



Navigating Contractor vs. Employee Arrangements: New Zealand's 4 Tests and Legal Considerations

Introduction

Distinguishing between contractor and employee arrangements is a crucial task with potential legal, financial, and operational implications. There are a set of 4 tests that help determine whether an individual is classified as a contractor or an employee. These tests have gained significant attention due to a particular court case that has again shed light on their application. In this blog post, we will delve into the 4 tests and explore how the courts' considerations in a notable recent case have influenced the understanding of these arrangements.

New Zealand's 4 Tests

Control Test: This examines the degree of control the employer has over the worker. An employment relationship is more likely if the employer sets the worker's hours, provides tools/equipment, and closely supervises the work. In some cases, the company's uniform has been provided and worn by the workers too, which was found to support it being an employee relationship.

Integration Test: Focuses on the worker's role within the business. If the worker's role is integral to the business's operations and success, they are more likely to be classified as an employee.

Economic Reality Test: Evaluates the economic dependence of the worker on the business. If the worker relies heavily on the business as their primary source of income, they are more likely to be considered an employee.

Intention Test: Examines the intentions of both parties regarding the nature of their relationship. This includes the terms of the contract and whether it aligns with the claimed relationship, although it's important to note that having a Contract for Service agreement that specifies it is a contractor, not employee relationship is not enough by itself, without meeting the 3 other tests as well.

Legal Considerations: *E tū Inc & Anor v Raiser Operations BV & Ors [2022]*
NZEmpC 192

In this Employment Court case, the court emphasised the importance of the control test. While the court accepted that some of the usual indicators of a traditional employment relationship were missing, the fact that the company had incentive schemes for drivers that reward consistency and quality, and withdrawal of rewards for breaches of Uber's Guidelines or for slips in quality levels, measured by user ratings, tipped the scale toward an employment relationship. Despite the contract stating a contractor arrangement, the court considered the actual working conditions and the degree of control exercised by the company.

Additionally, the integration test played a role. As drivers were essential to the ride-sharing platform's core operations, which the court described as a transportation business, not merely a digital platform that facilitates interactions between drivers and passengers, the four drivers in the case were seen as an integral part of the business. This highlighted the employee-like role they held.

Court of Appeal Case: *RASIER OPERATIONS BV v E TŪ INCORPORATED [2023]*
NZCA 216

On 8 June 2023 the Court of Appeal approved the application for leave, to have aspects of the Employment Court's decision reassessed, as they related to matters of law. When this case appears before the Court of Appeal, the focus will be on the correct approach to s6 of the Employment Relations Act 2000,

which directs the Employment Relations Authority and courts to determine the real nature of the relationship between the parties on “all relevant matters”. The application to the Court of Appeal, included 3 questions, and the Court noted that it would consider these in the context of new ways and fast-moving changes to the way in which work is done. The questions of law on appeal are:

- (i) Did the Employment Court err by misdirecting itself on the application of section 6 (the meaning of “employee”) of the Employment Relations Act 2000 (Act)?
- (ii) Did the Employment Court err by misapplying the test in section 6, or in the alternative was the Court’s conclusion so insupportable as to amount to an error of law?
- (iii) Did the Employment Court err in finding that joint employment may arise in New Zealand simply as a result of a number of entities being sufficiently connected and exercising common control over an employee?

Conclusion

It will certainly be interesting to see the Court of Appeal’s decision. Distinguishing between contractor and employee arrangements in New Zealand involves careful consideration of the 4 tests: control, integration, economic reality, and intention. While some employers or industries may have used contractors to fulfil key duties for a long time, that in itself does not ensure the arrangement would meet the requirements of the tests to withstand legal scrutiny.

Recent court cases like *E tū Inc & Anor v Raiser Operations BV & Ors [2022] NZEmpC 192* and the upcoming Court of Appeal case provide valuable insights about how these tests are applied in real-world scenarios. By understanding these tests and legal considerations, businesses can ensure they classify their workers correctly, avoiding potential legal complications down the road, which, amongst other things, can include reinstatement of leave that would be owed had they been treated as an employee.

Please do not hesitate to call (021 932 332) or [email me](#) to discuss this topic further or seek advice about whether your contractors meet the tests.