

THE EMPLOYMENT RELATIONS AMENDMENT ACT IS HERE

Following a fast-tracked Parliamentary process, the Employment Relations Amendment Act 2026 (the “Act”), which amends key provisions in the Employment Relations Act 2000 (the “ERA 2000”), has now been enacted.

The changes are “employer friendly” and are intended to make it easier and more flexible to manage the workforce. The Act introduces (i) a new bright-line contractor gateway test, (ii) an income threshold for dismissal-related personal grievances, (iii) an increased role for contributory behaviour in terms of remedies, (iii) a change to the justification test, and (iv) the removal of the “30-day rule” and other information sharing obligations on employers about collective agreements. The Act also closes a small loophole in the trial period provisions.

The Act came into force on Saturday 21 February 2026, but the income threshold provisions have a 12-month transition period for certain employees.

We have prepared a one-page guide which summarises the changes and outlines practical steps employers should consider taking now the Act is in force. If you would like further advice on the detail of the Act or its impact on your business, please contact a member of our team.

Summary of change	Actions to take now
<p>Gateway test for specified contractors</p> <p>If a contractor meets a new five-part test they are deemed a “<i>specified contractor</i>” and are excluded from the definition of an employee under the ERA 2000. If a contractor is not a “<i>specified contractor</i>” then the usual “real nature of the relationship” test still applies. The new five-part test assesses:</p> <ol style="list-style-type: none"> 1. the terms of the written agreement; 2. whether the worker is restricted in who else they work for; 3. whether the worker is required to be available to work at specified times, days or for a minimum period, or is able to sub-contract work; 4. whether the arrangement can be terminated if the worker declines additional work; and 5. whether the worker had a reasonable opportunity to seek independent advice before entering into the arrangement. <p>The new test applies from 21 February 2026. However, if status proceeding are filed prior to this date, then the current law applies.</p>	<ul style="list-style-type: none"> • Assess whether current contracting arrangements meet the gateway test. • Amend independent contractor agreements if the business wishes to rely on the gateway test going forward.
<p>Income threshold for unjustified dismissal claims</p> <p>Where an employer dismisses an employee who earns more than the income threshold (\$200,000), the employee cannot bring an unjustified dismissal claim, or a disadvantage claim related to a dismissal, or request written reasons for their dismissal, and the employer’s duty of good faith is limited in relation to the dismissal.</p> <p>The income threshold is measured by calculating an employee’s annual remuneration according to a formula that takes into account all taxable income payments (not just base salary) and share scheme benefits, over the last 364 days. Employees who earn over the threshold can agree with their employers in writing that the remuneration threshold does not apply to them.</p> <p>The effective date is 21 February 2026 for new hires after that date. However, for persons who were employed prior to 21 February 2026, the threshold will not apply until 21 February 2027, unless:</p> <ul style="list-style-type: none"> • they move into a different position before then (other than as a result of a restructuring); or • the parties have agreed in writing that the remuneration threshold applies. 	<ul style="list-style-type: none"> • Consider whether adopting the threshold is a good fit for the business commercially and culturally. • If the threshold will be relied upon, think about: <ul style="list-style-type: none"> ○ Whether employment agreements need to be updated. ○ How to respond to requests for enhanced termination entitlements, such as “no fault” termination payments and longer notice periods. ○ Whether there are any non-dismissal related claims still available on dismissal (e.g. discrimination, breach of contract, breach of Health and Safety at Work Act 2015). • Implement a process to accurately calculate whether the threshold is met using the statutory formula.
<p>Reduced remedies and changes to the justification test</p> <p>The Authority and Court:</p> <ul style="list-style-type: none"> • cannot award any remedies where an employee’s actions have contributed to their personal grievance and amount to serious misconduct; • cannot order reinstatement or award compensation for hurt and humiliation or lost benefits where an employee’s actions have contributed to their personal grievance (even if no serious misconduct has occurred); • can reduce remedies by up to 100% in any case for employee contribution; • must not find a dismissal or action unjustified just because of procedural defects if they did not result in the employee being treated unfairly; and • must consider whether the employer was obstructed in its process when considering if its actions were justified. 	<ul style="list-style-type: none"> • Consider whether the changes will impact how employment processes are managed (particularly disciplinarys). • Seek advice on the ability to rely on this law change in disciplinary processes involving serious misconduct. • Consider how the changes impact settlement negotiations.
<p>Repealing the “30-day rule”</p> <p>Employers who have a collective agreement in place are no longer required to employ new employees on the terms and conditions of the collective agreement for their first 30 days of their employment, unless the new employee is a union member covered by the collective agreement. Employers will still be required to share with new employees information about its collective agreement(s) and union(s).</p>	<ul style="list-style-type: none"> • If a collective agreement is in place, seek advice on updating the letter of offer for new employees. • Update new employee induction processes.
<p>Trial periods</p> <p>The Act makes clear that employees on 90-day trial periods are unable to bring unjustified disadvantage claims related to a dismissal (in addition to unjustified dismissal claims).</p>	<ul style="list-style-type: none"> • Consider whether trial period provisions in employment agreements need updating.