



Advice from Alan

The gateway test

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The New Zealand Government has passed a new law which has considerable implications

for contractors. This comes in response to the Supreme Court's decision which found that Uber drivers were employees rather than independent contractors as argued by Uber.

While the previous approach to ascertaining status was an analysis of the 'real nature of the relationship', the new law introduces a five-part gateway test, alongside existing employment law. An individual will be considered a contractor if:

1. A written contract exists, which specifies that they are a contractor or that they are not an employee;
2. They are free to work for another employer;
3. They are not required to work at specified times, on specified days, for minimum periods; or they otherwise have the ability to sub-contract the work;
4. The working relationship cannot be terminated if the worker declines work; and
5. They had a reasonable opportunity to seek independent advice before entering into the contract.

This change narrows the scope of the law on who is an employee and who is a contractor but more clearly defines the types of arrangements that don't come under a usual employer-employee arrangement.

If an existing agreement satisfying the gateway test was in place before the 21st of February 2026, it will be accepted as a valid contractor agreement from that date. The law applies retrospectively no matter how old the agreement. The only exception is if the person had commenced proceedings to determine their status before the 21st of February 2026, so those Uber drivers held to be employees remain employees, but that only applies to those particular people, not every Uber driver.

If an existing agreement was in place before the 21st of February 2026 but does not satisfy the gateway test, the 'real nature of the relationship' test as applied by the Employment Relations Authority and courts continues to apply.

For new agreements after the 20th of February 2026, if the gateway test is satisfied, they will be contractors. If the test is not satisfied, the 'real nature of the relationship' test will apply.