



WORKPLACE PARTNERS
**CASUAL OBLIGATIONS
GUIDE**
2021

NEW EMPLOYER OBLIGATIONS TO CASUAL EMPLOYEES

What are the changes to casual employment?

The following key changes were made to the Fair Work Act (FW Act), effective from 27 March 2021:

1. Casual Employment Information Statement
2. Definition for casual employment
3. Right to casual conversion (convert a casual employee to permanent employment)
4. Casual loading offset

Casual Employment Information Statement (CEIS)

A newly introduced CEIS must now be provided to every new casual employee before, or as soon as possible after, they commence employment in your business.

Existing casual employees must also be provided with a copy of the CEIS

- Small business employers (less than 15 employees), a copy of the CEIS must be provided as soon as possible after 27 March 2021.
- All other employers must provide a copy to existing casual employees as soon as possible after 27 September 2021.

A copy of the Casual Employment Information Statement is attached below.

How is casual employment defined?

Under the changes, a person is defined as a casual employee if an offer of employment is made by the employer to the person and it is made on the basis that the employer makes no firm advance commitment to continuing and indefinite work, and that the person accepts the employment offer on that basis.

In determining whether a firm advance commitment to continuing and indefinite work exists, the changes under the FW Act requires a Court to have regard to only 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 as required according to the needs of the employer;
- 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.



What is the right to casual conversion?

Employers now have an obligation to offer full time/part time conversion to a casual employee if:

- a) the employee has been employed by the employer for a period of 12 months beginning the day the employment started; and
- b) during at least the last 6 months of that period, the employee has worked a regular pattern of hours on an ongoing basis which, without significant adjustment.

The offer to convert must be in writing to full time or part-time for an employee that has worked a consistent regular pattern of hours that is less than the equivalent of full-time hours.

The written offer must be given to the employee within the period of 21 days after the casual employee has been employed for at least 12 months.

However, an employer is not required to make an offer if, there are **reasonable grounds** not to make the offer; and the reasonable grounds are based on facts that are known, or reasonably foreseeable, at the time of deciding not to make the offer.

Reasonable grounds includes:

- a) the employee's position will cease to exist in the period of 12 months after the time of deciding not to make the offer;
- b) the hours of work which the employee is required to perform will be significantly reduced in that in the 12 months after the conversion right arises;
- c) there will be a significant change in the days or times the employee is required to perform work in the 12 months after the conversion right arises.

Where a decision is made by an employer not to make an offer of conversion, the employer must give written notice to the employee within 21 days of when the conversion right arose and include the reason for not making the offer.

Small business exclusion - the obligation to offer casual conversion does not apply to small business employers. However, a casual employee in a small business can request a conversion to permanent employment, which can be refused on reasonable grounds.

Workplace Partners can provide you with letters of offer to relevant employees for casual conversion that meet the FW Act requirements.



What is the casual loading offset?

Most importantly, the amendments to the FW Act now address the issue of misclassification of a casual employee and how the casual loading paid is to be taken into account when calculating relevant entitlements to prevent double dipping.

If a Court determines that an employee who is engaged as a casual and paid a casual loading is deemed not to have been a casual employee but rather a full time or a part time employee, the casual loading paid to the employee can be used to offset relevant entitlements that will be payable to a full time or a part time employee.

Employers next steps

We recommend employers:

- Ensure that all current casual employees are provided with the CEIS as soon as possible.
- Ensure employment contracts align with the recent changes.
- Implement a process for dealing with casual conversion to ensure you are meeting your obligations under the FW Act.
- Review your workforce strategies based on the new changes.



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