

What employers need to know about new casual employment laws

The Fair Work Act (FWA) was recently amended to change workplace rights for casual employees, and places new obligations on employers.

A new definition of casual employment has been introduced, as well as a pathway for casual employees to move to permanent employment, through casual conversion or offer of permanent employment. Essentially, the laws confer a statutory entitlement for long-term casual employees to be offered, or to request permanent employment in certain circumstances.

Employers must also give a copy of the Casual Employment Information Statement (CEIS) to their casual employees.

This information is general only. If you are an employer employing casual staff, you should be aware of your obligations under these laws and obtain professional advice specific to your workplace and circumstances.

Casual Employment Information Statement

Employers are required to give every new casual employee a CEIS before or as soon as possible after they start their new job. They also need to give their existing casual employees a copy of the CEIS as soon as possible. For further information, see [Casual Employment Information Statement](#).

Definition of a “casual employee”

Generally, a person is a casual employee if an employer makes an offer of employment on the basis that the employer makes no firm advance commitment to continuing and indefinite work according to an agreed pattern of work, and the person accepts the offer on that basis.

A person will be considered a casual employee on the basis of the offer and acceptance as indicated above and not on the basis of any subsequent conduct of either party that may imply otherwise.

Casual conversion to permanent employment

Subject to some exceptions, employers, other than small business employers (those with less than 15 employees), must offer casual employees conversion to full or part-time (permanent) employment if:

- the employee has worked for them for at least 12 months, and
- during the past 6 months, the employee has worked regular and systematic hours on an ongoing basis which, without significant adjustment, the employee could continue to work as a full-time or part-time employee.

If the employer does not offer casual conversion, they must write to the employee within 21 days of their 12-month work anniversary, advising them of their decision not to offer them the option to convert to permanent employment and their reasons for doing so.

The employer may only base their decision to not offer the employee casual conversion on “reasonable grounds”.

Casual employees may request permanent employment from an employer

Employees may request to convert to permanent employment 21 days after their 12-month work anniversary.

To be eligible to request casual conversion, employees need to:

- have been employed by the employer for at least 12 months;
- worked a regular pattern of hours on an ongoing basis for at least the last 6 months of their casual employment;
- be able to continue working these hours as a full or part-time employee without significant changes.

Employees will not be eligible to make a request if, in the last 6 months:

- they have refused an offer to convert to permanent employment;
- the employer has advised in writing that they will not be making an offer of casual conversion because there was a reasonable ground not to make the offer;
- the employer has refused another request for casual conversion because there was a reasonable ground to refuse the request.

Casual employees eligible to become a permanent employee can make a request for casual conversion every 6 months.

Employers need to respond in writing to an employee’s request within 21 days advising whether they have accepted the request. If the employer refuses the request, they must state the reasons why in their response. The reasons for not accepting a request for casual conversion must be based on a “reasonable ground”.

A “reasonable ground” may include that within the next 12 months any of the following will occur:

- the employee's position will not exist;
- the employee's hours of work will significantly reduce;
- the days or times of work will significantly change, and this cannot be accommodated within the employee's available days or times for work.

Conclusion

Employers should review their employment contracts in line with these laws and the definition of a casual employee, and understand the circumstances under which a statutory right for casual employees to convert to permanent employment will arise.

Processes should be implemented to ensure that existing and future casual employees are provided a CEIS, and to deal with the conversion from casual to permanent employment.

With employment laws constantly evolving, it is important to obtain professional advice to ensure compliance with workplace laws, whilst balancing the resources and operational needs of an organisation.

If you need more information or if you need assistance or advice on how to proceed please call us on 07 5538 2766 or email jeff@dwyerlaw.com.au today.