

## CASUAL EMPLOYMENT

### What is a casual employee?

From **26 August 2024**, section 15A of the *Fair Work Act 2009* will define a 'casual employee' as:

- having '**no firm advance commitment to continuing and indefinite work**'; and
- being entitled to a casual loading or specific casual rate of pay under an award, enterprise agreement or contract of employment.

### How is 'no firm advance commitment to continuing work' determined?

The most important consideration as to whether an employee has no firm advance commitment to continuing and indefinite work is the '**real substance, practical reality and true nature of the relationship**'.

The terms in the contract of employment (written or verbal) will be considered, however despite what is written in the contract, a mutual understanding of the expectations between the employee and employer may also be considered. This may be inferred from the conduct during the employment relationship, such as how work is performed.

The factors to consider as to whether there is a firm advance commitment include:

- the employer's ability (or lack of ability) to offer work, and the employee's ability to accept it, and whether this actually occurs;
- the reasonable likelihood of future availability of continuing work, given the nature of the operation of the business and work required;
- whether there are full or part time employees performing the same kind of work; and
- whether the employee has a regular pattern of work (regardless of variation over time for illness, injury, recreation etc.).

An employee is not a casual employee if they are engaged on a fixed term contract for a 'specified season'.

## Casual conversion

### What is casual conversion?

Casual conversion is a pathway for casual employees to become permanent (full time or part time) employees.

An employer and their casual employee can agree to change to full time or part time employment at any time. However, in some circumstances an employee can request, or an employer should offer to change the status of employment.

The rules for casual conversion will change **from 26 August 2024**.

## How does casual conversion work for employees engaged before 26 August 2024 and until 26 February 2025?

Under the existing laws there are two routes for casual conversion – offer and request.

### 1. On employer offer

If the employer has 15 or more employees, an eligible casual employee must be **offered** the option to convert to permanent employment. The casual employee is *eligible* if they have worked:

- for the employer for 12 months;
- on an ongoing, regular pattern of hours for at least the last 6 months; and
- be able to continue working these hours as a full-time or part-time employee.

If an employer does not offer casual conversion, the employer has 21 days to write to the employee with reasons why they are not making an offer of casual conversion.

### 2. On employee request

An eligible casual employee may **request** to convert to permanent employment from 21 days after 12 months of employment with an employer. An employee isn't eligible to make a request if, in the last 6 months, they have:

- refused an offer from their employer to convert to permanent employment;
- been told them in writing that their employer won't be making an offer of casual conversion because there was a reasonable ground not to make the offer; or
- their employer has refused another request for casual conversion because there was a reasonable ground to refuse the request.

Such a request can be made every 6 months.

## How does casual conversion work for employees on or after 26 August 2024?

The above casual conversion pathways will not apply to casual employees employed on or after 26 August 2024.

From this date the casual conversion process moves to a new '**employee choice**' process.

This is where a casual employee may notify their employer of their belief that they no longer meet the definition of a casual employee and request casual conversion. The employee must have been employed for 6 months, or 12 months for small businesses (less than 15 employees). Making such a request is a workplace right.

The employer has 21 days following the notification to firstly consult with the employee and then respond in writing, either accepting or refusing casual conversion.

**If the employer accepts the notification**, the employee needs to be informed:

- whether they are full or part time;
- their hours of work after the date of change; and
- the date of change.

The employer can only **refuse** an employee's request on 'fair and reasonable operational grounds', for example there would be substantial impacts to the employer's enterprise or substantial changes required to the way in which work in the employer's enterprise is organised to accommodate the conversion. If refusing, the employer needs to provide:

- the reasons for declining;
- a statement that the employee may dispute the decision; and

- if it cannot be resolved at the workplace level the employee may apply to the Fair Work Commission.

Fair and reasonable operational grounds for refusal include:

- the employee meets the definition of casual employment;
- impractical substantial changes would be required to the employee's terms and conditions (i.e. that would significantly affect the way the employee needs to work) would be necessary;
- substantial changes would be required to the way the employer's business is organised; and
- that there would be a significant impact on the operation of the business.

### What should LPA Members do in preparation for these changes to casual employment?

1. Members must give casual employees the [Casual Employment Information Statement](#):
  - upon commencement of employment; and
  - if you have 15 or more employees, again six months after they commence employment; and
  - again every 12 months on the anniversary of their employment (only on the first year if a small business of under 15 employees).
2. When a casual employee commences employment Members are encouraged to enter these timeframes in a calendar or other system to ensure compliance.
3. Review the likelihood of casual employees being considered permanent employees in light of the updated definition and in the event of casual conversion requests.
4. Update template contracts used to employ casual staff.
5. Members should have a notification system in place to alert them when a casual employee has been employed for 6 months and every 12 months. This will ensure that Members are prepared for requests or to offer ongoing employment where required, and to respond within the required 21 days.

The following template letters can assist employers in responding to requests for casual conversion:

[LPA Template: Letter offering permanent employment](#)

[LPA Template: Letter NOT offering permanent employment](#)