

Submission by



to the

**Ministry of Business Innovation and Employment**

on the

**Better Protections for Contractors Discussion document**

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# **SUBMISSION BY BUSINESSNZ ON THE BETTER PROTECTIONS FOR CONTRACTORS DISCUSSION DOCUMENT <sup>1</sup>**

## **INTRODUCTION**

1. The changing nature of work, including the expansion of the “gig/platform” economy, has led to increased scrutiny of the use of contractors to provide services. Globally, contractors are used in all sectors and industries (including by government departments) and contracting takes many forms.
2. This globally increasing diversity of working arrangements reflects a natural response of both workers and employers to the fluid nature of modern business. Put more simply, businesses need flexibility to match supply with unpredictable demand, while workers increasingly seek to balance work with domestic responsibilities in a world where traditional roles are becoming less prevalent.
3. Business New Zealand contends that policy responses to this need for diversity and flexibility should enable such responses to exist while protecting the rights of workers and businesses in the process.

## **Feedback sought**

4. In New Zealand, there are two categories of workers: employees or contractors. Employees are afforded protection by our legislative framework that provides for minimum entitlements, rights, and protections. Contractors do not receive employment related entitlements as the vehicle for their relationship with a principal is a commercial contract.
5. The Government’s discussion document “Better Protections for Contractors” (the Discussion paper) has identified two key issues to be addressed:
  - a. Workers who are (in substance) employees, but are misclassified as “independent contractors”, and
  - b. Workers in a hypothetical “grey zone”, between employee and contractor status, who can experience poor working conditions.
6. To address these issues, the Government is seeking feedback on 11 options grouped in four areas for change. The Government’s stated aim is to:
  - a. Ensure all employees (including those misclassified as contractors) receive their statutory minimum rights and entitlements,
  - b. Reduce the imbalance of bargaining power between organisations and “vulnerable contractors”, and
  - c. Ensure system settings encourage inclusive economic growth and competition.

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<sup>11</sup> Background information on BusinessNZ is attached as Appendix 4

7. However, the Discussion paper also acknowledges that uncertainty exists for only a small number of workers<sup>2</sup>. This raises questions over why such a far-reaching set of options needs to be examined.

### **Business New Zealand's Position**

8. Business New Zealand's basic position is that current law is adequate for the purpose of deciding who is a contractor and who is not, and that current criteria and penalties are similarly adequate.
9. BusinessNZ believes that potential unintended (or inadequately researched) consequences of adopting most of the proposed options may lead to constraints on economic growth and worker prosperity.
10. Furthermore, it is concerning that the Discussion Paper is ambiguous in terms of whether it is dealing with dependent contractors (those tied to a single client) and independent contractors (those free to take on multiple and even concurrent clients). Indeed, the Discussion paper characterises contractors as either independent contractors or those in the "grey zone" despite most of the areas of concern mainly affecting dependent contractors.
11. The Discussion Paper is primarily focussed through a lens of exploitative practices and their impact on "vulnerable" workers. It does not examine the extent to which either independent or dependent contractors are "vulnerable", focussing instead on options that would affect both categories across a spectrum that is largely commercial in reality. Thus, the options risk negatively affecting genuine commercial contracting across the economy in the name of protecting instances which are already arguably unlawful under current law.
12. In our view, few of the proposed options will achieve the aim of protecting the few inappropriately classified dependent contractors without negatively impacting the vast majority who are genuine contractors. Most options in fact will constrain the ability of workers and employers generally to respond effectively to change.
13. At the practical level, many of the options may render the Government itself unable to use dependent contractors (something it does extensively at present) as many current contractors would likely be classified as employees under the proposed options. This has significant implications for government staffing levels and ultimately taxpayer costs. Conversely, exempting some groups but applying the options to others would be legally unsound and politically contentious.
14. Constraints over the use of contractors in government have further implications for workers over 45; this group is finding increasing difficulty in finding full time employment, particularly if they have been displaced, and often seek part or full time contractor roles as their only viable alternative.

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<sup>2</sup> P 20, Better protections for contractors "How many dependent contractors are there in New Zealand?"

15. Ultimately what is needed is improved effectiveness in detecting breaches, which is an issue of education and resources rather than the law. The introduction of simple and effective reporting requirements may also assist. Improved alignment of approach and information sharing between the two branches of workplace inspection (health and labour) would also contribute to better detection of breaches and improved enforcement of labour standards<sup>3</sup>.

## **OPTIONS FOR CHANGE**

16. The discussion paper identifies 11 options for change, grouped under 4 headings:

### **Deter misclassification of employees as contractors**

*Option 1* - Increase proactive targeting by Labour Inspectors.

*Option 2* - Give Labour Inspectors the ability to decide workers' employment status.

*Option 3* - Introduce penalties for misrepresenting an employment relationship as a contracting arrangement.

### **Make it easier for employees to access to determinations of worker employment status**

*Option 4* - Introduce disclosure requirements for organisations when hiring workers.

*Option 5* - Reduce costs for workers seeking employment status determinations.

*Option 6* - Put the burden of proving that a worker is a contractor on organisations .

*Option 7* - Extend the application of employment status determinations to workers in fundamentally similar circumstances.

### **Change who is an employee under New Zealand law**

*Option 8* - Define workers in some occupations as employees.

*Option 9* - Change the tests used by courts to determine employment status to include 'vulnerable contractors'.

### **Enhance protections for contractors without making them employees**

*Option 10* - Extend the right to bargain collectively to some contractors.

*Option 11* - Create a new category of worker with some employment rights and protections.

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<sup>3</sup> While MBIE is responsible for labour inspectors and WorkSafeNZ for health inspectors, the work of both overlaps. H&S events may be a symptom of inadequate observance of minimum labour standards in the workplace, and vice versa. Ideally the two activities should be mutually supportive.

## COMMENTS ON OPTIONS

### General comments

17. It needs to be recognised that the so-called “gig” economy is not new, albeit that app based “platform” work is a relatively recent manifestation. For instance, a self-employed tradesperson, who makes their living from an unpredictable “spot market” of customer needs, is a gig worker. So arguably are vocations such as doctors, lawyers and consultants.
18. That said, the emergence of user based “app” sourcing and assignment of work has introduced new perspectives on who is who in the working relationship. As much as anything it is this change in perspective that has driven concerns about a rise in exploitative practices, seemingly founded more on a lack of knowledge than empirical evidence.
19. There is no acknowledgement of the potential benefits of such models. For instance, it seems obvious that IT tools provide opportunities for communicating between people who do not speak the same language. The higher flexibility inherent in a “platform” model arguably offers opportunities for workers with language barriers and lacking formal qualifications to establish themselves in the labour market.
20. However, much of the response to the most recent gig and platform phenomena has been emotional rather than rational and, as the Discussion Paper acknowledges, the extent of both the practice and exploitation of platform work is still poorly understood.
21. There is no question that instances of exploitative practices and incorrect application of the law have occurred. These are clearly unacceptable and need to be dealt with effectively.
22. Yet, no evidence is presented in the Discussion Paper to demonstrate widespread exploitation or some other harm to the wide spectrum of “dependent contractors” requiring a change to the classification of their status. This begs the question of whether the proposed options are not more in the nature of solutions looking for problems.
23. The narrative of the discussion paper seems focused on so called “vulnerable workers” yet proposes options that would be generic in scope. This risks impacting on the efficacy of both genuine contracting and employment models.
24. If enacted, almost all the proposed changes would significantly alter New Zealand’s industrial relations landscape and have a substantial impact on business models and, ultimately, economic outcomes. They would separate New Zealand from the flexible employment models increasingly prevalent globally. The changes would reduce or remove the flexibility contractors currently provide to organisations as part of their resourcing needs.

25. On this basis, BusinessNZ offers qualified support for
- a. *Option 1* – Increase proactive targeting by Labour Inspectors to detect non-compliance.
  - b. *Option 4* – Introduce disclosure requirements for firms when hiring workers
  - c. *Option 5* – Reduce costs for workers seeking employment status determinations.
26. For the avoidance of doubt, Business NZ opposes the introduction of the remaining options, reasons for which are given below

### **Specific comments on options**

#### ***Option 1***

##### *Increase proactive targeting by Labour Inspectors*

27. Increasing proactive targeting by labour inspectors is consistent with Business New Zealand's view that better detection and enforcement are likely to be more effective and less damaging than other options. By targeting we mean the identification of areas of activity that manifest higher than average concentrations of non-employment based work.
28. Targeting will offer two broad benefits; an in-depth appreciation of the nature of the work and its economic benefits and the extent to which this work is correctly classified against existing legal criteria. The more intensive nature of a targeted approach will also act in part as a disincentive to misclassification of employees as contractors as the risk of detection will be relatively higher.
29. Information obtained from a targeted approach will allow areas of higher risk of inappropriate classification to be "triaged" appropriately in terms of future monitoring and investigation. It will also assist in identifying low risk areas that in future can be monitored on a less stringent basis than high risk areas.
30. Coupled with requirements around information disclosure and an appropriately resourced labour inspectorate, Option 1 offers improved opportunities for the detection of inappropriately classified workers and enhanced effectiveness in enforcement of the law.
31. This is Business NZ's preferred option.

#### ***Option 2***

##### *Give Labour Inspectors the ability to decide workers' employment status*

32. Giving labour inspectors the power to determine the status of a worker overlooks the overwhelming evidence of the complexity of this issue. Illustrating the complexity is

the seminal case on this point: *Bryson v Three Foot Six* (the so called "Hobbit case")<sup>4</sup>.

33. Mr Bryson was a modelmaker engaged as a contractor whose contract was terminated once his work was finished. He raised a personal grievance alleging unjustified dismissal, an action that could only be brought if Bryson was found to be an employee and not a contractor. Determining his status was therefore crucial to deciding the central claim of unjustified dismissal.
34. At first instance the Employment Relations Authority (ERA) found Bryson to be a contractor but this was overturned by the Employment Court which decided Bryson was an employee. On appeal, the Court of Appeal overturned the Employment Court decision and restored the decision of the ERA. This decision was in turn reversed by a final appeal to the Supreme Court.
35. This caused considerable concern in the film industry internationally and resulted in the passing of the Employment Relations (Film Production) Amendment Act which changed the definition of employee in section 6 of the Employment Relations Act to exclude all workers involved in the film production industry.
36. The *Bryson* case exemplifies the complexity of this issue and the attendant difficulties faced by the entire judicial system in determining employment status. The probability that labour inspectors, who are not judges, will err one way the other is commensurately extremely high. Labour inspectors may face additional difficulties in accessing the information required to make a decision, given that a person engaged as a contractor will not generate employment records as such.
37. Furthermore, the addition of labour inspectors to the decision making "tree", increases the number of opportunities for litigation on questions of status, thus increasing the costs to litigants and increasing delays in their respective productive work capacity. This in turn would diminish the value of *Option 5* (reduce the costs for workers seeking employment status determinations). While initial access to a labour inspector might be cheap or free, subsequent litigation could render the initial approach worthless.
38. A better approach would be to require those engaging contractors to make obligations – tax, ACC, Kiwisaver – clear to anyone taking on a contractor relationship. This approach could be included in any requirements attached to *Option 4* (introduce disclosure requirements for firms when hiring workers).
39. That said, consideration could be given to enabling labour inspectors to apply to the Employment Relations Authority to seek a determination of the status of a worker (this is not the same as giving labour inspectors the power to determine the status of a worker). This would entail amending the current jurisdiction of ERA to enable it to consider applications from labour inspectors regarding the status of workers.

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<sup>4</sup> *Bryson v Three Foot Six Ltd* [2005] NZSC

40. Criteria could include a requirement that a labour inspector have reasonable grounds to believe that a worker had been incorrectly classified and to provide those grounds to the business and provide an opportunity to comment before taking an action to the Employment Relations Authority.
41. BusinessNZ does not support Option 2.

### ***Option 3***

#### *Introduce penalties for misrepresenting an employment relationship as a contracting arrangement*

42. The discussion paper does not produce evidence to suggest that increased penalties have a significant deterrent effect. Greater penalties typically don't change the behaviour of those who deliberately (and routinely) commit breaches. A more effective solution would be to improve the certainty of detection and punishment.
43. Concerns have been expressed over the deliberate misclassification of employees as contractors. While there is little evidence to suggest this is a widespread practice, it should be noted that such instances can be dealt with and penalised via the good faith provisions of the Employment Relations Act 2000. Emphasis on the availability of this option can be achieved through the issuing of "practice notes" by the heads of the Employment Relations Authority and Employment Court to their respective jurisdictions.
44. Overall, however, there are few obvious positive implications of simply increasing penalties. For this and the other reasons given, BusinessNZ opposes Option 3.

### ***Option 4***

#### *Introduce disclosure requirements for organisations when hiring workers*

45. Specific disclosure requirements may add value to the process of detecting and punishing non-compliance, particularly if aligned to Option 1 (increase proactive targeting by labour inspectors to detect non-compliance).
46. Requirements could include requiring those engaging contractors to make obligations – tax, ACC, Kiwisaver – clear before taking on a contract worker. Organisations would need to tell workers what their legal obligations are and where to seek advice before accepting the contractual arrangement.
47. The Global Reporting Index (GRI) framework may be useful in guiding reporting requirements. The GRI Standards are the first global standards for sustainability reporting. They feature a modular, interrelated structure, and represent the global best practice for reporting on a range of economic, environmental and social impacts. Reporting modules include employment issues, an example of which is attached at Appendix 1.

48. BusinessNZ supports the introduction of disclosure requirements as part of the introduction of Option 1 (increase proactive targeting by labour inspectors to detect non-compliance) but not otherwise.

### ***Option 5***

#### *Reduce costs for workers seeking employment status determinations*

49. Ultimately, reducing costs can only relate to the costs of litigation (i.e. the costs of taking a case to and through the Employment Relations Authority and the Courts). While letting labour inspectors decide the status of a worker (Option 2) would clearly prove a cheaper approach in the first instance this would not be effective unless the costs of subsequent litigation were also reduced or removed. This would impact more widely than may be appreciated.
50. The question of who bears court and other costs is fundamental here. For a start, lawyers' fees are not governed by statute; achieving reductions in these would require legislative intervention and create comparative issues in other fee charging professions.
51. In a similar vein, court fees and penalties are interlinked through the judicial system (including non-employment related disciplines). Costs may be dealt with in various ways, for example:
- a. In the United States each party to a court case pays their own costs no matter who wins the case.
  - b. In England the losing party may have to fully compensate the winning party for their costs.
  - c. New Zealand (and other countries such as Canada and Australia) take a middle-ground approach. The losing party to a court case is usually ordered to pay the winning party costs, however the winner will not fully recover their costs and will have to pay the shortfall themselves.
52. Usually, when a judge orders the unsuccessful party to pay costs, the judge will refer to a scale indicated by the High Court Rules to calculate costs (category 1 is for straightforward cases, category 2 is for cases that are of average complexity and category 3 is for cases that are complex and may require lawyers who have special skills and experience).
53. These categories are not related to the particular lawyer that is involved in a case – they relate to the nature of the case itself. This adds considerable complexity to the overall allocation of costs, a point well illustrated the New Zealand case of *Taylor v Roper*.<sup>5</sup> Essentially an expensive lawyer may attract lower levels of awards of costs if the case they take on behalf of their client is relatively straightforward.

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<sup>5</sup> <https://www.lawsociety.org.nz/news-and-communications/latest-news/news/costs-in-civil-cases-what-happened-in-taylor-v-roper>

54. BusinessNZ supports the idea of reducing costs of access to a determination of status but cautions against a simplistic approach that does not address the issues above.
55. BusinessNZ opposes the adoption of Option 2 (give Labour Inspectors the ability to decide workers' employment status) as a means of achieving the objective of Option 5.

### ***Option 6***

#### *Put the burden of proving that a worker is a contractor on organisations*

56. This basic option was introduced in Canada (Ontario) but later reversed. A key reason for its removal was that, legally speaking, a reverse onus of proof also reverses the legal presumption of innocence until guilt is proven. This is as undesirable in New Zealand as it was in Canada.
57. Putting the burden of proof on the employer when tied to increased penalties (Option 3) is likely to discourage use of contractors in favour of full-time employment. While this may be the objective of some, it would effectively restrict or remove the range of options available to business to respond to global trends in the use of labour. The efficiencies inherent in a flexible approach would be diminished or lost and the ensuing impacts on cost effectiveness would likely be very significant.
58. Leaving aside legal principles, the introduction of a reverse onus of proof would in terms of the process prove onerous and costly to both employers, and ultimately as presaged above, to the economy.
59. BusinessNZ opposes the introduction of Option 6.

### ***Option 7***

#### *Extend the application of employment status determinations to workers in fundamentally similar circumstances*

60. To some extent this option exists already, since a Court determination may have general application in common law. Courier drivers for instance were generally affected by the court's decision in *Cunningham v TNT*<sup>6</sup>.
61. Certainly, it would be expected that a court decision affecting one worker in a particular workplace would apply equally to other workers in that workplace whose circumstances were the same as that of the worker who was the subject of the judgment.
62. The issues this option creates are far wider, however. Giving effect to a decision of a lower court while appeals are possible or pending will create uncertainty and would likely prove costly. These effects arguably would be vastly exacerbated if Option 2 (give Labour Inspectors the ability to decide workers' employment status) was to be

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<sup>6</sup> *TNT Worldwide Express (NZ) Limited v Cunningham* (1993) 15 NZTC 10,234 Court of Appeal, CA 180/92

adopted, given the increased probability of consequential litigation over a labour inspector's determination on a worker's status.

63. Uncertainty would also be the likely result of a policy of waiting until all avenues of appeal were exhausted before applying a judgement more generally. Appeals can take years to resolve. Given the history of decisions on employment status (e.g. *Bryson v Three Foot Six*) there would be little certainty until all appeals had been heard.
64. On face value, this option would cover workers who were not party to a particular court case. Even if the immediate ambit of this option was restricted to those in the same workplace, this would not prevent other workers becoming aware of and making their own claims over their status, starting a chain reaction of uncertainty
65. BusinessNZ's view is that existing common law rules are adequate and should not be interfered with.
66. BusinessNZ opposes the introduction of Option 7.

### ***Option 8***

*Define workers in some occupations as employees – e.g. cleaners, security guards or couriers.*

67. Essentially this option would mean that certain types of work would only be able to be performed through an employment relationship, contrary to the genuine commercial nature of the work or the relationship the parties determined was the most appropriate.
68. However, simply designating categories of workers as employees is a breach of freedom of association principles (ILO Convention 87<sup>7</sup>) and of international legal guidelines that require recognition of genuine commercial relationships (ILO Recommendation 198<sup>8</sup>). Consistent with this view a New South Wales decision to classify certain groups as employees was reversed by the courts as contrary to freedom of contract.
69. The introduction of "opt outs" from a determination that a group of workers were employees would add complexity and cost to this option as it introduces totally new grounds for uncertainty and litigation.
70. Furthermore, allowing exemptions or opt outs effectively politicises the notion of employment, which currently is defined only in law. Being exempted or opting out from a political determination that certain groups of workers are defined as employees effectively makes all workers subject to political policy rather than law.

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<sup>7</sup> [Freedom of Association and Protection of the Right to Organise Convention 1948 \(No 87\)](#)

<sup>8</sup> See Appendix 2

71. For example, selective exemptions such as exempting dependent contractors working in government departments while classifying “vulnerable” groups of contractors as employees may be perceived as political interference in the employment perceptions of political partisanship as well as increasing legal uncertainty. Ultimately this option is unsound legally, politically and practically and will not add clarity or simplicity to the law.
72. BusinessNZ opposes the introduction of Option 8.

### ***Option 9***

*Change the tests used by courts to determine employment status to include ‘vulnerable contractors’*

73. As discussed under Option 2, the legal tests for determining the status of a worker are complex and interrelated. Attempts at separation and simplification of the various elements have been made without success in several jurisdictions.
74. Notable among these is the decision of the California Supreme Court in the *Dynamex case* where the application of a “simpler” approach has effectively disenfranchised “gig” and “platform” options for work<sup>9</sup>.
75. As with the effects of Option 8 (define workers in some occupations as employees – e.g. cleaners, security guards or couriers), this option also risks politicising the concept of employment. Evidence of this exists in the series of exemptions proposed for California Bill AB-5 which is intended to give effect to the court’s decision in the *Dynamex* case. The effects are illustrated and discussed in Appendix 3.
76. BusinessNZ opposes the introduction of Option 9.

### ***Option 10***

*Extend the right to bargain collectively to some contractors*

77. Currently, only employees can bargain collectively in respect of their terms and conditions of employment.
78. Allowing contractors to retain that status but providing an ability to bargain collectively is the scenario currently envisaged for the film industry. However, the changes proposed there effectively codify existing practice, not a scenario practised elsewhere at present. Moreover, the model proposed for the film industry prohibits industrial action in favour of final offer arbitration. This fundamental feature was made possible largely because of the mature infrastructure of the industry and the well understood roles and responsibilities of the various parties. The lack of existing similar rules for engagement in many other sectors means that this essential feature of the film industry model may not work in other areas, rendering them vulnerable to significant disruption.

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<sup>9</sup> *Dynamex Operations v. Superior Court* (2018) 4 Cal. 5th 903

79. Introducing the ability or even requirement to allow contractors to bargain collectively would, apart from anything else, involve developing new bargaining organisations and imposing on unwilling organisations terms and conditions they might be unable to meet. Similar effects would be seen if Fair Pay Agreements are introduced.
80. The Discussion Paper recognises that a further and inevitable effect of this option would be reduced competition. However, the Discussion paper does not produce evidence or analysis of what the likely impacts will be, making it difficult to make informed comment.
81. BusinessNZ recommends that this option not be adopted more widely than the film industry until such time as its effects that are more apparent.

### ***Option 11***

82. Creating a new category of workers is being explored in England, without success to date. We should learn from the experiences being developed there. This option would be a significant change, creating a new category of “dependent contractor” whose status falls somewhere between employees and contractors. Almost by definition, this option will create confusion and uncertainty.
83. One of the most significant questions arising from this option is whether or not it would undermine or dilute the status of “employment”. This should be avoided as it would add considerable complexity to legal questions of status.
84. If a case for regulatory intervention can be made out, then permitting certain categories of contractors to bargain collectively is likely to be a far less invasive, risky or costly intervention than interfering in the contractual relationship between contractors and firms.
85. In other jurisdictions this option has been introduced with varying degrees of success. The UK distinguishes between an employee and a worker with workers being self-employed and having no employment rights other than the right to the national minimum wage, and to be protected from unlawful deductions from what they earn and from discrimination. In Italy a sub-category of quasi-subordinate worker was removed after employers pushed employees into this category where the protection was limited to access to the labour courts.
86. BusinessNZ opposes the introduction of Option 11

## Appendix 1

# GRI Standards Disclosure 102-8

Information on employees and other workers

### Reporting requirements

The reporting organization shall report the following information:

- a. Number of employees by:
  - i. employment contract (permanent and temporary), by gender;
  - ii. employment contract (permanent and temporary), by region;
  - iii. employment type (full-time and part-time), by gender.
- b. Information to explain what the data reported under Disclosure 102-8-a represents.
- c. For workers who are not employees and whose work and workplace is controlled 10 by the organization:
  - i. a description of the nature of the work performed;
  - ii. how they are engaged by the organization;
  - iii. the number.
- d. Whether there are significant fluctuations in the number of employees and workers who are not employees during the reporting period and compared to the previous reporting period(s), and if applicable, a description of these fluctuations.
- e. An explanation of how the data has been compiled, including any assumptions made, and whether the numbers of employees and workers who are not employees are reported:
  - i. as head count or Full Time Equivalent (FTE), or using another methodology;
  - ii. at the end of the reporting period or as an average across the reporting period, or using another methodology.

### Guidance

#### Purpose of the disclosure

The number of employees and other workers who are not employees provides information about the scale of workers involved in an organization's core activities including workers who may not be captured by the formal employment figures but who are performing work for the reporting organization. This information together with the number of employees by employment contract and employment type, by gender and region provides insight into the organization's approach to human resources and the type of employment model used.

It also provides the scale and context for the information disclosed in other disclosures.

The number of employees provides the basis for calculations in several disclosures (e.g., to report new employee hires and employee turnover in Disclosure 401-1) and is a standard normalizing factor for many other disclosures (e.g., average hours of training that the employees have undertaken during the reporting period in Disclosure 404-1).

The number of employees and other workers who are not employees involved in an organization's activities provides insight into the scale and nature of impacts created by labor issues.

### *Scope of 'workers' in this disclosure*

In the context of the GRI Standards, the term 'worker' is defined as a person that performs work.

Some GRI Standards specify the use of a particular subset of workers.

This disclosure covers the following subset of workers:

- All workers who are employees (i.e., those workers who are in an employment relationship with the organization according to national law or its application);
- All workers who are not employees but whose work and workplace is controlled by the organization (i.e., those workers who perform work for the organization on the site of any of its entities but who are not in an employment relationship with the organization).

The subset of workers to be included are those who perform work for any of the organization's entities that are included in its sustainability reporting (see Disclosure REP-2).

### **Guidance for Disclosure 102-8-a**

Why do we ask for this information?

Breaking down the number of employees by employment type, employment contract, and region (region refers to 'country' or 'geographical area') demonstrates how the organization structures its human resources to implement its overall strategy. It also provides insight into the organization's business model, and offers an indication of job stability and the level of benefits the organization offers. Providing this data by gender enables an understanding of gender representation across an organization. It further shows gender diversity across the organization.

The number of employees by employment contract gives insight into the different types of labor used by the organization to realize its business objectives. In recent years, organizations have increased their use of non-permanent contract types. A high dependency on temporary contracts can indicate insecure employees who receive fewer employment benefits compared to permanently contracted employees.

Providing this data by region enables an understanding of regional representation and variations across regions. For example, the number of temporary employees by region shows whether temporary employment is equally distributed or whether there are variations across regions.

The number of employees by employment type shows how many employees are working on a full-time or a part-time basis. This gives insight into the nature of the organization and how it structures its employees to meet its business objectives.

The number of full-time and part-time employees by gender shows how full-time and part-time employment is distributed across men, women and, if applicable, other gender(s). This can show whether the organization offers full-time and part-time employment to all employees regardless of gender and can give an indication of gender equality across the organization. For example, it can show whether men have the same opportunities for working part-time as women, or whether women have the same opportunities as men for working full-time.

### *Workers who are employees*

Disclosure 102-8-a requires information on the number of employees. An employee is an individual who is in an employment relationship with the organization, according to national law or its application. All employees are to be included by the organization in its reported data, regardless of whether the organization controls their work or workplace.

This means that it is required to include all workers who are in an employment relationship with any of the organization's entities that are included in its sustainability reporting whether they are performing work on the site of any of these entities or offsite (e.g., at home or in a public area, on domestic or international temporary work assignments, or at the workplace of a client of the organization).

The organization's entities included in its sustainability reporting are reported in Disclosure REP-2.

Disclosure 102-8-a does not include workers who perform work for the organization but who are not in an employment relationship with the organization. The number of workers who are not employees is reported under Disclosure 102-8-c.

### Number of employees by employment contract, by gender and region

For Disclosures 102-8-a-i and 102-8-a-ii, there are two types of employment contracts:

- Permanent employment contract – for an indeterminate period; it is open ended;
- Temporary employment contract – of limited duration; for a specific period of time.

See the definition of 'employment contract' in the Glossary for more information.

The organization can identify the contract type of employees based on the definitions under the national laws of the country where they are based.

The organization can combine country statistics to calculate global statistics, and disregard differences in legal definitions. Although what constitutes a type of contract and employment type varies between countries, the global figure should still reflect the relationships under law.

Gender is not defined in the GRI Standards. The organization can decide which gender categories to use. For example, in addition to men and women, it can use any other gender categories.

Region refers to 'country' or 'geographical area'. The organization can decide which regions to use.

For an example of how to present this information, see Table 1 and Table 2.

### *Number of employees by employment type, by gender*

For Disclosure 102-8-a-iii, there are two types of employment types:

- Full-time contract – minimum working hours per week, month or year are defined according to national law or practice;
- Part-time contract – less working hours than what is defined as full-time.

See the definition of 'employment type' in the Glossary for more information.

The number of working hours that make up a full-time contract is not the same across the world, as national legislation varies in defining what is full-time.

The organization can identify the contract type of employees based on the definitions under the national laws of the country where they are based.

The organization can combine country statistics to calculate global statistics, and disregard differences in legal definitions. Although what constitutes a type of contract and employment type varies between countries, the global figure should still reflect the relationships under law.

For example, a full-time contract is 40 hours in Country A and 36 hours in Country B. Country A has 50 full-time employees and Country B has 100 full-time employees. Even though the definition of full-time varies between these countries, to calculate the total number of full-time employees for Countries A and B, the organizations adds the full-time employees for Country A (50) and for Country B (100). Even when the part-time employees in Country A work 36 hours, which is full-time employment in Country B, these are not included in the total.

Gender is not defined in the GRI Standards. The organization determines the gender categories to use. For example, in addition to men and women, it can use any other gender categories (e.g., gender designation X, intersex).

For an example of how to present this information, see Table 3.

### **Guidance for Disclosure 102-8-b**

Disclosure 102-8-b requires organizations to provide further information to assist in understanding what the data they have provided under Disclosure 102-8-a represents. This gives the organization an opportunity to explain what the data conveys, since quantitative data can be interpreted in different ways, if no further description is provided.

For example, temporary and part-time employment can be associated with greater insecurities compared to permanent and full-time employment, but can also provide flexibility to employees when it is voluntary.

For the number of permanent and temporary employees, the organization can explain the reason for using temporary employees, for example, to provide work during busier

months, at an event organized by the organization, or it is common to offer a temporary contract to new employees.

The organization can also explain if temporary employees receive the same benefits as permanent employees. If differences exist across genders or regions, the organization can explain the reason.

For the number of full-time and part-time employees, the organization can explain the reason for offering part-time employment, for example, to accommodate employees' request to work reduced hours or it cannot provide full-time employment to all employees. The organization can also explain how it defines full-time (i.e., the minimum number of hours) and whether it uses the same definition across the world. If differences exist across genders, the organization can provide explanation for these differences.

### **Guidance for Disclosure 102-8-c**

Why do we ask for this information?

Disclosure 102-8-c requires organizations to provide the number of workers who are not employees. These workers are not in an employment relationship with the organization, but do perform work on behalf of the organization. The number of workers who are not employees shows the organization's level of reliance on these workers. Further, in combination with the number of employees reported under Disclosure 102-8-a, this provides an understanding of the actual number of workers who are performing work for the organization. Without this information the total scale of workers may not be visible.

An organization that depends to a large extent on workers who are not in an employment relationship with the organization can expose these workers to labor rights risks (e.g., not being paid at a decent wage and being at a disadvantage relative to the organization's employees, and not receiving the same benefits as the organization's employees).

For example, an important trend in the field of online on-demand platforms is the classification of workers as independent contractors instead of employees. This may allow employers to circumvent minimum wage rates and withhold benefits while shifting risks onto workers by denying them workers' compensation, sick leave, other employee safety nets and the right of collective bargaining.

#### *Guidance for Disclosure 102-8-c-i*

Disclosure 102-8-c-i requires organizations to describe the nature of the work performed by workers who are not employees. The organization can describe the type of work performed by the workers who are not employees, including how they support the delivery of the organization's strategy.

#### *Guidance for Disclosure 102-8-c-ii*

Disclosure 102-8-c-ii requires organizations to describe how the workers who are not employees are engaged by the organization. This means describing the relationship between the organization and the workers who are not employees, i.e., a direct

relationship between the organization and the workers who are not employees, or an indirect relationship through a third party (e.g., agency workers, sub-contractors).

#### *Guidance for Disclosure 102-8-c-iii*

Workers who are not employees but whose work and workplace is controlled by the organization

Disclosure 102-8-c-iii requires information on the number of workers who are not employees.

Workers who are not employees are workers who perform work for the organization but who are not in an employment relationship with the organization. Workers who are not employees might include volunteers, contractors, individuals or self-employed persons, and agency workers, among other types of worker. They can be engaged by the organization directly or indirectly.

All workers who are not employees whose work and workplace is controlled by the organization are to be included by the organization in its reported data, regardless of the type of worker. This means that it is required to include all workers who perform work for any of the organization's entities that are included in its sustainability reporting on the site of any of these entities, but who are not in an employment relationship with any of these entities.

The organization's entities that are included in its sustainability reporting are reported in Disclosure REP-2.

The organization is required to include workers who are not employees that perform work for the organization at sites controlled by the organization at a minimum. The organization can include workers who are not employees that perform work for the organization at sites other than those controlled by the organization, although this is not required. Examples of sites other than those controlled by the organization can include a public area (e.g., on a road, on the street), or the workplace of a client of the organization. If the organization reports more than the minimum requirement, it is expected to explain this.

Disclosure 102-8-c does not include employees who are in an employment relationship with the organization. The number of employees is reported under Disclosure 102-8-a.

The organization has no workers who are not employees performing work for the organization

If there are no workers who are not employees performing work for the organization, a brief statement of this fact is sufficient to meet the reporting requirement.

#### **Guidance for Disclosure 102-8-d**

Disclosure 102-8-d requires organizations to report whether or not there are significant fluctuations in the number of employees and the number of workers who are not employees during the reporting period and compared to previous reporting period(s). This gives insight into whether the number of employees and workers who are not employees

have changed significantly over time or not. The organization determines whether the fluctuations are significant or not.

If the organization decides that the fluctuations in the number of employees and/or workers who are not employees are significant, it is required to describe the fluctuations.

The organization can describe how the numbers have fluctuated (e.g., the number of employees has increased during the reporting period, or the number of workers who are not employees has decreased compared to the previous reporting period). The organization can also describe the reason for the fluctuations (e.g., many temporary employees were seasonally hired during the busier summer months, or the number of employees and the number of workers who are not employees have decreased compared to last year due to a significant project ending).

*There are no significant fluctuations*

If there are no significant fluctuations, a brief statement of this fact is sufficient to meet the reporting requirement.

### **Guidance for Disclosure 102-8-e**

Disclosure 102-8-e requires organizations to explain how the data has been compiled, including any assumptions made. The disclosure further requires organizations to report if the number of employees and workers who are not employees are expressed as head count, Full Time Equivalent (FTE), or using another methodology. Finally, the disclosure requires organizations to report if the number of employees and workers who are not employees are used at the end of the reporting period, as an average across the reporting period, or using another methodology. This provides an understanding of how the reported data can be interpreted.

Expressing the number of employees and workers who are not employees in head count provides information about the number of individual workers performing work for the organization whether on a full-time or part-time basis. Expressing the numbers in FTE provides information about the hours worked.

Reporting the number of employees and workers who are not employees at the end of the reporting period provides a snapshot at that point in time, without capturing any fluctuations during the reporting period. Reporting the numbers as an average across the reporting period can give an indication of fluctuations during the reporting period.

*Table 1 Example template for presenting information for Disclosure 102-8-a-i*

Total number of employees by employment contract, by gender

- Men Year Permanent [Number] Temporary [Number] Total [Number]
- Women Permanent [Number] Temporary [Number] Total [Number]
- Other gender category (to be determined by the reporting organization) Permanent [Number] Temporary [Number] Total [Number] Grand total [Number]

*Table 2 Example template for presenting information for Disclosure 102-8-a-ii*

Total number of employees by employment contract, by region

- Region (provide the title for the region) Year Permanent [Number] Temporary [Number] Total [Number]
- Region (provide the title for the region) Permanent [Number] Temporary [Number] Total [Number]
- Region (provide the title for the region) Permanent [Number] Temporary [Number] Total [Number] Grand total [Number]

*Table 3 Example template for presenting information for Disclosure 102-8-a-iii*

Total number of employees by employment time, by gender

- Men Year Full-time [Number] Part-time [Number] Total [Number]
- Women Full-time [Number] Part-time [Number] Total [Number]
- Other gender category (to be determined by the reporting organization) Full-time [Number] Part-time [Number] Total [Number] Grand total [Number]

### **Sources used**

- 2019 WDI Survey
- Guidelines for the Evaluation of Workers' Human Rights and Labour Standards
- ILO: Non-standard forms of employment, a feature of the contemporary world of work
- Non-standard employment around the world: Understanding challenges, shaping prospects
- The Workforce Disclosure Initiative 2019 Survey Guidance Document

## Appendix 2

### **R198 - EMPLOYMENT RELATIONSHIP RECOMMENDATION, 2006 (NO. 198)**

#### **Preamble**

The General Conference of the International Labour Organization, Having been convened at Geneva by the Governing Body of the International Labour Office, and having met in its Ninety-fifth Session on 31 May 2006, and  
Considering that there is protection offered by national laws and regulations and collective agreements which are linked to the existence of an employment relationship between an employer and an employee, and  
Considering that laws and regulations, and their interpretation, should be compatible with the objectives of decent work, and  
Considering that employment or labour law seeks, among other things, to address what can be an unequal bargaining position between parties to an employment relationship, and  
Considering that the protection of workers is at the heart of the mandate of the International Labour Organization, and in accordance with principles set out in the ILO Declaration on Fundamental Principles and Rights at Work, 1998, and the Decent Work Agenda, and  
Considering the difficulties of establishing whether or not an employment relationship exists in situations where the respective rights and obligations of the parties concerned are not clear, where there has been an attempt to disguise the employment relationship, or where inadequacies or limitations exist in the legal framework, or in its interpretation or application, and  
Noting that situations exist where contractual arrangements can have the effect of depriving workers of the protection they are due, and  
Recognizing that there is a role for international guidance to Members in achieving this protection through national law and practice, and that such guidance should remain relevant over time, and  
Further recognizing that such protection should be accessible to all, particularly vulnerable workers, and should be based on law that is efficient, effective and comprehensive, with expeditious outcomes, and that encourages voluntary compliance, and  
Recognizing that national policy should be the result of consultation with the social partners and should provide guidance to the parties concerned in the workplace, and  
Recognizing that national policy should promote economic growth, job creation and decent work, and  
Considering that the globalized economy has increased the mobility of workers who are in need of protection, at least against circumvention of national protection by choice of law, and  
Noting that, in the framework of transnational provision of services, it is important to establish who is considered a worker in an employment relationship, what rights the worker has, and who the employer is, and  
Considering that the difficulties in establishing the existence of an employment relationship may create serious problems for those workers concerned, their communities, and society at large, and  
Considering that the uncertainty as to the existence of an employment relationship needs to be addressed to guarantee fair competition and effective protection of workers in an employment relationship in a manner appropriate to national law or practice, and  
Noting all relevant international labour standards, especially those addressing the particular situation of women, as well as those addressing the scope of the employment relationship, and  
Having decided upon the adoption of certain proposals with regard to the employment relationship, which is the fifth item on the agenda of the session, and  
Having determined that these proposals shall take the form of a Recommendation;  
adopts this fifteenth day of June of the year two thousand and six the following Recommendation, which may be cited as the Employment Relationship Recommendation, 2006.

#### **I. NATIONAL POLICY OF PROTECTION FOR WORKERS IN AN EMPLOYMENT RELATIONSHIP**

1. Members should formulate and apply a national policy for reviewing at appropriate intervals and, if necessary, clarifying and adapting the scope of relevant laws and regulations, in order to guarantee effective protection for workers who perform work in the context of an employment relationship.
2. The nature and extent of protection given to workers in an employment relationship should be defined by national law or practice, or both, taking into account relevant international labour standards. Such law or practice, including those elements pertaining to scope, coverage and responsibility for implementation, should be clear and adequate to ensure effective protection for workers in an employment relationship.
3. National policy should be formulated and implemented in accordance with national law and practice in consultation with the most representative organizations of employers and workers.
4. National policy should at least include measures to:

- (a) provide guidance for the parties concerned, in particular employers and workers, on effectively establishing the existence of an employment relationship and on the distinction between employed and self-employed workers;
  - (b) combat disguised employment relationships in the context of, for example, other relationships that may include the use of other forms of contractual arrangements that hide the true legal status, noting that a disguised employment relationship occurs when the employer treats an individual as other than an employee in a manner that hides his or her true legal status as an employee, and that situations can arise where contractual arrangements have the effect of depriving workers of the protection they are due;
  - (c) ensure standards applicable to all forms of contractual arrangements, including those involving multiple parties, so that employed workers have the protection they are due;
  - (d) ensure that standards applicable to all forms of contractual arrangements establish who is responsible for the protection contained therein;
  - (e) provide effective access of those concerned, in particular employers and workers, to appropriate, speedy, inexpensive, fair and efficient procedures and mechanisms for settling disputes regarding the existence and terms of an employment relationship;
  - (f) ensure compliance with, and effective application of, laws and regulations concerning the employment relationship; and
  - (g) provide for appropriate and adequate training in relevant international labour standards, comparative and case law for the judiciary, arbitrators, mediators, labour inspectors, and other persons responsible for dealing with the resolution of disputes and enforcement of national employment laws and standards.
5. Members should take particular account in national policy to ensure effective protection to workers especially affected by the uncertainty as to the existence of an employment relationship, including women workers, as well as the most vulnerable workers, young workers, older workers, workers in the informal economy, migrant workers and workers with disabilities.
6. Members should:
- (a) take special account in national policy to address the gender dimension in that women workers predominate in certain occupations and sectors where there is a high proportion of disguised employment relationships, or where there is a lack of clarity of an employment relationship; and
  - (b) have clear policies on gender equality and better enforcement of the relevant laws and agreements at national level so that the gender dimension can be effectively addressed.
7. In the context of the transnational movement of workers:
- (a) in framing national policy, a Member should, after consulting the most representative organizations of employers and workers, consider adopting appropriate measures within its jurisdiction, and where appropriate in collaboration with other Members, so as to provide effective protection to and prevent abuses of migrant workers in its territory who may be affected by uncertainty as to the existence of an employment relationship;
  - (b) where workers are recruited in one country for work in another, the Members concerned may consider concluding bilateral agreements to prevent abuses and fraudulent practices which have as their purpose the evasion of the existing arrangements for the protection of workers in the context of an employment relationship.
8. **National policy for protection of workers in an employment relationship should not interfere with true civil and commercial relationships, while at the same time ensuring that individuals in an employment relationship have the protection they are due.**

## **II. DETERMINATION OF THE EXISTENCE OF AN EMPLOYMENT RELATIONSHIP**

9. For the purposes of the national policy of protection for workers in an employment relationship, the determination of the existence of such a relationship should be guided primarily by the facts relating to the performance of work and the remuneration of the worker, notwithstanding how the relationship is characterized in any contrary arrangement, contractual or otherwise, that may have been agreed between the parties.
10. Members should promote clear methods for guiding workers and employers as to the determination of the existence of an employment relationship.

11. For the purpose of facilitating the determination of the existence of an employment relationship, Members should, within the framework of the national policy referred to in this Recommendation, consider the possibility of the following:
  - (a) allowing a broad range of means for determining the existence of an employment relationship;
  - (b) providing for a legal presumption that an employment relationship exists where one or more relevant indicators is present; and
  - (c) determining, following prior consultations with the most representative organizations of employers and workers, that workers with certain characteristics, in general or in a particular sector, must be deemed to be either employed or self-employed.
12. For the purposes of the national policy referred to in this Recommendation, Members may consider clearly defining the conditions applied for determining the existence of an employment relationship, for example, subordination or dependence.
13. Members should consider the possibility of defining in their laws and regulations, or by other means, specific indicators of the existence of an employment relationship. Those indicators might include:
  - (a) the fact that the work: is carried out according to the instructions and under the control of another party; involves the integration of the worker in the organization of the enterprise; is performed solely or mainly for the benefit of another person; must be carried out personally by the worker; is carried out within specific working hours or at a workplace specified or agreed by the party requesting the work; is of a particular duration and has a certain continuity; requires the worker's availability; or involves the provision of tools, materials and machinery by the party requesting the work;
  - (b) periodic payment of remuneration to the worker; the fact that such remuneration constitutes the worker's sole or principal source of income; provision of payment in kind, such as food, lodging or transport; recognition of entitlements such as weekly rest and annual holidays; payment by the party requesting the work for travel undertaken by the worker in order to carry out the work; or absence of financial risk for the worker.
14. The settlement of disputes concerning the existence and terms of an employment relationship should be a matter for industrial or other tribunals or arbitration authorities to which workers and employers have effective access in accordance with national law and practice.
15. The competent authority should adopt measures with a view to ensuring respect for and implementation of laws and regulations concerning the employment relationship with regard to the various aspects considered in this Recommendation, for example, through labour inspection services and their collaboration with the social security administration and the tax authorities. 16. In regard to the employment relationship, national labour administrations and their associated services should regularly monitor their enforcement programmes and processes. Special attention should be paid to occupations and sectors with a high proportion of women workers.
17. Members should develop, as part of the national policy referred to in this Recommendation, effective measures aimed at removing incentives to disguise an employment relationship.
18. As part of the national policy, Members should promote the role of collective bargaining and social dialogue as a means, among others, of finding solutions to questions related to the scope of the employment relationship at the national level.

### **III. MONITORING AND IMPLEMENTATION**

19. Members should establish an appropriate mechanism, or make use of an existing one, for monitoring developments in the labour market and the organization of work, and for formulating advice on the adoption and implementation of measures concerning the employment relationship within the framework of the national policy.
20. The most representative organizations of employers and workers should be represented, on an equal footing, in the mechanism for monitoring developments in the labour market and the organization of work. In addition, these organizations should be consulted under the mechanism as often as necessary and, wherever possible and useful, on the basis of expert reports or technical studies.
21. Members should, to the extent possible, collect information and statistical data and undertake research on changes in the patterns and structure of work at the national and sectoral levels, taking into account the distribution of men and women and other relevant factors.
22. Members should establish specific national mechanisms in order to ensure that employment relationships can be effectively identified within the framework of the transnational provision of services. Consideration should be given to developing systematic contact and exchange of information on the subject with other States.

### **IV. FINAL PARAGRAPH**

23. This Recommendation does not revise the Private Employment Agencies Recommendation, 1997 (No. 188), nor can it revise the Private Employment Agencies Convention, 1997 (No. 181).

## California's War on Workers

by STEVEN GREENHUT

December 19, 2019, 12:05 AM

A gushing article in the liberal publication *Vox* declared in September that a new California law that outlaws the use of contractors in many industries, is “a victory for workers everywhere.” Assembly Bill 5 was not “just another progressive victory in California” but “a historic moment for the U.S. labor movement too.” The legislation was meant to force companies to instead hire permanent employees who receive benefits.

Fast forward three months and note this paragraph in a *Los Angeles Times* article about the new law: “New York-based Vox Media said Monday it would end contracts with hundreds of freelance writers and editors in California who covered sports for the blog network NB Nation as the company came into compliance with the law, which could have forced it to reclassify some of these contractors as employees.” What a victory for workers.

“I have tears in my eyes and goosebumps on my limbs,” said a University of California Hastings law professor quoted in that *Vox* piece. But the *Times* article quoted devastated *Vox* employees who feared the impact on their personal budgets as well as on “the most vulnerable in our community.”

Their tears were not ones of joy. I'm not sure if the professor still has goosebumps, but law professors aren't being affected by the new law — although she might want to talk to a few of the people who lost their incomes right before Christmas.

Many journalists championed the new law as it made its way through the state Capitol. Perhaps they are having second thoughts now that they — and not just some faceless delivery people and Uber drivers — are losing their livelihoods thanks to a measure that was supposedly designed to help them. I love the headline on Elizabeth Nolan Brown's *Reason* column this week: “California Freelancers Suffer From Totally Predictable ‘Unintended Consequences’ of Gig Worker Protection Bill.”

Yeah, there was no way to see this one coming. Brown's point is a good one: “It's not an ‘unintended consequence’ so much as one that folks who wanted to stick it to Uber and Lyft (or at least get press for pretending to stick it to Uber and Lyft) deemed an *acceptable* consequence.” Reporters can't say that no one warned them, but they aren't used to being part of the acceptable collateral damage inflicted by the state's Democratic leaders.

Similar efforts could be coming to other states, especially if Democratic presidential candidate Elizabeth Warren of Massachusetts has her way. “This is a crucial moment in the fight for workers in this country,” she wrote in an August column in the *Sacramento Bee*. “It's a time for us to show whose side we're on. All Democrats need to stand up and say, without hedging, that we support AB 5 and back full employee status for gig workers.” You've been warned.

To its credit, the *Bee* — which is shuttering its Saturday edition and whose parent company could be facing bankruptcy — penned an editorial decrying the legislation as something that could “put local newspapers out of business.”

AB 5 was the response to a 2018 California Supreme Court decision that imposed an “ABC test” on companies that rely on contractor labor. The only way companies could use contractors is if a) the workers don’t take direction from the company, b) they aren’t involved in the core work that the company performs, and c) the workers made the affirmative decision to be contractors by setting up an LLC or a separate business entity. Instead of fixing the mess the court made, the union-friendly Legislature codified the ruling.

Basically, the law outlawed the use of contractors except in some narrow instances. Then, the process of horse-trading began and the most influential industries — doctors, lawyers, realtors, insurance agents — secured exemptions. But drivers weren’t so fortunate, nor were freelance writers and photographers. In fact, the drivers were the target of the bill, even though the vast majority of these drivers work a small number of hours to boost their income between other jobs and school.

Never mind — California’s lawmakers know what’s best for the rest of us. We’ll see how state officials react when they can no longer grab an Uber or Lyft or have packages delivered to their door.

As the new legislative session gears up, there’s virtually no chance that lawmakers will revisit the legislation in any substantive way. Uber, Lyft, and DoorDash are sponsoring an initiative that would exempt drivers from the onerous new rules, and a number of lawsuits — including one from the California Trucking Association — are headed to the federal courts. Writers have a legitimate First Amendment objection, given that the law arbitrarily placed a 35-piece limit on the number of freelance pieces a writer can publish in a single outlet. We’ll see how the litigation plays out.

That favorable *Vox* article made clear what’s going on here. It rehashed some recent history of the labor movement, going back to Ronald Reagan’s crackdown on striking air-traffic controllers. It notes that the number of “major strikes in the U.S. dropped from an average of 300 each year in the decades before (the strike) to fewer than 30 in recent years.” Labor unions have decided to take a stand on gig-economy workers — without contemplating how dramatically the economy has changed since the 1980s. Who really cares if non-union workers lose their livelihoods in the process?

In a piece published Wednesday “explaining” the most significant events of the decade, *Vox* seemed undaunted by its own hypocrisy: “Now, California’s new AB 5 law could force Uber to provide an hourly wage and full employment benefits to its tens of thousands of drivers in the state, potentially threatening not just its business model, but that of the entire gig economy, which, many argue, succeeded for too long at workers’ expense.”

It is a historic moment indeed, but it’s hard to see it as much of a victory for anyone other than union activists who want to quash the competition. It’s yet another reminder — if we needed another one — that labor unions don’t care about workers, but only about political victories that promote their pet progressive causes.

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## Appendix 4



[BusinessNZ](#) is New Zealand's largest business advocacy body, representing the majority of New Zealand private sector companies as members, affiliates or through membership of BusinessNZ divisions such as the Major Companies Group, ExportNZ, ManufacturingNZ, Sustainable Business Council and Buy NZ Made.

BusinessNZ represents around 14,000 businesses that are members of four regional business organisations:

[Employers & Manufacturers Association](#) (EMA) - northern half of North Island

[Business Central](#) - central region

[Canterbury Employers' Chamber of Commerce](#) (CECC)

[Otago-Southland Employers' Association](#) (OSEA)

In addition:

BusinessNZ's [Major Companies Group](#) (MCG) and [Gold Group](#) work with and represent New Zealand's largest and significant companies.

[ExportNZ](#) and [ManufacturingNZ](#) work with and advocate for New Zealand exporters and manufacturers.

The [Sustainable Business Council](#) (SBC) provides mainstream leadership on sustainable business matters.

The [BusinessNZ Energy Council](#) (BEC) is a group of New Zealand organisations taking on a leading role in creating a sustainable energy future for New Zealand.

The [Buy NZ Made](#) Campaign encourages consumers and organisations to help create local jobs and growth by buying New Zealand goods and services.

BusinessNZ's [Affiliated Industries Group](#) (AIG) is a grouping of major industry associations affiliated to BusinessNZ that work together on pan-industry issues.

BusinessNZ undertakes research, analysis and advocacy on behalf of all business in New Zealand.

Research activities include producing monthly surveys of the manufacturing and services sector – the *BNZ-BusinessNZ Performance of Manufacturing Index* (PMI) and *BNZ-BusinessNZ Performance of Services* (PSI) as well as other surveys on business issues.

BusinessNZ analysts work in economic, environmental, employment and skills disciplines and provide submissions on current and proposed legislation affecting the environment for business and New Zealand's growth.

BusinessNZ champions policies leading to:

- international competitiveness
- balanced employment, economic and environmental legislation
- compliance and tax levels that foster growth and investment
- innovation and skill development
- an environment fostering the production of high value goods and services