

CASUAL EMPLOYMENT

What is a casual employee?

Section 15A of the *Fair Work Act 2009* defines 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.

Both criteria above must be satisfied for an employee to be classified as casual.

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 in practice;
- the reasonable likelihood of continuing work being available in the future, 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 right for casual employees to request to become permanent (full time or part time) employees.

Previously, there were different laws which applied to casual conversion. There is no longer an obligation on employers to offer casual conversion.

How does casual conversion work for employees now?

From 26 August 2024 (or 26 August 2025 for small businesses), casual employees now have the right to request permanent employment through the “**employee choice**” pathway, under the National Employment Standards.

Employee choice is where a casual employee notifies their employer of their belief that they no longer meet the definition of a casual employee and request to be converted to a permanent part time or full time employee.

Making a request for conversion from casual to permanent employment is a workplace right.

Providing Notice

Casual employees can notify their employer **in writing** of their intention to change to permanent employment under the employee choice pathway if they:

- have been employed for at least 6 months or 12 months if employed by a small business (less than 15 employees); and
- believe they no longer meet the requirements of the casual employee definition.

A casual cannot provide notice if they:

- Are currently engaged in an ongoing dispute with their employer about changing to permanent employment under this pathway; or
- In the last 6 months, their employer refused a previous notice or they’ve resolved a dispute with their employer under this pathway.

Responding to a notice

Before a formal written response is provided to the employee, the employer must consult with the employee regarding the change.

The employer has **21 days** following the notification to respond in writing, either accepting or refusing the change to permanent employment.

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

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

An 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 still 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;
- that there would be a significant impact on the operation of the business; and
- accepting the change would mean the employer won't comply with a recruitment or selection process required by law.

Casual Employment Information Statement (CEIS)

Employers must give all casual employees the [Casual Employment Information Statement](#) as follows:

| When to provide the CEIS | Small Business (less than 15 employees) | All other businesses |
|---|---|----------------------|
| At commencement, | ✓ | ✓ |
| After 6 months of employment | | ✓ |
| After 12 months of employment | ✓ | ✓ |
| After every subsequent 12 months of employment (eg. 24, 36, 48 months) | | ✓ |

SUMMARY

What are the key steps to the “employee choice” pathway?

1. The employee may make a written request for casual conversion under the employee choice pathway. Check whether the employee is eligible to do so.
2. If the employee is eligible, the employer must consider the request and consult with the employee regarding the changes.
3. The employer must respond in writing within 21 days of receiving the notification, either accepting or refusing the change to permanent employment.

What are the key practical takeaways?

1. **Set notification reminders:**
 - **CEIS Timeframes:** When a casual employee commences employment, Members are encouraged to enter the CEIS timeframes into their calendar or other system to ensure compliance.
 - **Review Casual to permanent conversions:** 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. At

this time, you should review the likelihood of casual employees being considered permanent employees in light of the updated definition and in the event of casual conversion requests.

2. **Update Contracts:** Update template contracts used to employ casual staff. A link to LPA's template contracts are provided below.

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

- [LPA TEMPLATE LETTER CASUAL CONVERSION – Acceptance of notification to convert to permanent employment](#)
- [LPA TEMPLATE LETTER CASUAL CONVERSION – Non-Acceptance of notification to convert to permanent employment](#)
- LPA and ACCI's [Guide on Casual Employment.](#)