee influence on workplace practices also plays a part in this regulation or norm-setting (Kristensen and Lilja, 2011; Larsen *et al.*, 2010). The flexible labour market indicates that there is limited direct state intervention though state intervention appears in the form of generous welfare and unemployment benefits and extensive re-training measures.

It is important to stress that there has recently been a more critical assessment of Danish flexicurity which questions the efficiency and outcomes of all of the three components of the "Golden Triangle" (see Auer, 2010; Knudsen and Lind, 2016). There appears to be some confusion about how flexible the Danish labour market really is (see Janssen, 2013) and the reliance on collective bargaining, as the core underpinning of the Danish flexible labour market, is experiencing difficulty (see theme issues of *Arbejdsliv* (14(2), June 2012) and *Økonomi & Politik* (86(1), April 2013)).

Finally, the Danish approach has become prominent in the current New Zealand debate with the Labour Party frequently pointing to its benefits (Small, 2015). It has also become part of the New Zealand discussion of how to deal with "future of work" issues (see Salmon, 2016). How that fits with current government policy and employer attitudes will be addressed in the Discussion section.

Setting the scene: employer-determined flexibility in New Zealand

From the early 1980s, the traditional New Zealand conciliation and arbitration model became increasingly questioned by employer groups (Walsh, 1989). When major economic, social and public sector reforms/deregulation were implemented from the mid-1980s onwards it intensified demands for wide reaching employment relations reforms (Dannin, 1997; Kelsey, 1997). Following piecemeal reforms in 1984 and 1987, the Employment Contracts Act 1991 (ECA) was a radical departure from a nearly 100-year old regulatory approach (Harbridge, 1993). The traditional conciliation and arbitration framework was abandoned and a non-prescriptive approach to collective bargaining and unionism was introduced: the award system was abolished as was the blanket coverage of awards (i.e. extending coverage across industries or occupational groups), unions were no longer seen as the sole negotiators of collective contracts, strikes in favour of multi-employer collective contracts were made unlawful and individual employment contracts were covered for the first time. The new collective and individual bargaining regulations unleashed a sharp change in bargaining patterns with workplace bargaining rising in importance, industry and occupational



Source: OECD Employment Outlook 2004

Figure 1.
The "Golden Triangle" of flexicurity

bargaining become less common and with individualised bargaining having a new, dominant role (Foster *et al.*, 2009; Rasmussen, 2009). This led, as can be seen in Table III, to a sharp fall in union membership and density.

Under the ECA, employers obtained a very strong bargaining position and employers' demands of "more flexibility" became prevalent and had great impact in the majority of workplaces which had no collective bargaining and union representation. This focus on flexibility facilitated a dismantling of penal and overtime rates, longer working hours, a growing number of low paid workers and variation of employment conditions (Deeks and Rasmussen, 2002: 86-88; Harbridge, 1993). Instead major constraints on employer behaviour became the personal grievance right (covering all employees since 1991), a range of statutory minima and the Employment Court's continuous insistence on fair processes (Foster *et al.*, 2011).

Throughout the 1990s, the Labour Party and the unions campaigned for a very different approach. Upon its election victory in late 1999, the Labour-led government introduced a new legislative framework – the Employment Relations Act 2000 (ERA) – and followed it up with several other pieces of employment relations legislation. The ERA's Objectives spelled out its general advocacy of collectivism and more "productive employment relationships" and had several specific interventions favouring collective bargaining: abolishing strike restrictions on multi-employer bargaining, exclusive bargaining rights for registered unions, better workplace access, and paid union delegate training (Rasmussen, 2004).

While the ERA overturned the 1990s decline in collective bargaining and union membership it only facilitated a modest increase in union density in the new millennium (see Table I). Additionally, the general figures hide that collective bargaining and unions were strong in the public sector while private sector union density kept on falling and is now around 9 per cent. This has raised questions about the ERA's failure to resurrect collectivism and what factors could be behind this failure (Rasmussen, 2009: 129-133). While a drift towards more individual employee attitudes may have influenced union membership preferences (Bryson, 2008; Haynes *et al.*, 2006), the importance of union membership was probably also undermined by a strong growth in statutory minima and a buoyant labour market. While employer attitudes

Year	Number of unions	Union membership	Union density (%)
September 1989	112	648,825	44.7
May 1991	80	603,118	41.5
December 1992	58	428,160	36.0
December 1994	82	375,906	29.6
December 1996	83	338,967	24.7
December 1998	83	306,687	22.1
December 2000	134	318,519	22.3
December 2002	174	334,783	21.7
December 2004	170	354,058	21.6
December 2006	166	382,538	21.7
December 2008	141	384,777	21.4
December 2010	145	386,276	21.4
December 2012	133	369,200	20.3
December 2014	125	361,419	18.5

Source: Centre for Labour, Employment and Work (2015)

Table III. Union membership and density, 1989-2014, selected years

and behaviours could intuitively be considered important in determining collectivism there has been limited research of employer attitudes, behaviours and practices and the resultant impact on collective bargaining (Foster *et al.*, 2009).

Since 2008, a National-led government has introduced ongoing, piecemeal changes to the ERA (see Table IV). Public policy and legislative changes have diluted the ERA's support of collective bargaining though the main thrust has been a reduction in employee rights. In particular, the personal grievance right of new employees is now up for negotiation (the so-called "90 days rule") and employees can sell their fourth annual leave week for cash. Employment status has also been contested with some employers favouring contractors over employees and contracting has been institutionalised industry-wide in the film industry (see *New Zealand Journal of Employment Relations*, 36(3)).

In light of the limited research on employer attitudes and behaviours, our research has tried to survey such attitudes. As shown below, we have sought to highlight employer attitudes to collective bargaining and recent legislative changes to see whether political rhetoric and reality is matching and whether the demand for "more flexibility" is supported by most employers.

Employer attitudes to collective bargaining

There has been limited research of employers' attitudes and behaviours and researchers from Massey University and Auckland University of Technology decided, therefore, to survey employer attitudes to collective bargaining. Three surveys were carried out

Legislation	Legislative purpose and details
ER Amendment Act 2008	Introduce 90-day probation/trial period for small businesses (1-19 employees)
ER Amendment Act 2010	Extend 90-day trial period to all organisations, reduced union access rights, reinstatement is no longer primary remedy in dismissal cases, change dismissal test from what a reasonable employer "would" instead of "could" have done
Holidays Amendment Act 2010	Employers can require proof of sickness from the first day, allow employees to trade for cash their fourth week of annual leave
ER (film production work) Amendment Act 2010	"Hobbit" legislation prescribes "contracting" for film production workers
ER (secret ballots for strikes) Amendment Act 2012	Before taking strike action, unions need to conduct secret ballots of members
ER Amendment Bill 2013 (not implemented prior to the 2014 General Election)	Changes good faith duty to conclude collective bargaining, allow opting out of multi-employer agreement bargaining, meal and refreshment breaks can be removed, allow pay reduction for partial strikes, changes transfer regulation (Part 6A), strike notice requirements changed
Minimum Wage (starting-out wage) Amendment Act 2013	Reduce starting-out wages for 16-19 years employees to 80 per cent of adult statutory minimum wage (applies only to 18-19 years olds if they have been on benefit prior to starting job)
Health and Safety Legislation	The Health and Safety Reform Bill in March 2014 extends the duty of care to all persons in control of a business or undertaking, worker participation is strengthened. New enforcement agency Worksafe NZ
	The Accident Compensation Act underwent two amendments in 2008 and 2010. The amendments were primarily concerned with reducing the number of claims and associated costs

Table IV.
Employment relations policy changes 2008-2014

Source: Rasmussen *et al.* (2014, p. 24)

providing a national coverage of private sector organisations which employed ten or more staff[1]. These were undertaken using a cross-sectional survey design where the surveys matched the sample demographics used by previous New Zealand studies (see McAndrew, 1989; Foster *et al.*, 2009, 2011). The three surveys involved a self-administered questionnaire in two regions (the lower half of the North Island and the South Island) with an online survey being used in the third region (the upper half of the North Island). The response rates ranged from a disappointing 8 per cent for the online survey to 19 and 21 per cent, respectively, for the two postal surveys. The survey information was also supported by in-depth interviews of 30 employers.

The surveys asked employers about a number of key attitudes towards the process of collective bargaining: the interest of employees in the process, its relevance to the business, and whether collective bargaining had been considered at all. As discussed in other articles (Foster *et al.*, 2009 and 2011), there were many different opinions amongst employers but we also ascertained that there were two distinct groups of employers. The attitudes of employers who were engaged in collective bargaining differed systematically from the attitudes of those employers who were not engaged in collective bargaining. Of those engaged in collective bargaining, only 21 per cent believed their employees lacked interest in the process. Of those not engaged, the proportion was reversed with 70.1 per cent arguing that their employees lacked any form of interest in collective bargaining. While those not engaged in collective bargaining would also regard individual bargaining to offer greater benefit (73.8 per cent) this was not so prevalent amongst employers engaged in collective bargaining (where less than half saw individual bargaining as offering greater benefit.

The differences in employer opinions were confirmed by the interviews where a strong individual approach clearly prevailed, with many employers being quite clear that their staff had a preference for direct discussions and absolutely no interest in collective bargaining (Foster *et al.*, 2009, 2011). While the negative attitudes to collective bargaining appeared rather firm amongst employers who were not engaged with collective bargaining, it appeared that the positive attitude amongst employers who were engaged with collective bargaining was tinged with some reservations. Some employers involved in collective bargaining found that it was not relevant because of the quality of the relationship with the union or because the workplace had no major problems (according to the interviewed manager). It was also suggested that the bargaining costs were either too high or collective bargaining did not add much to the business. These negative attitudes did depend on the ongoing relationship with the union but it was also associated with transaction costs of collective negotiations.

It is important to note that the employers who are engaged in collective bargaining constitute a clear minority and, as mentioned, we found criticism of bargaining processes and associated outcomes amongst these employers. Generally, employers have a negative attitude towards collective bargaining and unionism and they would prefer to conduct their employment relations affairs in direct discussion with individual employees. As fewer and fewer employers become engaged in collective bargaining, it is likely that employer resistance or indifference to collective bargaining and arrangements will grow.

Employers' attitudes to flexibility: survey findings

Methodology

In order to investigate employers' attitudes to employment legislative changes implemented in the 2008-2010 period (see Table IV), surveys carried out by researchers from Massey University and Auckland University of Technology used a representative

sample of private sector organisations employing more than ten staff (though some employers with less than ten staff also answered the questionnaire). This was done by using a cross-sectional survey design involving a self-administered postal questionnaire in two regions: first, in 2012 employers in the South Island and the lower half of the North Island were surveyed; second, in 2012-13 employers in the upper half of the North Island were surveyed. These surveys provided a national coverage with a total of 765 employer respondents and sought information on employers' attitudes to a range of issues. The issues surveyed:

- Whether employers supported these changes, including what effect (if any) these changes had on running their business and their relationship with employees.
- What were employers' views on employment legislation in New Zealand?
- Were there different employer views in respect of employer characteristics (e.g. between small and medium-sized (SMEs) and larger organisations and the various industry categories)?
- Besides these issues, the survey targeted specifically reactions to the two main pieces of legislation – the ERA and the Holidays Act.
- Respondents were also given a chance to comment in detail on their answers, both in general and to a particular question.

As with our earlier employer surveys, the 2012-2013 surveys matched the sample demographics used by previous NZ studies. This allowed the entire population of employers (around 2,500 individual firms) to be surveyed as well as covering employers within all 17 standard industry classifications used by previous researchers (Blackwood *et al.*, 2007; Foster *et al.*, 2011). While our response pattern generally matched the employer population by industry and firm size there were also a few notable differences. Our decision to focus on firms with ten or more staff bypassed 81 per cent of all firms (having less than ten staff and accounting for 22 per cent of all employees). This also skewed industry presentation in industries with a prevalence of small firms such as fast-growing service industries in tourism, hospitality and age care. In the following tables, responses have not been weighted to match the general employer population and thus relies on raw response rates.

Survey respondents were also asked if they wanted to partake in semi-structured interviews so as to extract any underlying issues that could not be gleaned from a questionnaire. We received 80 acceptances and a selected group (25 interviewees) was used to ensure that the interviewees covered the various regions, industries and firm sizes in the survey. The interviews were conducted by telephone and taped. Subsequently, the interview information was compared with responses obtained through the questionnaire's open-ended questions. While only a few insights and quotes can be included in this paper the interviews gave additional depth and detail to our understanding of employer attitudes and behaviour.

Results

Table V shows that most of the amendments were favoured by a substantial proportion of employers. In particular, this was the case with changes which would have a direct impact on workplace employment relations, such as evidence of sick leave provisions, the 90 day provisions and unions securing employer consent before entering the workplace. It was important for outcomes of personal grievance cases that the employment institutions were

Legislative changes	% responses VMF	SWF	*n*	SWO	VMO
Trial period < 20	60.6	20.6	14.6	1.5	2.7
Consent to enter workplace	58.5	18.7	16.9	2.7	3.1
Penalties re-enter workplace	37.1	29.5	28.7	2.5	2.2
Employers copy of EA	64.0	24.7	9.9	0.5	0.9
Trial period for all employers	66.3	21.0	9.6	2.0	1.1
Test of justification fair and reasonable	30.5	45.0	15.7	6.5	2.3
Must consider substance of case	68.1	24.1	5.8	0.8	1.2
Reinstatement one of remedies	5.4	19.2	26.0	29.3	20.1
Cashing of one week's annual leave	47.4	28.6	13.8	6.1	4.1
Transfer of public holiday	39.2	26.6	21.3	5.0	7.9
Proof of sick leave within 3 days	73.0	21.4	4.1	0.8	0.7

Notes: $n = 765$. VMF, very much in favour; SWF, somewhat in favour; N, neutral; SWO, somewhat opposed; VMO, very much opposed

Table V.
Employers in favour or opposed to employment legislative changes

directed through two legislative changes to mainly consider the substance of a case with less emphasis given to process defects. Likewise, employers were opposed to reinstatement ("if practicable and reasonable") being considered the primary remedy in dismissals and redundancy cases. These two issues – procedural fairness and reinstatement – have been part of a long running campaign by employer interest organisations in respect of personal grievance cases (McAndrew *et al.*, 2004; McAndrew, 2010).

All in all, there are very few employers who are not supportive of the legislative changes. There are some industry and firm size variations but these variations are more about how strong the support is, not whether the majority of employers within a particular industry or of a certain size support the changes. As mentioned above, there is a prevalence of SMEs in New Zealand and the number of private sector organisations with 100 employees or more are limited. Thus, the attitudes of SME employers tend to dominate the overall employer perspective.

Impact of legislative changes on employers' business

In Table VI most employer respondents see the changes on their workplace employment relations in a positive light. They have seen a positive impact on employment relationships, changes have clarified legislation, simplified processes and reduced costs or they have had no cost in implementing changes. However, it is also noticeable that many respondents say that the changes have had minimal impact or no impact on their workplace employment relations. This is the case with restrictions on unions' ability to enter a workplace which has had minimal impact according to nearly half of respondents (43.4 per cent) and in respect of reinstatement, with a majority of the respondents saying minimal impact (35.6 per cent) or negative impact (23.2 per cent).

While Table V found an overwhelming support for the legislative changes, the impact of legislative changes on employers' business in Table VI presents a more blurred picture. It appears that employers supporting changes even if these changes may have limited impact in their own workplace. This probably indicates a general ideological support of fewer constraints on employers' prerogative and is less associated with whether these changes will have practical workplace implications.

Still, there also appears to have been a significant impact of the most debated legislative changes – the introduction of trial periods, the provisions for cashing up one

Legislative changes	% responses PI	CEL	NC	MI	NI	IC
Trial period < 20	14.4	22.1	24.1	37.1	1.1	1.1
Consent to enter workplace	8.3	11.0	33.6	43.4	3.2	0.6
Penalties re-enter workplace	6.3	10.7	34.9	44.2	2.8	1.1
Employers copy of EA	10.7	18.2	32.4	36.0	1.3	1.5
Trial period for all employers	18.4	24.0	24.6	31.8	1.2	0.0
Test of justification fair and reasonable	7.3	24.6	25.9	34.6	3.4	4.2
Must consider substance of case	15.0	25.2	24.4	31.4	2.4	1.6
Reinstatement one of remedies	2.3	6.8	27.2	35.6	23.2	5.0
Cashing of one week's annual leave	36.4	19.3	14.9	25.6	3.9	0.0
Transfer of public holiday	22.1	16.9	22.2	31.9	4.0	2.9
Proof of sick leave within 3 days	14.3	25.4	24.1	31.6	3.5	1.1

Table VI. Impact of legislative changes on employers' business

Notes: $n = 765$. PI, positively improved the employment relationship; CEL, clarified the employment legislation, simplifying processes and reducing costs; NC, no cost in implementing the new changes; MI, minimal impact on the business and relationships with employees; NI, had a negative impact on the employment relationship with employees; IC, increased costs in implementing the new changes

week's leave and the transfer of public holidays. These changes have the lowest scores in terms of minimal or no impact. In the Select Committee hearings on these changes, there was an overwhelming support from business interest organisations as well as from many individual employers. This support was often underpinned by the argument that such changes would lead to more productive relationships. In our research, this argument is aligned with our employer respondents in two ways. First, as can be seen from Table V, most of our employer respondents thought that the changes have had a positive impact on employment relationships (Table VII).

Second, the survey's open-ended questions and the subsequent in-depth interviews clearly highlighted that employers were very positive about changes to trial periods, cashing up of holiday entitlement and transfer of public holidays. Interestingly, there was a distinct different tone in employer responses with the trial period being associated with stronger employer power and prerogative while respondents emphasised the practicality of holiday changes and also indicated that "cashing up" could create a win-win situation. Typical responses for the trial periods were:

> I think it's a very difficult process recruiting people and the labour laws the way they are, are full of danger for the employer […] Just knowing it's there is definitely a comfort […] I mean within our employment contract and our agreement you have stages anyway where you can address poor performance, but this does take away the ultimate threat of personal grievance.

	1-9	10-19	20-49	50-99	100+	% total	*n* total
Positive	2.1	8.7	8.5	5.9	4.1	29.2	179
Negative	0.2	1.3	0.3	0.2	0.5	2.5	15
None	8.3	22.1	21.6	7.8	8.5	68.3	418
% total	10.6	32.1	30.4	13.9	13.1	100	612
n total	65	196	186	85	80	612	

Table VII. If changes had been implemented what was the impact on employment relationships?

Notes: $n = 612$. Per cent figures

> It's a good thing. Certainly in the past there has been quite a strong risk aversion around hiring, because clients are so careful of making a wrong decision and being lumped with someone who doesn't work out and is difficult to remove […] They just have the ability to end that employment arrangement without having too much risk hanging over them.
>
> Puts employer in a position of strength at the start of the relationship.

Typical responses for cashing up the fourth weeks annual were:

> Employees are cashing up one week of their annual leave. Observation – it is better than going to a loan shark and paying 30% interest.
>
> A few of the staff were saying to me 'we don't need four weeks, we [*sic.*] sooner have the cash' and that was something with regards to their circumstances at the time, I'm very much aware of that.
>
> So that's only a couple of weeks over the Christmas period that we take off, and you have four statutory days in that period so a lot of them aren't taking a lot of leave so it's a convenience for them really.

Table VIII also highlights that business size is an important variable. While large businesses often have better employment systems and thus can better implement proper human resource management processes (including high-quality recruitment and selection processes) this is seldom the case with SMEs. However, the number of large businesses has declined over the last decade and New Zealand has a predominance of SMEs. The survey found on a number of questions that enterprise size has a strong impact on employer attitudes to legislative change.

In Table IX, employer respondents make it clear that they think that there is enough or more than enough legislation. This is another indication that respondents think that there is further room for enhancing employer-determined flexibility by reducing employment relations legislation.

This employer attitude – that there is enough or more than enough legislation – is further supported by the general findings of Table X. In that table, a majority of employers, 59.7 per cent, across all industry classification believed that employment legislation in New Zealand is employee focused while another 38.3 per cent of employers thought that

Changes to legislation	1-9	10-19	20-49	50-99	100+	% total	*n* total
Trial period < 20	2.6	14.7	4.5	1.1	1	23.9	148
Union consent to enter workplace	0.2	0.3	0.5	0.5	0.2	1.7	10
Penalties re-enter workplace	0	0	0	0	0.2	0.2	1
Employers to retain copy of EA	0.8	0.5	1.6	0.3	0.5	3.7	23
Trial period any new employee	1.9	4	13.8	5	4.4	29.1	179
Test of justification	0.3	0.8	0.8	0.6	1.3	3.8	24
Must consider substance of case	0.2	0.6	0.3	0.5	0.2	1.8	11
Reinstatement one of remedies	0	0.2	0.4	0.2	0.2	1	7
Bargain in good faith	0.2	0.5	0	0.2	0.5	1.4	8
Cashing one week's annual leave	3.1	7.4	6.1	4	4	24.6	153
Transfer of public holiday	0.3	1	1.3	0.6	0.6	3.8	24
Proof of sick leave after one day	0.2	1.5	1.1	1.3	0.9	5	30
% total	9.8	31.5	30.4	14.3	14	100	618
n total	60	195	190	88	85	618	

Notes: $n = 618$. Per cent figures

Table VIII. Which amendment had the most impact by size?

employment legislation is balanced. Only 1.9 per cent think that employment legislation is employer focused. Generally, this pattern can be found, with some variation, in all industries and it is noticeable how few employer respondents think that employment legislation is employer focused. In all industries, the majority of respondents – often over 60 per cent - find that employment legislation is employee focused.

These are interesting findings and, in light of the previous historical overview, they are also rather paradoxical. The findings do not align well with the standard comparative understanding of a high level of flexibility in New Zealand workplaces (see Table II and Appendix 1). However, the figures in Table X were backed up by our in-depth interviews. The quotes below leave no doubt that employers feel that employment relations legislation is "heavily weighted in favour of the employee" and there are simply too many employee rights and procedural challenges. This also indicates why many employers have supported the recent legislative changes.

Typical responses in respect of the balance of employment relations legislation were:

> My main concern is that the whole framework is so heavily weighted in favour of the employee. It's so focused on procedural errors and not on the basis of the relationship.

Table IX.
Level of employment legislation

	1-9	10-19	20-49	50-99	100+	% total	*n* total
Too little	0.3	0.7	0.9	0.1	0.3	2.3	17
Enough	7.9	19.7	20.3	10.0	8.6	66.5	497
Too much	3.1	11.4	9.5	3.1	4.1	31.2	233
% total	11.3	31.8	30.7	13.2	13	100	747
n total	84	238	229	99	97	747	

Notes: $n = 747$. Per cent figures

Table X.
Industry classification and focus of employment legislation

Industry classification of firms	Employee focused	Balanced focused	Employer focused	Total
Accommodation and food services	59.4	34.4	6.3	100.0
Administration and support services	75.0	25.0	0.0	100.0
Agriculture, forestry and fishing	57.1	42.9	0.0	100.0
Arts and recreation services	50.0	50.0	0.0	100.0
Construction	64.9	33.8	1.4	100.0
Electricity, gas, water and waste services	61.1	33.3	5.6	100.0
Financial and insurance services	50.0	42.9	7.1	100.0
Health services and social assistance	55.9	44.1	0.0	100.0
Information, media and telecommunication	55.0	45.0	0.0	100.0
Manufacturing	61.8	36.1	2.1	100.0
Mining	66.7	33.3	0.0	100.0
Professional, scientific and technical services	55.0	41.7	3.3	100.0
Rental, hiring and real estates services	63.6	36.4	0.0	100.0
Retail trade	71.1	26.7	1.7	100.0
Transport, postal and warehousing	57.6	42.4	0.0	100.0
Wholesale trade	51.0	44.9	4.1	100.0
Other services	57.7	41.6	0.7	100.0
Total	59.7	38.3	1.9	100.0

Notes: $n = 725$. Per cent figures

> We are always on the rough end of the deal as the employer. Sometimes you think we end up having to do all the giving.
>
> Too many rights given to the employee and not enough to the employer in dealing with disciplinary issues.
>
> I think the employers have got so many challenges as it is, with all the rights of the employees. Some of the laws and things make it so difficult for an employer to maintain the control of staff.
>
> I think employees have got a huge amount of rights.

Discussion

There is a consistent message coming from our surveys: employers have been seeking and have been successful in obtaining comprehensive changes to facilitate more flexibility. With the decline in collective bargaining, now mainly conducted in larger workplaces, the employer prerogative would be relatively strong in the majority, non-unionised workplaces. This has been buttressed by recent legislative changes. These legislative changes are supported strongly by most employers and they are particularly in favour of interventions which reduce employment relations constraints (trial periods, cashing up of holiday leave, superannuation). Our findings indicate that some of the other changes have had limited impact on workplace employment relations (see Table VI) and employer support appears influenced by political and ideological values.

However, employers are still seeking further changes. It is rather paradoxical that most employers surveyed still feel that legislation is either evenly balanced or employee focused (see Table X). There appears to be two possible explanations for those attitudes which fit well with the paper's discussion of flexibility. First, legislative constraints on employers' ability to determine flexibility measures have been bolstered through a number of individual employee rights. Some of these legislative constraints are associated with the ERA 2000 while other acts concerning human rights, health and safety and privacy have also enhanced individual employment rights (Lamm, 2010). In fact, the significance attributed to new trial periods in our findings is a clear indication how strongly employers feel about the personal grievance entitlements. These entitlements were bestowed on all employees in the ECA 1991 and, subsequently, a string of decisions in the Employment Institutions have raised the ire of employer associations (McAndrew, 2010; Rasmussen and Greenwood, 2014). These constraints have clearly become a major public policy battlefield over the last couple of decades.

Second, there are some industry and firm size variations which indicate that the employer "voice" is skewed by the prevalence of small and medium-size employers in New Zealand. These employers often have inadequate human resource management processes, narrow profit margins and staff turnover issues (Williamson *et al.*, 2008). Recent legislative changes appear to pander to the interest of those small and medium-size employers. This has clearly been the case with trial periods for employers with 19 or less employees and recent changes to health and safety regulations. It can also be associated with growing concerns over the lack of effective "policing" of regulations and their compliance (Lamm *et al.*, 2013).

Generally, our research findings fit well with the international flexibility debate. While employers have obtained "more flexibility" they are seeking further reduction in collective bargaining and they are still advocating additional

deregulation. These changes have had the support of international organisations with OECD's country reports advocating further labour market reforms. For example, OECD's reports on the New Zealand's economy have frequently praised its labour market reforms and low employment barriers (e.g. OECD, 2015b). These reforms have left New Zealand with a low level of strictness of employment protections (see Table II). Despite this, employer associations have continued to advocate "more flexibility". Business New Zealand – the main employer association – has suggested that "more flexibility" will enhance productivity and employment and has advocated specific measures to increase employers' flexibility (see Business New Zealand, 2008, 2014). Similar suggestions have been raised by industry employer associations where, for example, hospitality employers are seeking reductions in labour costs, penal rates and immigration restrictions (Hospitality Report by Restaurant Association of New Zealand and Auckland University of Technology, 2013; Searle *et al.*, 2015).

The countermeasures or employee demands of the international flexibility debate have also featured strongly in the New Zealand debate and, in many cases, they are informed and inspired by overseas debates. This has been the case with the "living wage campaign", parental leave and flexible working arrangements (Rasmussen and Anderson, 2010; Ravenswood, 2013). However, the pervasive role played by personal grievances is fairly unique to New Zealand employment relations and this is clearly a focal point for employer demands of "more flexibility". Addressing these employee demands have softened the impact of employers' demands for "more flexibility". However, the negative fall-outs have still featured strongly in New Zealand debates of inequality, low paid work, atypical and precarious employment and exploitative employment practices (Anderson and Tipples, 2014; Rashbrooke, 2013).

While "flexicurity" has started to feature in New Zealand debates – mainly driven by the Labour Party's advocacy of the approach (Salmon, 2016; Small, 2015) – it is difficult to see how numerous barriers can be overcome and the approach be implemented successfully. While the above empirical research shows that employers would relish the flexibility aspect there is very little appetite for the security aspects of more generous welfare and unemployment benefits or for enhanced spending on active labour market measures (Business New Zealand, 2008, 2009, 2014). The important role of comprehensive collective bargaining coverage found in Danish "flexicurity" is clearly not supported by employers and it would demand considerable legislative underpinnings. While the Labour Party and the trade union movement have started to discuss such legislative underpinnings they are yet to become part of their official public policy platform. Such changes are bound to be controversial and politically risky with opponents being able to draw on IMF and OECD reports who advocate against national and industry collective bargaining arrangements (e.g. IMF, 2016; OECD, 2015a).

Conclusion

New Zealand has been something of a "laboratory" for employment relations changes and these changes have often been couched in terms of demands of "more flexibility". Our research shows that employers have been successful in the pursuit of "more flexibility" because of the radical changes in the 1990s and the limited success of resuscitating collectivism in the new millennium. The influence of traditional institutional ER has been eroded and a workplace-based and individualised

employment relations approach has become embedded in most New Zealand workplaces. Collective bargaining and union activity have become less relevant for most employers and instead the current employer focus is on limiting the impact of individual employment rights.

However, NZ employers still regard their flexibility as being constrained as indicated by employer responses in Table X. Undoubtedly, constraints on employers' ability to implement their desired forms of flexibility still exist as the New Zealand employment approach is short of an American "employment-at-will" approach (which was suggested by Treasury in 1990, see Walsh and Ryan, 1993). The ERA 2000 continues to prescribe bargaining processes and employment rights and other pieces of legislation and legal precedent also constrain employer behaviour and practices. Labour market norms and demand-supply balances can further shift employer-determined flexibility towards employee demands for flexibility which has placed work life balance and other employee-orientated issues high in public policy debates. Recent legislative changes to parental leave and flexible working arrangements point in the same direction.

New Zealand employment relations trends fit well with international debates over the decline of institutional employment relations and a growing importance of flexibility and individualism. They have provoked a political debate over the wider economic and social implications of flexibility (see Rasmussen and Foster, 2011). In particular, low productivity growth, growing income inequality and high industrial accident and fatality rates have raised considerable public policy concerns. Thus, New Zealand employers may have achieved "more flexibility" but so far the legislative framework's goal of "productive employment relationships" is yet to be achieved.

Note

1. A more detailed description of the applied methodology can be found in Cawte (2007); Foster *et al.* (2011).

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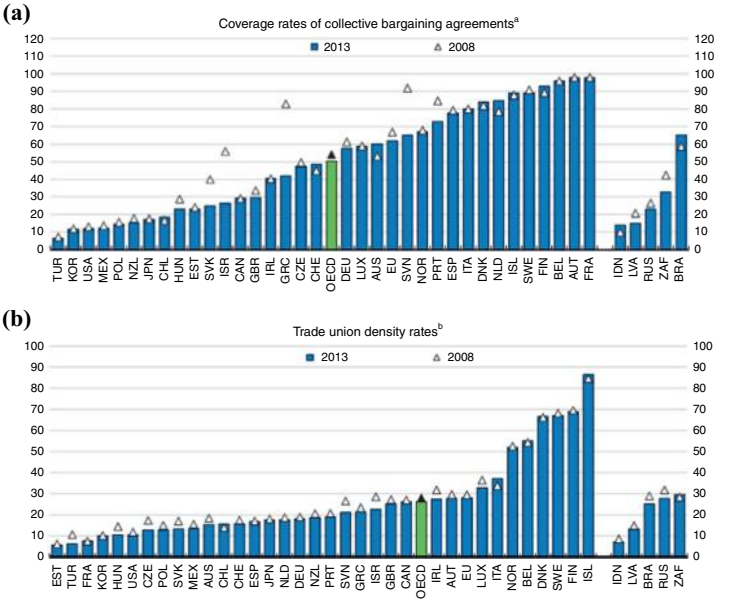
(The Appendix follows overleaf.)

Appendix. Collective bargaining coverage and union density rates



Notes: [a]The coverage rate is measured as the percentage of workers who are covered by collective bargaining agreements, regardless of whether or not they belong to a trade union. For 2013, data refer to 2012 for Australia, Estonia, France, Israel, Korea, Luxembourg, Mexico, Poland, Indonesia and South Africa; 2011 for New Zealand; 2010 for Italy; 2009 for Ireland. For 2008, data refer to 2009 for Chile, Denmark, Estonia, Hungary, Ireland, Maxico, Norway, Switzerland, Brazil, the Russian Federation and Latvia; 2007 for New Zealand, Poland and Sweden; 2005 for Italy; 2000 for Israel; [b]The union density rate is the percentage of workers belonging to a trade union. The rates refer to wage and salary workers. The last available year is 2014 for Australia, Canada, Chile, Iceland, Ireland, Japan, Mexico, New Zealand, Sweden, Switzerland, the United Kingdom and the United States; 2012 for Indonesia, Israel, Korea, Latvia, Luxembourg, Poland, Portugal and South Africa; 2011 for Brazil

Sources: OECD estimates and J. visser, ICTWSS Database, version 5.0. Amsterdam: Amsterdam Institute for Advanced Labour Studies AIAS, October 2015; OECD (2016, p. 133)

Figure A1.
Coverage rates of collective bargaining agreements and trade union density rates percentage

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