

## Changes to casual employment

Recently, the Federal Government amended the Fair Work Act 2009 (Cth) (“the FW Act”) regarding casual employment. The following changes were introduced:

1. A definition of casual employment; and
2. A pathway for casual employees to convert to ongoing employment;

There are certain exceptions for small business employers (employers who employ less than 15 employees). The details of these changes are outlined in this article.

## Definition of casual employment

Previously, the term “casual employee” was not defined by the FW Act. Now, under the FW Act, a casual employee is defined as an employee who has accepted an offer of employment on the basis that the employer makes no firm advance commitment of continuing and indefinite work according to an agreed pattern of work.

To determine whether the employer has made no firm advance commitment of continuing and indefinite work according to an agreed pattern of work, the Court must consider only the following matters:

- whether the employer can elect to offer work and whether the person can elect to accept or reject work;
- whether the person will work as required according to the needs of the employer;
- whether the employment is described as casual employment; and
- 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.

The new definition will apply to casuals who were employed before 27 March 2021, so long as their initial employment offer meets the definition.

## Conversion to ongoing employment

Now, the FW Act outlines a pathway for casual employees to convert to ongoing (i.e. permanent) employment.

Eligible casual employees, who have worked for their employer for 12 months, must be offered the option to convert to full-time or part-time ongoing employment. Casual employees may also be able to request that they be converted to ongoing employment.

### Offer of conversion to ongoing employment

An employer must offer to convert a casual employee to ongoing employment if the employee has:

- been employed for 12 months;
- has worked a regular pattern of hours on an ongoing basis for at least the previous 6 months; and
- could continue working these hours as a fulltime or parttime ongoing employee without significant changes.

Small business employers are not required to offer conversion to ongoing employment.

An employee must respond to their employer within 21 days of receiving the offer, or they will be deemed to have rejected the offer.



The only reasons an employer may refuse to offer casual employment are:

- the employee hasn't worked a regular pattern of hours on an ongoing basis for at least 6 months; or
- it would require significant changes for the employee to continue to work a regular pattern of hours on an ongoing basis;
- the business has reasonable grounds not to make an offer (see below).

#### Request for conversion to ongoing employment

Eligible casual employees have the right to request conversion to ongoing employment from 21 days of reaching their 12 month anniversary.

To be eligible, a casual employee must meet the following requirements:

- been employed for 12 months;
- has worked a regular pattern of hours on an ongoing basis for at least the previous 6 months; and
- could continue working these hours as a fulltime or parttime ongoing employee without significant changes.

Eligible casual employees of small business employers can make a request at any time. Eligible casual employees (of non-small business employers) who commenced employment before 27 March 2021, can make a request any time from 27 September 2021.

The request to convert must be made in writing. Employers must respond in writing within 21 days. Employers can only refuse the request on reasonable grounds (see below).

#### Reasonable business grounds

Employers are not obliged to offer conversion or agree to a request for conversion if they have reasonable grounds.

Reasonable grounds include that:

- the employee's position will no longer exist within 12 months;
- the employee's hours of work will significantly reduce within 12 months;
- the employee's days or times of work will significantly change, and that cannot be accommodated within the employee's available days or times for work.
- making the offer would not comply with a recruitment or selection process required by law.

If you are a member of Professionals Australia and you require advice or representation regarding a work-related issue, you can contact our Workplace Advice and Support team on 1300 273 762 or at [was@professionalsaustralia.org.au](mailto:was@professionalsaustralia.org.au).