

Employment law is routinely used as a political football for politicians. The recent changes to trial periods (now only permitted for employers with 19 or less employees) is an example of how a change in Government can lead to important law reform in the employment space.

The current Government is now trying to address the long-standing issue of the status and rights of people whose work is for, and dependent on, one principal (typically labelled as contractors). A public consultation document has been released for discussion, proposing a range of potentially significant legislative reforms.

TYPES OF NZ WORKERS

There are two key types of workers in New Zealand:

1. **Employees:** Employees receive a number of important minimum employment rights under law, e.g. protection against unfair dismissal.
2. **Contractors:** In contrast, contractors generally have few rights and protections unless these are provided for in their agreement for services. Although there are advantages for contractors, such as tax benefits, more flexible work-life and working for multiple businesses.

The Government's consultation document has arisen due to what has been seen as an increase in the "misclassification" of employees as contractors. This sometimes occurs because employers are ignorant of what constitutes a true principal/contractor relationship under the law. However sometimes it occurs as a deliberate attempt to deprive workers of key employment rights.

"Grey Zone"

The Government is also concerned about a "grey zone" of workers, whose terms of engagement make it difficult to differentiate the true nature of their status as employee or independent contractor. For example, this might include an IT services provider running their own business, but relying on one firm for most of their income and having little control over how that work is performed. It is believed that these "grey zone" workers are being disadvantaged by not having basic employment rights.

POTENTIAL REFORMS

The consultation document seeks feedback on a range of options to address these problem areas. These include:

- introducing a specific offence for employers who misrepresent employment relationships as contracting arrangements i.e. trying to deprive workers who are truly employees of employment rights;
- giving the Labour Inspectorate increased powers to investigate the misclassification of employees as contractors, and even to make an ultimate decision about a worker's employment status (presently this can only be done by the Employment Relations Authority);
- making it easier for workers to access a determination about their employment status and reducing the legal costs associated with applications;
- defining certain occupations or types of workers as employees under the law – although defining workers in certain industries as employees would be tricky and would prejudice those having no desire to access the full suite of employment rights or wanting the benefits of being contractors (e.g. tax advantages);
- extending the right to collective bargaining to some contractors; and
- creating a new and third category of workers known as "**dependent contractors**", who have some employment rights and protections – although this concept has been tried in Italy and Spain with limited success, and having three categories of worker could cause further confusion.

A copy of the discussion document can be found [here](#).

Some of the proposals seem logical – like the first two bullet points above. Other proposals may only create further confusion if implemented. Many of the suggestions seem more ideologically driven than grounded in reality.

WHAT SHOULD I DO?

Submissions on the consultation document have now closed, so we will hear soon more about which options may be carried forward to potentially become law.

Any change is likely to be some way off and would be subject to the usual Parliamentary process. However, we recommend businesses turn their mind to the issue and ensure they are aware of the legal distinction between employees and contractors. For further information, please contact one of the JR employment lawyers listed below.

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