

# CHANGES TO CASUAL EMPLOYMENT

The recent amendments to the *Fair Work Act 2009* (FW Act) change workplace entitlements and obligations for casual employees

Specifically, the FW Act has been amended to include the following among other changes:

1. an obligation on employers to provide casual employees with a Casual Employment Information Statement (CEIS);
2. a definition of casual employment (Definition); and
3. an entitlement for eligible casual employees to convert to permanent employment (Casual Conversion).

## CEIS

Small business employers must provide a copy of the CEIS to all existing casual employees (employed before 27 March 2021) as soon as possible after 27 March 2021.

All other employers must provide a copy to existing casual employees as soon as possible after 27 September 2021.

Employers are still required to give every new employee a copy of the Fair Work Information Statement (FWIS) before, or as soon as possible after, they commence with the employer. However, employers must also give every new casual employee a copy of the CEIS at the same time.

Copies of the CEIS and the FWIS can be accessed on the Fair Work Ombudsman website.

## Definition - Casual Employee

A person is a 'casual employee' of an employer if:

- an offer of employment made by the employer to the person is made on the basis that the employer makes no firm advance commitment to continuing and indefinite work according to an agreed pattern of work for the person;
- the person accepts the offer on that basis; and
- the person is an employee as a result of that acceptance.



In determining whether, at the time the offer is made, the employer makes no firm advance commitment to continuing indefinite work according to an agreed pattern of work for the person, regard must be had only to the following considerations:

- whether the employer can elect to offer work and whether the person can elect to accept or reject work;
- whether the person will work only as required according to the needs of the employer;
- whether the employment is described as casual employment;
- whether the person will be entitled to a casual loading or a specific rate of pay for casual employees under the terms of the offer or a fair work instrument.

A regular pattern of hours does not of itself indicate a firm advance commitment to continuing and indefinite work according to an agreed pattern of work.

The question of whether a person is a casual employee is to be assessed on the basis of the offer of employment and the acceptance, not on the basis of any subsequent conduct of either party.

A person who commences employment as a result of acceptance of an offer of casual employment remains a casual employee until:

- the employee's employment is converted to permanent employment; or
- the employee accepts an alternative offer of employment (other than as a casual employee) by the employer and commences work on that basis.

## Casual conversion

In addition to existing casual conversion clauses in some Awards, the FW Act now includes obligations and entitlements for offering and/or requesting casual conversion in certain circumstances.

For instance, employers (other than small business employers) must offer casual employees the ability to convert to permanent employment if:

- they have been employed for a period of 12 months; and
- during at least the last six months of that period, they have worked a regular pattern of hours on an ongoing basis which, without significant adjustment, the employee could continue to work as a full-time employee or a part-time employee (as the case may be).

However, an employer will not be required to make an offer if there are reasonable grounds not to make the offer and the reasonable grounds



are based on facts that are known, or reasonably foreseeable, at the time of deciding not to make the offer. Reasonable grounds for deciding not to make an offer include the following:

- the employee's position will cease to exist in the period of 12 months after the time of deciding not to make the offer;
- the hours of work which the employee is required to perform will be significantly reduced in that period;
- there will be a significant change in either or both of the following in that period:
  - o the days on which the employee's hours of work are required to be performed;
  - o the times at which the employee's hours of work are required to be performed;
- which cannot be accommodated within the days or times the employee is available to work during that period;
- making the offer would not comply with a recruitment or selection process required by or under a law of the Commonwealth or a State or a Territory.

The FW Act sets out requirements for making, accepting and refusing an offer.

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