



Engaging Casual Employees – National System Employers

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Introduction

The information in this fact sheet only applies to national system employers covered by the Fair Work Act 2009 (**Act**) and their casual employees. It does not apply to State system employers and their employees.

When engaging a new employee, a decision needs to be made regarding the new employee's employment status.

Where you require an employee to work on an on-going basis and you intend to provide a firm advance commitment of that ongoing work, including predicting in advance the hours that the employee will be required to work, you should engage the employee on a permanent basis (whether that be full-time, part-time or fixed-term) unless there are further factors which militate against this.

However, where you require an employee to fill a labour gap or cannot predict their hours due to fluctuating operational or seasonal requirements, engaging an employee on a casual basis may be more suitable. This will provide greater flexibility as well as reducing your obligations when the time comes for terminating the employment.

What is a casual employee?

A 'casual employee' is defined in the Act as a person who accepts an offer of employment with no firm advance commitment to continuing and indefinite work according to an agreed pattern of work.

Factors determining whether there is 'no firm advance commitment' include whether the:

- employer can offer or not offer shifts and the employee can accept or reject the shifts
- employee will work only as required
- employment is described as casual
- employee is entitled to a casual loading or casual rate of pay
- employee will work as required according to the needs of the employer

Regular and systematic casual employment will not of itself imply permanency. Whether an employee is a casual is based on the offer of employment and not on what the parties do afterwards.

A casual employee remains a casual until either their employment is converted to permanent employment, or the employee accepts an alternative offer of employment.

Employer obligations for casual employees

Casual loading

Casual employees are not entitled to paid leave entitlements. However, they are entitled to a casual loading (usually 25% of their base hourly rate of pay), which can result in higher staffing costs.

Casual conversion – large employer obligation

Casual employees may be entitled to conversion to permanent employment where they meet the criteria set out in the Act. The Act requires employers with 15 or more employees (**Large Employer**) to offer permanent employment in writing to casuals with:

- 12 months service and
- A regular pattern of work for at least the last six months of their employment that could continue as permanent employment (**eligible casuals**).

The Large Employer must make the offer within 21 days of the employee completing 12 months' service unless there are reasonable grounds not to make the offer, including

- the role will no longer exist in 12 months' time
- the employee's hours of work will be significantly reduced in the next 12 months
- there will be a significant change to the employee's days and times of work which cannot be accommodated within the employee's availability or
- making the offer will not comply with recruitment or selection processes requirements of the Commonwealth, States or Territories.

If not making an offer, the Large Employer must give a written notice to the employee within 21 days of their completing 12 months' service setting out the reasonable grounds for not making the offer or that they do not satisfy the six-month regular pattern of work requirement.

The employee must respond within 21 days of receiving the offer stating whether they accept or reject it. Failure to respond within the 21-day timeframe is taken as rejection of the offer.

If the employee accepts, within 21 days the Large Employer must consult with the employee and give written notice of the details of the employee's permanent employment. The employee is taken to be a permanent employee on and from the day specified in the notice confirming conversion.

An employer cannot:

- reduce or vary hours of work or terminate an employee's employment to avoid casual conversion rights, or
- require an employee to convert to full-time or part-time employment

Casual conversion rights now form part of the National Employment Standards, so a failure to comply with these provisions risks liability for civil penalties. Please also note that employers may have casual conversion obligations under the relevant award, registered agreement or employment contract.

Casual conversion – employee right to request

Eligible casuals of any size business may make a written request to convert to permanent employment if:

- they have not refused a conversion offer made under the Act in the last six months
- the employer has not given notice of reasonable grounds of not making an offer under the Act
- the employer has not refused a request to convert in the last six months and
- they make the request within 21 days of completing 12 months' service.

The employer:

- must respond to the request within 21 days after the request is given to the employer stating whether the request is granted or refused, with reasons for the refusal and
- cannot refuse the request without consulting with the employee and having reasonable grounds to refuse the request. Reasonable grounds are the same as for refusing to make an offer to convert.

Casual Employment Information Statement

The Casual Employee Information Statement published by the Fair Work Ombudsman must be provided to all new and existing casual employees. This is in addition to the Fair Work Information Statement.

Need more help with casual employment? Contact the Advice Team on 1300 651 415 or email advice@employsure.com.au for specific advice.