
BETTER PROTECTIONS FOR CONTRACTORS

The Government is considering whether to give more protection to contractors - <https://www.mbie.govt.nz/have-your-say/better-protections-for-contractors/>.

During 2019 MBIE developed a discussion document for public feedback, which was published in November. The Minister for Workplace Relations and Safety, Ian Lees-Galloway is expected to report back to Cabinet in April or May this year, with final policy proposals and any financial implications.

What follows is a summary of the main points.

Why?

Minister Lees-Galloway says that while we “have one of the highest employment rates in the OECD and near record low unemployment, changes made to our labour market in the 1990s in the name of market flexibility have resulted in structural problems and left too many hard working New Zealanders struggling to make ends meet. Some of those changes may have been useful for GDP growth, but they also increased inequality by removing the checks and balances that were needed to ensure all workers had the tools to support their wellbeing in the labour market.”

So, the objective is to ensure that –

- All employees receive their statutory minimum rights and entitlements
- The imbalance of bargaining power between firms and vulnerable contractors is reduced
- System settings encourage inclusive economic growth and competition.

What’s the real problem?

In New Zealand, there are broadly two types of workers: employees and contractors. Employees have a range of rights and protections prescribed by law, while contractors, who enter into commercial contracts with their principals, do not.

According to MBIE there are two specific problems –

- Some workers are really employees, but are misclassified as independent contractors; and
- Some workers are in a ‘grey zone’ between employee and contractor status. They often have poor working conditions and little bargaining power.

What is proposed?

MBIE has suggested 11 options, which are not mutually exclusive and could be combined in various ways as a package. The options are presented in 4 groups, each aimed at a particular issue –

Options to deter the misclassification of employees as contractors

1. Increase proactive targeting by Labour Inspectors

2. Enable Labour Inspectors to decide workers' employment status (Only the Employment Relations Authority or Employment Court can do so at the moment)
3. Introduce penalties for misrepresenting an employment relationship as a contracting arrangement.

Options to make it easier for workers to get a determination of their employment status

4. Introduce disclosure requirements when firms hire workers
5. Reduce costs for workers who seek employment status determination
6. Put the burden of proving a worker is a contractor on firms
7. Extend the application of employment status determinations to similar workers (even if they were not involved).

Options to change who is an employee under New Zealand law

8. Define some occupations of workers as employees (reserve some types of work for employees only)
9. Change the tests that courts use to determine employment status to include vulnerable contractors

Options to improve protections for contractors without making them employees

10. Give some contractors the right to bargain collectively (presently only employees can bargain)
11. Create a new category of workers with some employment rights and protections (for instance "dependent contractor").

How will this affect employers?

Contractors have become an essential part of the gig economy, which does not fit into the old industrial relations structure, and which values independence and freedom of choice. Both businesses and contractors will be severely affected by the proposed change, which will restrict their freedom of choice.

The Cabinet Economic Development Committee's Minutes on the proposal (DEV-19-MIN-0291 minute 4.2) record the connection with the development of a Fair Pay Agreement system, "**which would create a new mechanism for collective bargaining to set minimum wages and terms across an occupation of sector**" - <https://www.mbie.govt.nz/dmsdocument/10340-strengthening-protections-for-vulnerable-contractors-release-of-consultation-document-minute-of-decision-proactiverelase-pdf>

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