Employment Relations Amendment Act 2026

What Employers Need to Know

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Today's Agenda

01		Why this reform matters
02		Contractor vs employee: the new gateway test
03		The high-income threshold ($200k)
04		Personal grievance changes
05		Trial periods, 30-day rule & other changes
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CONTEXT

The Most Significant Reform Since 2018

The Employment Relations Amendment Act 2026 received Royal Assent on 20 February 2026 and came into force the following day. It represents a substantial rebalancing of New Zealand's employment law settings.

5	$200k	21 Feb
key reform areas	new PG income threshold	2026 — in force date

Government's stated aim: make it easier for businesses to hire and manage misconduct, increase labour market flexibility, reduce compliance costs, and rebalance the personal grievance system.

Driven by

- Ongoing uncertainty over contractor vs employee status (incl. the Uber litigation)
- Employer concerns about cost and unpredictability of personal grievances
- A push for greater flexibility at the top end of the labour market

OVERVIEW

Five Key Reform Areas

Contractor Gateway Test Test

New statutory test to determine 'specified contractor' status

High-Income Threshold Threshold

$200k+ earners lose access to unjustified dismissal claims

Personal Grievance Remedies

New limits where employee conduct contributed to the grievance

Procedural Fairness Test Test

Minor process defects no longer automatically fatal

Trial Periods & 30-Day Rule

Trial period protections strengthened; 30-day rule repealed

01

Contractor vs Employee

The new statutory gateway test

Why a Gateway Test Was Needed

Under the previous law, whether a worker was an employee or an independent contractor was determined by examining the "real nature" of the relationship — regardless of contract labels. The Authority or Court weighed control, integration, and intention on a case-by-case basis.

This led to significant litigation and unpredictability — most visibly in the long-running Uber litigation over driver status.

The old approach meant

- Genuine intentions of the parties could be overridden by how the relationship operated in practice
- Businesses using contractors carried ongoing reclassification risk
- Workers faced uncertainty about their own status and entitlements
- Outcomes were difficult to predict in advance

The New "Specified Contractor" Gateway Test

A worker is a specified contractor — and excluded from the meaning of "employee" — only if ALL five criteria are met:

1. A written agreement states the worker is an independent contractor / not an employee
2. The worker is free to work for others (not just competitors), except while performing work for the business
3. The worker is not required to be available at set times or days, and may subcontract
4. The arrangement does not end solely because the worker declines additional work
5. The worker had a reasonable opportunity to get independent advice before signing

What This Means in Practice

Opportunities for employers

- Genuine contracting arrangements that meet the gateway test can no longer be challenged in the ERA or Employment Court
- Greater certainty when structuring contractor relationships
- Reduced exposure to reclassification claims for compliant arrangements

Points of caution

- All five criteria must be met — partial compliance gives no protection
- Existing contractor agreements should be reviewed and, where needed, updated
- Day-to-day practice must match the written agreement — conduct that contradicts the paperwork undermines the test
- Where the gateway test isn't met, the previous 'real nature of relationship' test still applies

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The High-Income Threshold

Personal grievance access for high earners

A New $200,000 Remuneration Threshold

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$200,000

total remuneration threshold

Reviewed annually from 1 July 2027, in line with average weekly earnings

- Employees at or above the threshold can no longer bring a personal grievance for unjustified dismissal (or related unjustified disadvantage).
- Employers are no longer required to follow certain good-faith procedural steps (e.g. consultation process or given access to relevant material) for these employees.
- The exclusion applies only to dismissal-related grievances — it does NOT extend to discrimination claims.
- Employers and employees can contract out of the bar by agreement.

HIGH-INCOME THRESHOLD

Calculating the Threshold & Transition Period

How remuneration is calculated

- Based on total remuneration — salary plus bonuses, commissions and similar payments
- Note: sources differ on inclusions — confirm the exact statutory definition (base salary vs total remuneration) before relying on it for a specific employee
- Excludes items such as overtime, superannuation/KiwiSaver, and owner-related benefits per some commentary

Transition period

- Applies immediately to new employment agreements from 21 February 2026
- 12-month grace period for existing high-earning employees — ends 21 February 2027
- During the transition, existing agreements retain unjustified dismissal rights unless the parties agree to apply the threshold early
- After the transition, the threshold applies by default

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Personal Grievance Changes

Remedies, contributing conduct & procedural fairness

Employee Conduct Now Limits Remedies

The Act introduces significant limitations on remedies where the employee's own conduct contributed to their personal grievance:

Serious misconduct contributed	→	No remedies awarded at all (no compensation for humiliation, loss of dignity or injury to feelings and no lost wages)
Conduct contributed (not serious misconduct)	→	No reinstatement; no compensation for humiliation, loss of dignity or injury to feelings
Any contributing behaviour	→	Remedies may be reduced — up to 100% — under amended s124

The Procedural Fairness Test Has Changed

Before the Act

- Procedural defects — even minor ones — could render an otherwise justified dismissal unjustified
- Employers faced risk from technical process errors regardless of substantive fairness

Under the 2026 Act

- New s103A(5): a dismissal is not unjustified solely for procedural defects, if those defects did not result in the employee being treated unfairly
- The focus shifts from technical compliance to substantive fairness
- The Authority may also consider whether the employee obstructed or frustrated the employer's process (new s103A(3)(e))

This is not a licence to abandon process — a robust, fair process remains the best protection against a grievance claim.

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Other Key Changes

Trial periods, the 30-day rule & bargaining obligations

Trial Periods: Protection Strengthened

Reminder: trial periods for all employers (regardless of size) were already restored in December 2023. The 2026 Act strengthens the protection further.

Previously

- An employee dismissed during a valid trial period could not bring a personal grievance for unjustified dismissal

Now

- The exclusion is extended to also cover unjustified disadvantage claims relating to the dismissal
- Core requirements are unchanged: the clause must be agreed in writing before the employee starts, and must be genuine

30-Day Rule Repealed

What's changed

- Previously: non-union new employees had to be employed on terms consistent with the applicable collective agreement for their first 30 days
- This requirement has been repealed
- The related obligation for employers to share new employee information with the union (unless the employee objects) has also been repealed

Practical effect

- Employers can agree individual terms with new employees from day one
- Reduces administrative burden of tracking and applying collective terms during the initial period
- Some obligations remain — e.g. providing a copy of the collective agreement and informing the union where the employee agrees

TIMELINE

Key Dates to Diarise

17 Feb 2026
Bill passes third reading

20 Feb 2026
Royal Assent

21 Feb 2026
Act comes into force — most provisions effective

21 Feb 2027
12-month transition ends for existing high-income employees

1 Jul 2027
Annual threshold adjustments begin

PRACTICAL IMPACT

What This Means for Your Business

Opportunities

- Greater certainty for genuine contracting arrangements meeting the gateway test
- Reduced grievance risk for senior/high-earning roles above $200k
- More flexibility to restructure or end senior roles without dismissal grievance exposure
- Reduced exposure from minor procedural missteps, provided substantive fairness is maintained
- Lower administrative burden removing new employees from the 30-day collective agreement rule

Risks & watch-outs

- Misclassifying a worker as a specified contractor when the gateway test isn't fully met leaves the arrangement exposed to the ordinary employee test
- "No licence to abandon process" — a robust process is still the best protection
- Existing high-income employment agreements need review before the 21 Feb 2027 transition deadline
- Discrimination-related grievances remain available even above the income threshold

NEXT STEPS

Action Checklist

- Review and, where needed, update existing contractor agreements against the 5-part gateway test
- Identify employees at or near the $200,000 total remuneration threshold
- Review high-income employment agreements ahead of the 21 February 2027 transition deadline
- Update template employment agreements to reflect the 30-day rule repeal and what defines misconduct v serious misconduct
- Refresh disciplinary and dismissal procedures with the new procedural fairness standard in mind
- Train HR / people leaders on the new personal grievance remedy limitations

Questions & Discussion

We're happy to discuss how these changes apply to your specific workforce and agreements.

Thank You

For advice specific to your business, please get in touch:

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