

## FAIR WORK ACT - CASUAL CONVERSION

### What is casual conversion?

On Friday 26 March 2021, the Fair Work Act 2009 was amended to change workplace rights and obligations for casual employees. These changes came into effect on Saturday 27 March 2021. Casual conversion is the obligation to convert a regular casual employee to permanent employment. An employer has to offer their casual employee to convert to full-time or part-time (permanent) when the employee meets the below criteria.

- > has worked for their employer for 12 months
- > has worked a regular pattern of hours for at least the last 6 of those months on an ongoing basis
- > could continue working those hours as a permanent employee without significant changes.

Some exceptions apply, including:

- > small business employers
- > if an employer has 'reasonable grounds' not to make an offer to a casual employee for casual conversion.

### Definition of a casual employee

(1) A person is a **casual employee** of an employer if:

- (a) an offer of employment made by the employer to the person is made on the basis that the employer makes no firm advance commitment to continuing and indefinite work according to an agreed pattern of work for the person; and
- (b) the person accepts the offer on that basis; and
- (c) the person is an employee as a result of that acceptance.

(2) For the purposes of subsection (1), in determining whether, at the time the offer is made, the employer makes no firm advance commitment to continuing and indefinite work according to an agreed pattern of work for the person, regard must be had only to the following considerations:

- (a) whether the employer can elect to offer work and whether the person can elect to accept or reject work;
- (b) whether the person will work only as required;
- (c) whether the employment is described as casual employment;
- (d) 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.

**Note:** Under Division 4A of Part 2-2, a casual employee who has worked for an employer for at least 12 months and has, during at least the last 6 months of that time, worked a regular pattern of hours on an ongoing basis may be entitled to be offered, or request, conversion to full-time employment or part-time employment.

- (3) To avoid doubt, a regular pattern of hours does not of itself indicate a firm advance commitment to continuing and indefinite work according to an agreed pattern of work.
- (4) To avoid doubt, the question of whether a person is a casual employee of an employer is to be assessed on the basis of the offer of employment and the acceptance of that offer, not on the basis of any subsequent conduct of either party.

- (5) A person who commences employment as a result of acceptance of an offer of employment in accordance with subsection (1) remains a **casual employee** of the employer until:
- (a) the employee's employment is converted to full-time or part-time employment under Division 4A of Part 2-2; or
  - (b) the employee accepts an alternative offer of employment (other than as a casual employee) by the employer and commences work on that basis.

### 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.

A small business (fewer than 15 employees) does not have to offer casual conversion as per the Fair Work Act. Employees are still able to make a request to their employer if you meet the requirements for making a request.

### Requirements for employers to offer casual conversion (other than a small business)

Employers must make an offer to regular casuals to become a permanent employee if:

- > they have been employed by them for at least 12 months
- > worked a regular pattern of hours for the last 6 months on an ongoing basis, and
- > regular hours could continue as a permanent employee without significant changes.

The employer must make the offer in writing before 27 September 2021 or within 21 days after the employee's 12-month anniversary, whichever is later.

Employers do not have to offer casual conversion if:

- > there are reasonable grounds for them not to, or
- > the employee is not eligible.

If this applies, the employer must notify the employee in writing.

### Requirement for employees to request casual conversion (other than a small business)

After 27 September 2021 employees can make a request to their employer to become a permanent employee if:

- > the employee has been employed for at least 12 months
- > worked a regular pattern of hours in the last 6 months on an ongoing basis
- > there is an expectation regular hours could continue as a permanent employee without significant changes and,
- > the employer hasn't already refused a previous request to become a permanent employee based on reasonable grounds in the last 6 months.

The request must be made by the employee in writing and can be made from 21 days after the employee's 12-month anniversary. The employer must respond within 21 days. The employer can only say no after consultation with the employee, and only if there are reasonable grounds. If your employer refuses a request on reasonable grounds, the reasons must be advised in writing.

## Can conversion to permanency be refused?

The employer can refuse a request for permanency only on reasonable grounds following a consultation process. If the employer is refusing, the reasons for doing so must be outlined in writing within 21 days of the request being made.

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

## Casual Information Statement

Employers must give every new casual employee a Casual Employment Information Statement (the CEIS) before, or as soon as possible after, they start their new job.

- > Small business employers need to give their existing casual employees a copy of the CEIS as soon as possible after 27 March 2021.
- > Other employers have to give their existing casual employees a copy of the CEIS as soon as possible after 27 September 2021.

## 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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