

Casual Changes - Fair Work Legislation Amendment (Closing Loopholes) Act 2023

New Definition of Casual

From 26 August 2024, an employee will be a casual employee only if the employment relationship is characterised by an “absence of a firm advance commitment to continuing and indefinite work” having regard to the following factors:

- Does the employee, in practice, have an inability to elect to accept or reject work? Does the employer have an ability to choose to offer or not offer work?
- Is it reasonably likely that there will be future availability of continuing work of the kind usually performed by the employee in your business?
- Are there full-time employees or part time employees performing the same kind of work in your business?
- Does the employee have a regular pattern of work?

If you were to answer positively to most of the above questions, then your employee may no longer fit inside the definition of casual.

However, simply exhibiting one of the above criteria is not indicative of the employment relationship no longer being casual, these factors will need to be weighed against one another to determine if the relationship in practice is one of casual employment.

Every 6 months (12 months in a small business) a casual employee will be able to self-assess their employment relationship by virtue of the above criteria and choose to, if they believe they no longer fit within the definition of casual, notify their employer of a conversion request.

New Conversion Stream

The new right to request conversion completely replaces the previous conversion streams including the requirement for employers to offer casual employees conversion to full-time or part-time at 12 months.

Employees, if they believe they no longer meet the definition of casual above can request conversion under this new right if they meet the following:

- the employee has been employed in the business for more than 6 months (or 12 months if a small business);
- the employee has not had a dispute with their employer about the operation of casual conversion in the last 6 months; and
- the employee has not been refused conversion in the last 6 months.



Employers must respond within 21 days alerting their employee to their acceptance or refusal of the conversion.

Can I Refuse Conversion Requests?

You can refuse conversion requests on a number of grounds:

- You believe the employee still meets the definition of “casual employee”;
- There are ‘fair and reasonable operational grounds’ for refusal; or
- converting the employee would affect compliance with a recruitment or selection process required under a law of the Commonwealth, a State or Territory.

Fair and reasonable operational grounds for a refusal of a casual conversion notification will include:

- substantial changes would be required to the way in which work in the employer’s enterprise is organised;
- there would be significant impacts on the operation of the employer’s enterprise;
- substantial changes to the employee’s terms and conditions would be reasonably necessary to ensure the employer does not contravene a term of a fair work instrument that would apply to the employee as a full-time employee or part-time employee (as the case may be).

This means that if it would be highly impractical for you to convert a casual, you may be able to refuse the request. Employers should familiarise themselves with the fair and reasonable operational grounds listed above.

Casual Employment Information Statement Requirements

To ensure employees are reminded of their rights and ability to change to permanent work, employers will also be required to provide the Casual Employment Information Statement to casual employees:

- for small business employers – after 12 months of employment,
- for other employers – after six and 12 months of employment, and then after every 12 months of employment.

The information provided in this Bulletin / attached guidance material is general and is intended to assist employers in understanding these changes.

The AADA encourages members to seek their own specialist advice regarding these changes.

