

# Employers take note

*Posted on: February 14, 2025*

The Government has proposed two major reforms in favour of employers in two critical areas:

- personal grievances; and
- employee remedies.

These proposed amendments (together with last year's announcement about a new gateway test to determine if a worker is an employee or a contractor) are part of an overall move towards greater flexibility and choice in the New Zealand employment market.
An income threshold is to be introduced whereby employees paid over $180,000 per annum

will be unable to raise unjustified dismissal claims.  The income threshold will apply to new employment agreements once the Bill is passed, and existing employment agreements twelve months after the Bill is passed.

This transition period gives high-income employees and employers time to amend employment agreements if they choose to. Crucially, this provides an opportunity to opt back in to the existing unjustified dismissal regime or negotiate bespoke dismissal procedures and recording the terms in a variation to the relevant employment agreement.

The income threshold will be determined by an employee's 'base salary' and will exclude alternative forms of remuneration (including benefits and incentives). The threshold will be reviewed annually and adjusted to match increases in average earnings.

The threshold will only apply to unjustified dismissal claims – high-income employees will still be able to raise other types of personal grievances (i.e. unjustified disadvantage, discrimination, harassment etc).

Employee Remedies

In a move sure to be welcomed by many employers, the Employment Relations Act 2000 will be amended to place a higher emphasis on considering employee behaviour when awarding remedies. This is said to be in response to concerns that the current personal grievance settings favour employees and create incentives for employees to raise low merit claims. The key changes can be summarised as follows:

- Removing an employee's right to a remedy where their behaviour constitutes serious misconduct;
- Removing an employee's eligibility for reinstatement and for compensation for hurt and humiliation, and allowing remedy reductions of up to 100 percent if their behaviour contributed to the issue which gave rise to the personal grievance;
- The Employment Relations Authority and Employment Court will be required to consider if the employee's behaviour prevented the employer from meeting their obligations to act fairly and reasonably; and
- Increasing the threshold for 'procedural error' in cases where the employer's actions against the employee are considered fair in all the circumstances.
- These changes aim to strike a better balance between the employee and employer

during personal grievance claims and should mean that remedies fairly reflect the level of employee behaviour, reassure employers that they can do the ‘right thing’, and disincentivise employees from trying their luck at raising a personal grievance.

We will continue to monitor the progression of these proposed legislative reforms. In particular, we are interested in seeing how employers and employees in the over $180,000 bracket creatively seek to navigate the transitional period.

If you have any questions or require assistance, please get in touch with our employment team.