Employers, are you ready? We'll help you make sense of the latest amendments to the Employment Relations Act.

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The Employment Relations Amendment Bill is now in force, introducing significant changes to the Employment Relations Act 2000 that are directly relevant to employers.

For businesses, the amendments create opportunities to reduce risk, increase flexibility, and revisit existing employment and contractor arrangements.

Below we outline the key changes and what employers should be doing now.

Contractor vs Employee Status: A New "Gateway" Test

One of the most significant changes is the introduction of a new gateway test for determining whether a worker can claim employee status.

Under the new regime, a worker who meets all criteria for a "specified contractor" will generally be prevented from bringing a claim that they are, in fact, an employee. To qualify, all the following must apply:

- The parties have a written agreement confirming the worker is an independent contractor (or not an employee).
- The worker is free to perform work for others.
- The worker is not required to work at specified times or days or is permitted to subcontract the work.
- The agreement cannot be terminated simply because the contractor declines additional work.
- The contractor has had a reasonable opportunity to obtain independent advice before signing.

If any of these requirements are not met, the worker may still challenge their status under the traditional "real nature of the relationship" test.

The gateway test applies to existing contractor arrangements but does not operate retrospectively. Contractors who now meet the definition may still seek a determination that they were employees before 21 February 2026.

Businesses should review current contractor arrangements, update templates, and ensure day-to-day practices genuinely reflect contractor independence.

High-Earning Employees and Personal Grievances

Employees earning $200,000 per year or more will no longer be able to bring a personal grievance for unjustified dismissal or related disadvantage claims.

In practical terms, these employees cannot pursue unjustified dismissal claims and

employers are not required under the Act to provide relevant information or an opportunity to comment before termination.

The changes apply immediately to new employees, unless the parties agree in writing that they will not apply. For existing high-income employees, a 12-month transition period applies from 21 February 2026.

This significantly reduces litigation risk for senior and executive roles. Employers should ensure employment agreements clearly record whether the new regime applies.

Changes to Remedies for Personal Grievances

The amendments strengthen employer protections where employee misconduct contributes to a dispute.

No remedies may be awarded where the employee's actions contributed to the situation, and those actions amounted to serious misconduct. Even where conduct is merely contributory, reinstatement and compensation may be unavailable.

Employers should note there is no statutory definition of "serious misconduct", and the Authority or Court may take a different view from the employer.

Clarification of the Test for Justification

A dismissal or disciplinary action will no longer be unjustified solely because of procedural defects, unless those defects resulted in unfairness to the employee.

This change reduces the risk of claims based on technical or inconsequential errors, while still requiring fair treatment in substance.

Removal of the 30-Day Rule

Employers are no longer required to employ new non-union employees on collective agreement terms for the first 30 days.

This allows immediate negotiation of individual terms, and greater flexibility in mixed union and non-union workplaces.

Trial Period Amendments

The amendments confirm that employees dismissed under a valid trial period cannot bring a personal grievance for unjustified disadvantage related to the dismissal.

What Employers Should Do Now

With the amendments now in effect, employers should:

- Review contractor arrangements against the new gateway test.
- Update executive and high-income employment agreements.
- Ensure trial period clauses are correctly drafted and applied.
- Continue to run robust disciplinary processes, particularly where misconduct is relied upon.

For tailored advice on how these changes affect your business, please contact our employment team