



CHANGES TO CASUAL EMPLOYMENT

Fact Sheet

As you are aware, the Federal Government made a number of significant changes to the *Fair Work Act 2009* (Cth) (**Act**) regarding casual employment in Australia.

The AHA WA has prepared the following comprehensive fact sheet for members, which details the relevant changes employers must be aware of in order to ensure they are not inadvertently breaching the new laws.

This fact sheet deals with the following changes:

1. A statutory definition of 'casual employment'
2. Casual conversion
3. Offsetting casual loading
4. The provision of a new casual employment information statement

1. Statutory definition of casual employment

A worker is now defined as a casual employee if:

- an offer of employment is made and the offer does not make a firm advance commitment to continuing and indefinite work according to an agreed pattern; and
- the worker accepts the offer and is employed because of the acceptance.

There are four (4) relevant considerations in determining whether or not a firm advance commitment of work has been made:

- whether the employer can elect to offer work and whether the worker can elect to accept or reject work;
- whether the employment is described as casual;
- whether the worker will work according to the needs of the employer; and
- whether the worker will be entitled to a casual loading under the terms of a modern award or enterprise agreement.

The assessment of whether a worker is a casual employee is to be on the basis of the offer and acceptance, not on the basis of the subsequent conduct of either party.

To assist members, the Workplace Relations team has updated casual employment contract templates for *Hospitality Industry (General) Award 2020* and the *Restaurant Industry Award 2020*. These contracts apply to new casual employees starting employment with you for the first time.

2. Casual conversion

What is it?

Casual conversion is the process where employees can change the basis of the employment from full time to part time. If the employee converts to permanent employment, they are no longer treated as a casual employee and are entitled to all the benefits of permanent employment including but not limited to:

- annual leave;
- personal / carer's leave;
- notice pay;
- redundancy pay

What do I need to do?

Employers with more than 15 employees

An employer with 15 or more employees must offer conversion to full-time or part-time employment if:

- the employee has been employed for at least 12 months; and
- has worked a regular pattern of hours for the last 6 months; and
- these hours can continue as a full-time or part-time employee without significant change.

An offer does not have to be made if there are reasonable grounds not to do so, or the employee is not eligible. If either of these apply, the employer must inform the employee in writing.

A casual employee has 21 days to respond to the offer and must respond in writing.

Currently, the new laws do not displace casual conversion provisions contained within modern awards.

When do I need to do it?

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

From 27 September 2021, an employee can make a request for conversion from casual employment to full-time or part-time employment, subject to the employee meeting the eligibility requirements and not having refused an offer from the employer in the previous 6 months.

Small business employers

Small business employers are not required to offer conversion to full-time or part-time employment.

However, existing and new casual employees of small business employers can make requests for conversion at any time if they meet the eligibility requirements.

3. Offsetting casual loading

The Act now limits an employee's ability to 'double dip' certain paid entitlements if a court finds an employee has been incorrectly engaged as a casual (meaning they are really a full time or part time employee).

The Act now allows courts and tribunals to 'offset' the casual loading paid to the employee against the amount the employee is lawfully entitled to have received.

In order to successfully have the benefit of this offset provision, employers must ensure the loading paid specifies the components / entitlements it compensates the employee for. Accordingly, it is critical employment contracts are drafted specifically enough for the offset provisions to apply.

4. Casual employment information statement

What is it?

The Fair Work Ombudsman gazetted a new Casual Employment Information Statement (CEIS).

What do I need to do?

All employers must provide the CEIS to **both current and new casual employees**, along with an updated version of the Fair Work Information Statement (FWIS) which reflects the changes contained in the Act.

When do I need to do it?

Employers are required to provide the CEIS to casual employees as follows:

New casual employees	Must receive a copy of the CEIS before, or as soon as possible after, they start their new job.
Existing casual employees	<p>Small business employers (fewer than 15 employees) must give existing casual employees a copy of the CEIS as soon as possible (after the commencement of the Act which took place on 27 March 2021).</p> <p>All other employers must give existing casual employees a copy of the CEIS as soon as possible after 27 September 2021</p>

How do I need to do it?

Employers can give casual employees the CEIS either in person, by mail, by emailing a copy of it or a link to it on the Fair Work Ombudsman's website (if the employee agrees). The CEIS can be provided to casual employees at the same time as an employer provides the FWIS.

FWIS

As a consequence of the Act commencing, the Fair Work Ombudsman has gazetted an updated version of the FWIS. The new version contains:

- reference to the need for casual employees to also be provided with the CEIS; and
- casual conversion in the NES summary

Employers will need to ensure that updated version of the FWIS is provided to all new employees before, or as soon as possible after, they start their new job.

We encourage you to **act on this requirement as soon as possible** to ensure you remain compliant with your workplace obligations.

5. Further information

Fair Work Information Statement:	https://www.fairwork.gov.au/employee-entitlements/types-of-employees/casual-part-time-and-full-time/casual-employees/becoming-a-permanent-employee#existing-casual-requests
Casual Employment Information Statement:	https://www.fairwork.gov.au/employee-entitlements/national-employment-standards/casual-employment-information-statement
Casual Conversion:	https://www.fairwork.gov.au/employee-entitlements/types-of-employees/casual-part-time-and-full-time/casual-employees/becoming-a-permanent-employee#existing-casual-requests
Casual Conversion Disputes:	https://www.fwc.gov.au/disputes-at-work/casual-conversion-disputes

FURTHER RESOURCES

If you would like template contracts, template conversion letters, or if you require any further advice, please contact the team on wra@ahawa.asn.au or (08) 9321 7701

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