The Gateway Test

What the new contractor classification rules mean for you

Practical guidance for New Zealand employers and contractors

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About this guide

New Zealand law distinguishes between employees and independent contractors. Getting the classification right matters — it affects employment rights, tax and ACC obligations, leave entitlements, KiwiSaver, termination rights, and business compliance.

A written contract is important, but it is not always enough on its own. The way the relationship works in practice also matters.

What is an employee?

An employee works for an employer as part of the employer’s business. An employer will usually have the right to direct and supervise the employee’s work, including what work is done, how it is done, when it is done, and where it is done. Employees usually have employment rights and protections, including minimum employment standards, leave entitlements and access to personal grievance processes.

What is an independent contractor?

An independent contractor is generally in business on their own account. A contractor is usually engaged to provide services, complete a project, or deliver an agreed result. Contractors often have more control over how they do the work, may work for more than one client, may use their own tools or systems, and are usually responsible for their own tax and business costs.

What is the Gateway Test?

The Gateway Test was introduced by the Employment Relations Amendment Act 2026 and came into force on 21 February 2026. It provides clearer rules for identifying some genuine contractor arrangements.

If the Gateway Test is met, the worker may be treated as a specified contractor rather than an employee.

If the Gateway Test is not met, that does not automatically mean the person is an employee. It means the usual legal assessment may still be needed, including looking at the real nature of the working relationship.

PLEASE NOTE

The Gateway Test is a pathway, not the only pathway. For it to apply, all five criteria set out overleaf must be satisfied — not just some of them.

The five Gateway Test criteria

For the Gateway Test to apply, all five criteria must be satisfied.

1. **There is a written contractor agreement**
   There must be a written agreement that says the worker is an independent contractor, or is not an employee. A verbal agreement is not enough.

2. **The contractor is free to work for others**
   The arrangement must not prevent the contractor from working for other businesses or clients. A contractor may still choose to work mainly or entirely for one business, but the agreement and practical arrangement should not improperly restrict them from working elsewhere.

3. **The contractor controls when they work, or can subcontract**
   The contractor must either not be required to work at set times, on set days, or for a minimum period, or be able to subcontract the work to another person. Where subcontracting is allowed, the business may still check that the substitute meets relevant legal, qualification, safety or suitability requirements where those checks are justified.

4. **The arrangement does not end just because the contractor declines extra work**
   A genuine contractor should be able to decline additional work. The arrangement should not be able to be terminated solely because the contractor says no to extra work outside what has been agreed.

5. **The contractor had a reasonable opportunity to get independent advice**
   Before entering the arrangement, the contractor must have had a reasonable opportunity to seek independent advice. This may include legal, accounting, employment, business or other professional advice.

Outcomes of the Gateway Test

If the Gateway Test is met

If all criteria are genuinely met, the arrangement is more likely to be treated as a contractor arrangement under the new framework. This can provide greater certainty for both the business and the contractor.

However, the written agreement and the actual way the work is performed should match. A contract that says “independent contractor” should not be used to describe a relationship that operates like employment.

If the Gateway Test is not met

The worker’s status may still need to be assessed using the broader legal tests. These may include looking at:

- who controls the work
- whether the worker is integrated into the business
- whether the worker is operating a business on their own account
- who provides tools, equipment and systems
- how the worker is paid
- whether the worker can work for others
- whether the worker carries business risk
- what both parties intended, and how the relationship works in reality

> **PLEASE NOTE**
> No single factor is usually decisive. The full working relationship matters.

Practical checklist

If you are entering or reviewing a contractor arrangement, use this checklist as a starting point.

Question	Yes / No / Action needed
Is there a clear written contractor agreement?	
Does the contractor understand they are being engaged as a contractor, not as an employee?	
Can the contractor work for other clients?	
Does the contractor have genuine control over when and how the work is done?	
Can the contractor subcontract the work, where appropriate?	
Can the contractor decline extra work without the arrangement ending for that reason alone?	
Was the contractor given a reasonable opportunity to seek independent advice?	
Does the day-to-day arrangement match what the contract says?	
Is the contractor responsible for their own tax, ACC and business obligations?	
Is the contractor genuinely operating independently?	

Why this matters

Incorrectly classifying a worker can create significant legal and financial risk. For employers, this may include claims for employment entitlements, tax issues, penalties, arrears, legal costs and disruption to the business. For contractors, classification affects legal rights, protections, tax obligations, business risk and access to employment remedies.

Getting the arrangement right at the start is usually easier than trying to fix it after a dispute arises.

What employers should do

- review current contractor agreements
- check whether each arrangement meets the Gateway Test criteria
- make sure actual working practices match the written agreement
- avoid treating contractors like employees in day-to-day management
- keep records showing the contractor had an opportunity to seek independent advice
- review long-term, regular or exclusive contractor arrangements carefully
- seek advice if there is uncertainty

What contractors should do

- read the agreement carefully before signing
- check whether the agreement reflects how the work will actually operate
- consider getting independent advice
- understand their tax, ACC, insurance and business obligations
- keep records of work, invoices and client arrangements
- clarify whether they can work for others or subcontract
- raise questions before signing if the arrangement is unclear

Need help?

If you are unsure whether an arrangement is employment or contracting, seek advice before signing or continuing the arrangement. Useful sources of advice may include:

- an employment lawyer
- an accountant
- an employment relations specialist
- Employment New Zealand guidance
- Inland Revenue guidance for tax obligations
- WorkSafe or ACC guidance where safety, injury prevention or levy obligations are relevant

IMPORTANT NOTE

This flyer provides general information only. It is not legal advice and should not be relied on as a complete assessment of any specific working arrangement. Employers and contractors should seek professional advice about their own circumstances.

Need help classifying a contractor arrangement?

Contact: enquiry@safemetrics.co.nz
Website: www.safemetrics.co.nz

Source used: Gateway Test information for employers and contractors (Employment Relations Amendment Act 2026).