

PFRA Symposium 2025- Employment Law Compliance – What you need to know

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Session Overview

- Significant changes coming through Employment Relations Amendment Bill
- Key areas to watch out for:
 - Casuals
 - Fixed term
 - Probationary and trial periods
- Managing performance and misconduct '101'



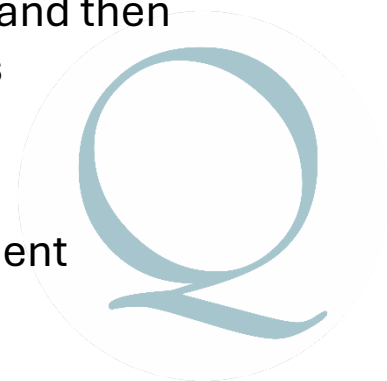
Gateway Test

- A worker is classified as a contractor when:
 - there is a written agreement that specifies the worker is an independent contractor.
 - the worker is not restricted from working for others, except while performing work for the business.
 - the worker is:
 - not required to be available to work certain times or days or for a minimum period, or
 - able to sub-contract the work;
 - the business does not terminate the arrangement for not accepting an additional task; and
 - the worker had a reasonable opportunity to seek independent advice before entering into the arrangement.
- Supreme Court decision in Uber case
- Section 6 relevance?



Specified Threshold for Personal Grievance Claims

- If an employee's annual wages or salary meet or exceed the income threshold, then:
 - In deciding whether to terminate the employee's employment, the employer is not required to follow a process in accordance with its good faith obligations under section 4(1A)(c) of the Employment Relations Act 2000.
 - If the employer terminates the employment agreement, it is not required to provide reasons for the dismissal under section 120 of the Employment Relations Act 2000.
 - The employee may not bring a personal grievance for unjustified dismissal or disadvantage relating to the dismissal.
- The income threshold will initially be set at \$180,000 per annum and then updated annually based on increases in average weekly earnings measured by Statistics New Zealand.
- 12-month transitional period for employees on existing employment agreements.



Other Changes

- Restrictions on awarding remedies for employees found to have committed serious misconduct.
- Other proposed changes such as:
 - Removal of the “30-Day Rule”.
 - Changes to the 90-day trial period provision.
 - Changes to the justification test.



Key Areas to Watch out for

- Casuals
 - What is casual employment?
 - What happens if things change over time?
- Fixed term
 - Must be genuine reasons based on reasonable grounds and included in employment agreement
- Probationary and trial periods
 - Big differences
 - 90 day trial periods provide a 'blank cheque' but employers often get caught out on the 'fine print'
- Controlling third parties



Performance Management

- Must be able to identify:
 - The required standard
 - How employee's performance falls short
 - How employee's improvement/performance will be measured
- Performance Improvement Plans (PIPs)
- How long does it take, are there any shortcuts?



Misconduct and disciplinary action

- Disciplinary action is needed what do you do?
- Where to begin – the disciplinary letter:
 - Invitation to a disciplinary meeting noting date, time, venue etc.
 - Specifying the matters of concern
 - Inviting support person or legal representation
 - Seeking confirmation of attendance and advice as to support person/representative
- Identity of independent decision-maker
- Two step process
- Provide all relevant information

