

# Significant changes to casual employment arrangements

**Recent amendments to the Federal Fair Work Act 2009 have changed the workplace entitlements and obligations for casual employees. The changes came into effect on March 27, 2021.**

There are three broad changes to the Fair Work Act:

- A new definition of casual employment;
- A new pathway for casual employees to become full-time or part-time (permanent); and
- A “casual employment information statement”.

## Definition of casual employment

From March 27, 2021, a person is a casual employee if they accept a job offer from an employer knowing that there is no firm advance commitment to continuing and indefinite work according to an agreed pattern of work.

Once employed as a casual, an employee will continue to be a casual employee until they:

- become a permanent employee through what is termed ‘casual conversion’;
- are offered and accept full-time or part-time employment; or
- stop being employed by the employer.

For existing employees, an employee will be deemed a casual employee if they met the new definition of casual employee when they were originally employed in their initial employment offer (ie. their initial contract of employment).



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## Casual conversion

### Employers’ obligations to offer casual conversion

The *National Employment Standards* now include an entitlement for a casual employee to become a full-time or part-time (permanent) employee in certain circumstances. This is known as casual conversion.

Different rules apply to small business employers (employers with less than 15 employees) than to employers who have 15 or more employees.

Except for small business employers, employers are required to offer casual employees who have worked in their employ for 12 months the option to convert to full-time or part-time (permanent) if the employee:

- has worked a regular pattern of hours on an ongoing basis for at least the last six months; and
- could continue those hours as a full-time or part-time (permanent) without significant change to their hours of work unless the employer has reasonable grounds not to make an offer.

The offer must be made within 21 days of the end of the employee’s 12-month anniversary. The amount of hours that the employee has worked over the previous six



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months will determine if the offer must be for full-time or part-time (permanent) basis.

### Employees right to request casual conversion

Eligible casual employees (except if they are employed by a small business employer) can also make a request to convert to permanent employment from 21 days after their 12-month anniversary.

An eligible casual employee who works for a small business employer can make a request at any time on or after their 12-month anniversary.

To be an eligible casual employee in either circumstance the casual employee must:

- have been employed by the employer for at least 12 months;
- have worked a regular pattern of hours on an ongoing basis for at least the last six months; and be able to continue those

hours as a full-time or part-time (permanent) without significant change to their hours of work, and none of the following must apply in the previous six months:

- the employee must not have refused an offer to convert to permanent employment;
- the employer has advised in writing that an offer of casual conversion will not be made as there are reasonable ground;
- the employer has refused another request for casual conversion based on reasonable grounds;
- that an offer of casual conversion will not be made as there are reasonable ground.

An employer is required to respond to that request by writing to the employee within 21 days. If the employer refuses the request, they must tell the employee their reasons why in their written response.

Employers cannot refuse a request unless they have consulted the employee and have reasonable grounds to refuse the request.

### Reasonable grounds for refusal of casual conversion

Reasonable grounds for not making an offer include if in the next 12 months the employee’s position will not exist, the hours will significantly reduce, or the days and times of work will significantly change and cannot be accommodated within the employee’s days or times for work. If an offer is not being made the employer must still write to the employee within 21 days of the employee’s 12-month anniversary explaining that no offer will be made along with the reasons why.

### Existing casual employees

Except for small business employers, employers must assess whether any of their existing casual employees who were employed prior to March 27, 2021, are eligible to convert to permanent employment.

Within 21 days of the assessment occurring the employer needs to make a written offer to convert employment or an explanation as to why that offer will not be made. The assessments and any explanation as to why the offer will not be made must occur by September 27, 2021.

Employees must respond to any offer within 21 days of receiving the offer. If no response is given an employee is deemed to refuse the offer. Small business employers are not required to make an offer to convert their casual employees to permanent employment.

### Casual employment information statement (CEIS)

A CEIS is a statement prepared by the ombudsmen and published in the Government Gazette. The CEIS has information about:

- the definition of a casual employee;
- when an employer is and is not required to offer casual conversion;
- when a casual employee can request casual conversion;

- casual conversion entitlements; and
- the role of the Fair Work Commission to deal with disputes about casual conversion.

The CEIS can be downloaded from the Fair Work website. There have been two versions of the form published to date. Employers need to ensure they are using the most current form published May 20, 2021.

A CEIS must be provided to each new casual employee before or as soon as possible after the employee starts their new job. Small business employers are required to give their existing casual employees a copy of the CEIS as soon as possible after March 27, 2021. Other employers are required to give their existing casual employees a copy of the CEIS as soon as possible after September 27, 2021.

### What does this mean for management rights operators?

All management rights operators will need to consider on what basis they employed their staff

in the past and how they will make offers for employment for the future. If an operator wishes to engage an employee on a casual basis, then it must be made abundantly clear from the outset and that offer must be accepted by the employee.

If an operator has any casual employees, then the manager must ensure that a CEIS is provided to all new and current casual employees.

If an operator has less than 15 staff, the operator is not required to offer casual conversion to its eligible casual employees, however, if an employee has been employed for 12 months the employee may ask for conversion. In that case the operator must consider and respond within 21 days.

If an operator has 15 staff or more, the operator must offer casual conversion to its eligible staff or give a written explanation as to why such an offer is not being made. The operator must ensure that assessments and offers have occurred by September this year. ▲

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