



Legislation Changes August 2024 Casual Employment

Released 12 August 2024

New Definition of 'Casual'

On the 26th of August 2024, a new definition of 'Casual' will apply. This definition states that an employee will be a true casual employee where:

- the employment relationship is characterised by an absence of a firm advance commitment to continuing and indefinite work; and
- the employee is entitled to a casual loading (which may arise from a fair work instrument or employment contract).

Determining 'Firm Advance Commitment'

In determining whether there is a "firm advance commitment," a range of non-exhaustive factors should be considered. These include:

1. the real substance, practical reality, and true nature of the employment relationship.
2. the terms of a contract of employment or a mutual understanding or expectation between the employee and employer.
3. whether there is an inability of an employer to elect to offer work or an inability for an employee to accept or reject work (and whether this occurs in practice).
4. whether it is reasonably likely there will be future availability for continuing work of the kind usually performed by the employee.
5. whether there are other permanent employees performing the same kind of work in the enterprise; and
6. whether there is a regular pattern of work. It is not a defence to state that the company is unsure of future potential work when there is an established pattern.

Casual Conversion Stream Changes

The changes also give employees an updated process to convert to permanent employment. This replaces the existing process in the Fair Work (FW) Act by which employers must offer conversion to permanent employment in certain circumstances. This does not alter any casual conversion processes in a modern award or enterprise agreement.

The FW Act will now provide for an "employee choice about casual conversion." This will give the employee the choice to provide an employer written notification if they believe they are no longer a casual employee and seek to convert to permanent employment.

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Conditions employees must meet in converting from casual employment

There are several conditions the employee must meet, namely:

- the employee is not in a current dispute with the employer about casual conversion.
- the employee has been employed with the employer for 6-months (or if a small business 12 months).
- in the 6 months leading up to the conversion notification, the employee has not received a response from the employer regarding a previous conversion notification; or
- in the 6-months leading up to the conversion notification, the employee has not had a dispute with the employer relating to operation of the casual conversion provisions in the FW Act

If an employer receives a written conversion notification, the employer must provide a written response within 21 days after the conversion notification is given, stating whether they accept or reject the conversion notification.

What does this mean for employers and employees?

- **The employer obligation is removed.** This will simplify administration of casual conversion requirements as they will no longer have to notify the employee of their eligibility, and instead the onus will now be on employees to notify their employer of their request to convert.
- **The employer must still monitor casual employees' length of service.** They should still ensure the casual information statement is provided to employees at the relevant time periods - further information below 'Provision of Casual Information Statement Requirements.'
- Employees, where eligible, may request to convert to permanent employment following 6 months of employment as opposed to 12 months of employment.
- There is no requirement for an employee to issue a notification if they do not want to change their employment status.

Refusing Casual Conversion

There are no changes to the grounds for refusal of casual conversion and an employer can continue to refuse the casual conversion request if any of the following apply:

- the employee still meets the definition of a casual
- there are fair and reasonable operational grounds for not accepting the notification, including:
 - substantial changes would be required to the way in which work in the employer's business is organised
 - there would be significant impacts on the operation of the employer's business, or
 - substantial changes to the employee's employment conditions would be reasonably necessary to ensure the employer does not break any rules (such as in an award or agreement) that would apply to the employee.
- accepting the change means the employer is not complying with a recruitment or selection process required by law.

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Disputes regarding Casual Conversion

If unable to be resolved internally between the employee and employer, the Fair Work Commission will have power to deal with disputes regarding casual conversion using its usual dispute resolution powers (such as by mediation, conciliation, making a recommendation, expressing an opinion or arbitration).

Provision of Casual Information Statement Requirements

The final key change to casual employment is the requirement to issue a Casual Employment Information Statement. That is, an employer must give a casual employee a Casual Employment Information Statement:

- before or as soon as practicable **after the commencement of employment**; and
- before or as soon as practicable **after 6 months of employment**; and
- before or as soon as practicable **after 12 months of employment**.

Transitional Period for Existing Casual Employees

From 26 August 2024 there will be a 6-month transitional period for employment relationships entered into before 26 August 2024. During this time the current conversion regime will continue to apply instead of the new provisions.

This means that:

- for any employees who reach 12 months of employment during the transitional period, the employer will need to conduct a 12-month assessment under the current regime and either make an offer of conversion or notify the employee in writing that they will not be offered conversion.
- employees can request conversion to full-time or part-time employment under the current regime if they meet the criteria.

After the 6-month transition period, the new conversion provisions will apply to employment relationships entered into before 26 August 2024.

However, existing employees of small business employers will not have access to the new conversion process until 26 August 2025 and can continue to make requests under the old regime until this time.

If you have any casuals in your business, or need expert guidance in navigating casual conversion with these new legislative changes, our team can help.

[Contact Us](#)