

A Guide To

Establishing

And

Administering

Unions

Prepared September 2000 by

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Overview

Introduction

This guide provides basic information for groups of employees who wish to establish unions and register them under the Employment Relations Act 2000. The guide is designed to provide practical assistance. It is not legal advice.

What are the basic requirements to register as a union?

Under the Employment Relations Act 2000, any group of employees can set up and register as a union. To be a union, a group of employees must become an incorporated society (under the Incorporated Societies Act 1908) and register as a union under the Employment Relations Act 2000.

To achieve both these things, the union:

- must have at least 15 members (Incorporated Societies Act 1908)
- be independent of employers (Employment Relations Act 2000)
- have a set of union rules that comply with both the Incorporated Societies Act 1908 and the Employment Relations Act 2000. The attached “Hints on creating union rules” provides information on union rules to assist compliance with both Acts.

The union must :

- first, become an “incorporated society” by applying to the Registrar of Incorporated Societies
- then apply to the Registrar of Unions for registration as a union.

What information do you require?

You will need to:

- understand the Incorporated Societies Act 1908. A copy of a Guide to the Incorporated Societies Act 1908 is attached. For further copies, contact the Registrar of Incorporated Societies (see contact details later in this guide)
- understand the union registration provisions in the Employment Relations Act 2000. The Registrar of Unions has prepared this guide to help you with that
- inform yourself about how to create a set of union rules. There are some hints at the back of this guide. You could also look at an existing union’s rules – copies of union rules are held by the Registrar of Incorporated Societies (see contact details later in this guide).

What the Employment Relations Act Requires

Introduction

The Employment Relations Act 2000 requires a union to be an incorporated society, to be independent from employers, and to have a set of rules that comply with the requirements of the Employment Relations Act 2000

Independence from employers

A union must be independent of, and be constituted and operate at arms length, from any employer.

The Registrar of Unions may examine applications for registration as a union to determine whether or not an applicant is independent of any employer. If an applicant is not independent of any employer, the Registrar must decline to register it as a union.

Employer support for the formation and/or registration of a union will not, in itself, prevent registration. The Registrar of Unions will consider all relevant circumstances including the nature and purpose of employer support and any employer influence over the nature or scope of the union's activities.

Union rules

A union's rules or constitution set out what the purpose of the union is and how it will operate. Union rules will vary depending on the nature of the union. A large national union will need a far more complex set of rules than will a small workplace-based union.

The Employment Relations Act 2000 requires that a union's rules:

- include an object (or purpose) of promoting members' collective employment interests
- are:
 - "not unreasonable"
 - "democratic"
 - "not unfairly discriminatory or unfairly prejudicial"
 - "not contrary to law".

Attached is "Some hints on creating union rules". It draws your attention to the requirements of both the Incorporated Societies Act 1908 and the Employment Relations Act 2000. It also makes some practical suggestions about what you might include in your rules.

How to register as a union

Overview

As indicated earlier, to become a union, a group of employees must follow a two step process:

- incorporate as an incorporated society
- register as a union.

Becoming an incorporated society

A Guide to the Incorporated Societies Act 1908 is attached. For further copies, contact the Registrar of Incorporated Societies (see contact details later in this guide).

Applying to register as a union

If you are already an incorporated society, you need to:

- check that your rules will comply with the requirements of the Employment Relations Act 2000. This involves:
 - the rules including an object to promote members' collective employment interests
 - the rules being "not unreasonable", "democratic", "not unfairly discriminatory or unfairly prejudicial", and "not contrary to law"
- satisfy yourself that the union is "independent from any employer"

To apply for registration as a union, an officer of the society needs to:

- fill in a copy of the prescribed application form. A copy of this prescribed form is attached
- attach a statutory declaration signed by an officer of the union. A copy of a statutory declaration is attached
- get copies of:
 - the union's certificate of incorporation under the Incorporated Societies Act 1908
 - the union's rules as lodged with the Registrar of Incorporated Societies
- send the application, statutory declaration and the copies to the Registrar of Unions (see contact details later in this guide). No fee is required.

The Registrar will deal with applications in the order in which they are received.

Registration

The Registrar of Unions will then check your application. If it is in order and complies with the Employment Relations Act 2000, the Registrar will register your union and send you a certificate of registration.

Other things to be aware of?

Under the Employment Relations Act 2000, it is an offence to mislead the Registrar of Unions. The penalty for misleading the Registrar can be up to \$5,000.

The union officer who makes the statutory declaration (referred to above) needs to carefully consider the requirements of the Employment Relations Act 2000 before signing that declaration.

Administering unions

General approach

The Registrar of Unions and the Registrar of Incorporated Societies have agreed to work together to help unions comply with both the Incorporated Societies Act 1908 and the Employment Relations Act 2000. Accordingly, below are some administrative requirements from both Acts.

Independence from employers

A union must operate independently from employers. If a union does not do so, it may have its registration revoked following an investigation by the Employment Relations Authority.

Annual financial statement

Each year, every union must get approval for its annual financial statement at an (annual) general meeting of members and must deliver a copy of that statement to the Registrar of Incorporated Societies.

Annual return of members

Each year, every union must advise the Registrar of Unions of the number of members it has as at 1 March that year. It must deliver that information to the Registrar by 1 June.

Changes to rules

A union's rules will state how the union may change its rules. Any change to the rules is not valid until the amendment has been approved by the Registrar of Incorporated Societies.

Advice on how to make rule changes is set out in “A Guide to the Incorporated Societies Act 1908” which is available from the Registrar of Incorporated Societies. A union needs to be careful to ensure that any rule changes also comply with the Employment Relations Act 2000.

Registered office

Every union must have a registered office and must advise the Registrar of Incorporated Societies of it. If a union changes its registered office, it must advise the Registrar of Incorporated Societies.

Contact details

Registrar of Unions

The Registrar of Unions can be contacted at:

Registrar of Unions
Employment Relations Service
Department of Labour
5th Floor Unisys House, 56 The Terrace
PO Box 3705, Wellington
Ph (04) 915 4500, Fax 915 4567

Registrar of Incorporated Societies

The Registrar of Incorporated Societies can be contacted on

Ph “0508 companies” (0508 266 726)

Copies of Legislation

You can get copies of the Employment Relations Act 2000 and the Incorporated Societies Act 1908 from any Bennetts Government Bookshop, or by visiting web site www.knowledge-basket.co.nz. Alternatively, copies are available from:

GP Legislation Services
PO Box 12418
Wellington 6038

Ph (04) 496 5655
Fax (04) 496 5698

Application for society to register as a union
(Section 13(2), Employment Relations Act 2000)

Name of society:
(insert name)

Date of application:
(insert date)

1. This application is made by
(insert name)
of
(insert address)

2. I hold the position of in the society
(insert office held)

3. Accompanying this application are –
- (a) a copy of the society’s certificate of incorporation under the Incorporated Societies Act 1908; and
 - (b) a copy of the society’s rules as registered under that Act; and
 - (c) a statutory declaration by myself (*or another officer of the society*) setting out the reasons why the society is entitled to be registered as a union.

.....
Signature of officer

Statutory declaration

(First schedule, Oaths and Declarations Act 1957)

FORM OF DECLARATION

I of
(insert name) (insert address)

being an officer of (“the society”),
(insert name of society)

solemnly and sincerely declare that:

- 1 The society is independent of, and is constituted and operates at arm's length from, any employer; and
- 2 An object of the society is to promote its members collective employment interest; and
- 3 The society is incorporated under the Incorporated Societies Act 1908; and
- 4 The society's rules are –
 - (i) not unreasonable; and
 - (ii) democratic; and
 - (iii) not unfairly discriminatory or unfairly prejudicial; and
 - (iv) not contrary to law.

And I make this solemn declaration conscientiously believing the same to be true and by virtue of the Oaths and Declarations Act 1957.

.....
(Signature)

Declared at this day of

before
[Justice of the Peace or other person authorised to take a statutory declaration]

Hints on creating union rules

Disclaimer

This guide is designed to assist groups of employees to create a simple set of union rules. It is not legal advice.

It points out requirements imposed by both the Incorporated Societies Act 1908 and the Employment Relations Act 2000.

General requirements for union rules

Union rules must be:

- “not unreasonable”
- “democratic”
- “not unfairly discriminatory or unfairly prejudicial”
- “not contrary to law”.

What specific union rules must and may include

Name: A union must have a name and the name must end with the word “Incorporated” (Incorporated Societies Act)

Objects: A union’s “objects” define the union’s aims and purposes. A union must have a set of objects (Incorporated Societies Act 1908). Those objects:

- should state all of the objectives that the union may wish to pursue now or in the future. This is because a union cannot legally undertake activities that fall outside its objects
- must include an object or a combination of objects to promote members’ collective employment interests (Employment Relations Act 2000)
- may include objects related to members non employment interests e.g. providing scholarships for the education of member’s children, running holiday homes, securing discount arrangements with retailers, etc

Powers: A union’s powers define the actions a union can take to administer itself. Rules:

- must clearly define what (if any) powers the union has to borrow money (Incorporated Societies Act 1908)
- need to set out normal administrative and any other powers that the union may need to operate effectively. This is because a union can only do things that its rules authorise it to do

Membership: The membership rule defines who may join the union. A union might define its membership in one or more of the following ways:

- employees in a particular occupation e.g. plumbers or cleaners
- employees in particular industries or sectors e.g. the manufacturing, retail, or construction industries or the government sector
- employees in a particular enterprise or workplace e.g. employees of Barry's Catering Ltd
- a combination of these approaches
- more generally

Unions may have overlapping membership coverage. There is nothing in the Employment Relations Act to prevent an employee joining more than one union

Unions need to note that there are close links between membership rules and union access rights which means there may be room for confusion if membership rules are unclear.

Unions also need to note that union members are automatically bound by collective agreements negotiated by the union. Some employees may not want the union to represent them for the purposes of collective bargaining. If so, unions should have another category (avoiding the word "member") of person who can join the union for purposes other than collective bargaining.

The rules:

- should define clearly who its membership is open to
- must set out how people can join the union (Incorporated Societies Act 1908)
- must set out how people cease to be members of the union (Incorporated Societies Act 1908) i.e. how members can resign, how (and in what circumstances) they can be expelled, etc

Fees: Rules generally specify some means of fixing and collecting union fees.

Governance: The rules need to set out how the union's decision making structures work. Rules must cover how meetings are summoned, how members (or their delegates) can participate in the meetings, how the meetings are conducted (chair, quorum, etc), and how voting occurs (Incorporated Societies Act 1908)

Rule changes: The rules must specify how the rules may be altered, added to, or rescinded (Incorporated Societies Act 1908). This is generally done by a decision of the union's peak decision making body (e.g. the AGM or an SGM)

Officers: The rules:

- must specify how union “officers” are elected (Incorporated Societies Act 1908)
- typically state who the union’s officers are, their roles, who may seek election to officer positions (often restricted to members), and when and how an officer can be removed from office.

The traditional union “secretary” may be an elected “officer” but is often an employee who is appointed by the executive committee.

Funds: The rules must include rules on the control and investment of funds (Incorporated Societies Act 1908). The rules must set out:

- who will receive monies, write receipts, open and operate bank accounts, pay bills, and write cheques
- what investments are permitted

Common seal: The common seal is a stamp used on documents issued in the society’s name to show they are valid. The rules must set out who controls and uses the seal and what the seal is used for (Incorporated Societies Act 1908)

Assets: The rules must state what will happen to any property of the union if the union is wound up or liquidated (Incorporated Societies Act 1908).