

MAJOR EMPLOYMENT LAW CHANGES ARE CLOSER

The Employment Relations Amendment Bill has been reported back from the Education and Workforce Committee (“Select Committee”) with proposed changes to the “gateway test” for contractors and the high-income threshold limiting unjustified dismissal claims.

The gateway test

The gateway test is intended to provide greater certainty about whether a worker is an employee or not. If each of the requirements of the test is met, then the worker will not be an employee.

The main changes recommended by the Select Committee are focused on ensuring that the gateway test is flexible enough to apply to workers who provide services through platforms/mobile apps. It achieves this by recognising that the work might be “facilitated by” (rather than performed “for”) the business, and that the worker might be neither an employee nor a contractor of the business.

The proposed new gateway test requires:

- **Intention criterion:** A written agreement that the worker is an “independent contractor” or “not an employee”;
- **Restriction criterion:** The worker cannot be restricted from performing work for any other person, except while performing work for the business. The Select Committee has proposed that working full-time for the business does not, by itself, mean the worker is “restricted” from working for others;

- **Availability criterion:** The worker is not required to work, or be available to work, at a specified time or on a specified day or for a minimum period; or the worker must be allowed to sub-contract the work (subject to any necessary statutory compliance, qualification and/or criminal record vet) (**sub-contracting criterion**);
- **Termination criterion:** The business cannot terminate the arrangement because the worker declines additional work.

High-income threshold

Employees who earn more than the income threshold would not be able to raise unjustified dismissal claims. This is intended to provide greater flexibility and certainty in the dismissal process for employees who have a significant impact on organisational performance and high bargaining power.

Originally, the threshold was set at \$180,000 salary/wages per annum. The Select Committee has recommended that:

- Other types of remuneration are factored in, including bonuses and share schemes, to capture all high-income earners regardless of their remuneration structure;

- The annual remuneration threshold be increased to \$200,000;
- Annual remuneration be calculated by reference to the previous 52 weeks (divided by the number of days worked x 364).

Employers and employees can still agree that the remuneration threshold provisions will not apply to their employment relationship. However, the Select Committee has recommended that any such agreement must be recorded in writing.

What's next?

There are other proposed changes in the Bill which the Select Committee have not amended. These are covered in our July 2025 newsletter and include:

- Changes to the justification test;
- Repealing the “30-day rule”;
- Closing a trial period loop hole; and
- Reducing remedies available in cases involving serious misconduct.

The Bill is expected to be enacted in the first quarter of 2026. We will continue to monitor the Bill's progress for any further changes. Meanwhile, employers should consider whether they have high-income earners or contractors who might be affected.

If you would like advice or assistance in preparing for these proposed changes, please contact a member of our team.