

MODERN AWARDS/ENTERPRISE AGREEMENTS - CASUAL CONVERSION

What is casual conversion?

Casual conversion is the obligation to convert a regular casual employee to permanent employment. This occurs in line with a clause in the applicable modern award or enterprise agreement.

In September 2018 the Fair Work Commission varied many modern awards to include such a clause. This clause is entitled “right to request casual conversion” and commenced operation on 1 October 2018. As only some modern awards contain the model clause, employers should check the applicable modern award for terms and conditions that vary.

When does the casual have the right to request?

A regular casual employee has the right to request. This is a casual employee who has, in the preceding period of 12 months, worked a pattern of hours on an ongoing basis which, without significant adjustment, the employee could continue to perform as a full-time employee or part-time employee under the provisions of this award.

Can conversion to permanency be refused?

The employer can refuse a request for permanency only on reasonable grounds and when there has been a consultation with the employee

Reasonable grounds include:

- > it would require a significant adjustment to the casual employee’s hours of work in order for the employee to be engaged as a full-time or part-time employee in accordance with the provisions of this award
- > it is known or reasonably foreseeable that the regular casual employee’s position will cease to exist within the next 12 months
- > it is known or reasonably foreseeable that the hours of work which the regular casual employee is required to perform will be significantly reduced in the next 12 months
- > it is known or reasonably foreseeable that there will be a significant change in the days and/or times at which the employee’s hours of work are required to be performed in the next 12 months which cannot be accommodated within the days and/or hours during which the employee is available to work

If the employer is refusing the reasons for doing so must be outlined in writing within 21 days of the request being made.

Key points for converting your casual to permanent

1. Record the date on which you agree to convert to part time or full time
2. Consider applicable modern award clauses for terms and conditions for the new type of employment
3. Where agreed, the conversion will take effect in the next pay cycle

Employers need to provide a copy of the complete modern award clause to the casual employee within the first 12 months of the employee’s first engagement to perform work. A copy of the model clause is as follows:

Right to request casual conversion model clause

- a) A person engaged by a particular employer as a regular casual employee may request that their employment be converted to full-time or part-time employment.
- b) A regular casual employee is a casual employee who has in the preceding period of 12 months worked a pattern of hours on an ongoing basis which, without significant adjustment, the employee could continue to perform as a full-time employee or part-time employee under the provisions of this award.
- c) A regular casual employee who has worked equivalent full-time hours over the preceding period of 12 months’ casual employment may request to have their employment converted to full-time employment.

- d) A regular casual employee who has worked less than equivalent full-time hours over the preceding period of 12 months' casual employment may request to have their employment converted to part-time employment consistent with the pattern of hours previously worked.
- e) Any request under this subclause must be in writing and provided to the employer.
- f) Where a regular casual employee seeks to convert to full-time or part-time employment, the employer may agree to or refuse the request, but the request may only be refused on reasonable grounds and after there has been consultation with the employee.
- g) Reasonable grounds for refusal include that:
 - i. it would require a significant adjustment to the casual employee's hours of work in order for the employee to be engaged as a full-time or part-time employee in accordance with the provisions of this award – that is, the casual employee is not truly a regular casual employee as defined in paragraph (b);
 - ii. it is known or reasonably foreseeable that the regular casual employee's position will cease to exist within the next 12 months;
 - iii. it is known or reasonably foreseeable that the hours of work which the regular casual employee is required to perform will be significantly reduced in the next 12 months; or
 - iv. it is known or reasonably foreseeable that there will be a significant change in the days and/or times at which the employee's hours of work are required to be performed in the next 12 months which cannot be accommodated within the days and/or hours during which the employee is available to work.
- h) For any ground of refusal to be reasonable, it must be based on facts which are known or reasonably foreseeable.
- i) Where the employer refuses a regular casual employee's request to convert, the employer must provide the casual employee with the employer's reasons for refusal in writing within 21 days of the request being made. If the employee does not accept the employer's refusal, this will constitute a dispute that will be dealt with under the dispute resolution procedure in clause 9. Under that procedure, the employee or the employer may refer the matter to the Fair Work Commission if the dispute cannot be resolved at the workplace level.
- j) Where it is agreed that a casual employee will have their employment converted to full-time or part-time employment as provided for in this clause, the employer and employee must discuss and record in writing:
 - (i) the form of employment to which the employee will convert – that is, full-time or part-time employment; and
 - (ii) if it is agreed that the employee will become a part-time employee, the days the employee will be required to attend for work and the starting and finishing times for each such day.
- k) The conversion will take effect from the start of the next pay cycle following such agreement being reached unless otherwise agreed.
- l) Once a casual employee has converted to full-time or part-time employment, the employee may only revert to casual employment with the written agreement of the employer.
- m) A casual employee must not be engaged and re-engaged (which includes a refusal to re-engage), or have their hours reduced or varied, in order to avoid any right or obligation under this clause.
- n) Nothing in this clause obliges a regular casual employee to convert to full-time or part-time employment, nor permits an employer to require a regular casual employee to so convert.
- o) Nothing in this clause requires an employer to increase the hours of a regular casual employee seeking conversion to full-time or part-time employment.
- p) An employer must provide a casual employee, whether a regular casual employee or not, with a copy of the provisions of this subclause within the first 12 months of the employee's first engagement to perform work. In respect of casual employees already employed as at 1 October 2018, an employer must provide such employees with a copy of the provisions of this subclause by 1 January 2019.
- q) A casual employee's right to request to convert is not affected if the employer fails to comply with the notice requirements in paragraph (p).

Contacting the Victorian Chamber of Commerce and Industry

The Victorian Chamber's team of experienced workplace relations advisors can assist members with a range of employment, human resources and industrial relations issues.

Our experienced workplace relations consultants can also provide assistance to both members and non-members on a range of more complex matters for a fee-for-service. The consultants can, among other things, provide training to employees, conduct investigations and provide representation at proceedings at the Fair Work Commission.

For assistance or more information, please contact the Workplace Relations Advice Line on **(03) 8662 5222**.

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