

Changes to Casual Employee Obligations Fact Sheet

Does your business employ casual staff? Important legislative change applies to casual employees from 27 March 2021

As part of the Federal Government's JobMaker plan, the Fair Work Act 2009 was amended on 26th March 2021 and changes the workplace rights and obligations for casual employees.

Why have these changes been implemented?

The changes are part of the Australian Government's JobMaker plan to explore reforms to the industrial relations system to regrow jobs lost in the COVID-19 pandemic.

What are the key changes?

The changes made by the Fair Work Amendment (Supporting Australia's Jobs and Economic Recovery) Act 2021 (The Amendment Act) introduces the following:

1. Definition of casual employment
2. Casual Employment Information Statement (CEIS)
3. Pathway for casual employees to move to full-time or part-time (permanent) employment.

Definition of Casual Employment

Under the new definition, a person is a casual employee if they accept a job offer from an employer knowing that there is no firm advance commitment to ongoing work with an agreed pattern of work.

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

- become a permanent employee through:
 - casual conversion, or
 - are offered and accept the offer of full-time or part-time employment, or
- stop being employed by the employer.

Casual Employment Information Statement (CEIS)

The Casual Employment Information Statement (CEIS) outlines the rights and obligations relating to casual employment. The link to the CEIS on the Fair Work website is here:

<file:///C:/Users/Contact%20Us/Downloads/casual-employment-information-statement.pdf>

Note: As part of this review, the Fair Work Information Statement that is provided to all employees (including non-casual employees) has been updated. Employers should provide all new and existing employees (casual or non-casual) with an updated copy of this document which can be found on the Fair Work Ombudsman website here: <https://www.fairwork.gov.au/tools-and-resources/fact-sheets/minimum-workplace-entitlements/fair-work-information-statement>

Pathway for casual employees to move to permanent employment (casual conversion)

The Amendment Act adds a new entitlement to the National Employment Standards (NES) giving casual employees a pathway to become a full-time or part-time (permanent) employee. This is also known as 'casual conversion'.

An employer (other than a small business employer) has to offer their casual employee to convert to full-time or part-time (permanent) when the employee:

- has worked for their employer for 12 months
- has worked a regular pattern of hours for at least the last 6 of those months on an ongoing basis
- could continue working those hours as a permanent employee without significant changes.

Some exceptions apply, including:

- if an employer has "reasonable grounds" not to make an offer to a casual employee (examples include if the employee's position will cease to exist or if the employee's hours of work will significantly reduce*)

The employer must respond in writing to the request and it is recommended that human resources advice is sought prior.

**Further detail on what constitutes "reasonable grounds" can be found here:*

<https://www.fairwork.gov.au/employee-entitlements/types-of-employees/casual-part-time-and-full-time/casual-employees/becoming-a-permanent-employee#reasonable-grounds>

What does our business need to do to implement the changes?

New Casual Employees

Employers must give a copy of the Casual Employment Information Statement (CEIS) to new casual employees before, or as soon as possible after, they start their new job. This should be provided in conjunction with the updated Fair Work Information Statement.

Existing Casual Employees

Casuals who were employed immediately before 27 March 2021 and whose initial employment offer meets the new definition will continue to be casual employees under the Fair Work Act.

[Small business employers](#) (businesses who employ fewer than 15 employees including casuals) need to give their existing casual employees a copy of the CEIS as soon as possible after **27 March 2021**.

[Employers who are not small business employers](#) (ie they employ 15 or more employees including casual employees) must give their existing casual employees a copy of the CEIS as soon as possible after **27 September 2021**.

The additional transition provisions for non-small business employers provides the business the opportunity to review and assess its workforce and manage the implementation of the new obligations.

How should I manage the process of making and responding to offers and requests?

There are rules for how employers and employees need to make and respond to offers. There are also rules for offering casual conversion to existing casual employees. The table below outlines the requirements for employees and employers in relation to "offers" and "requests" for conversion.

Employers other than small business employers

By 27 September 2021 employers (other than small business employers) need to assess whether any existing employees employed prior to 27 March 2021 are eligible to be offered to convert to permanent employment.

Within 21 days of completing the assessment the employer needs to make a written offer to convert their casual employee to permanent employment or write to their employee explaining why they won't be offering conversion. The reasons must comply with the requirements outlined in the legislation.

To accept the offer to convert, the employee must respond in writing within 21 days of receiving the offer.

Small business employers

For small business employers, there is no obligation to offer conversion, however an employee can make a request in writing for conversion at any time on or after their 12 month anniversary if they are eligible.

As above, the employer must respond in writing to an employee's request within 21 days and tell the employee if they have or haven't accepted the request. Employers can't refuse a request unless they have discussed the request with the employee and have reasonable grounds to refuse the request.

For more information regarding casual conversion offers and requests, see the below table and access additional information via the following link: <https://www.fairwork.gov.au/employee-entitlements/types-of-employees/casual-part-time-and-full-time/casual-employees/becoming-a-permanent-employee>

Other businesses

If you work for a business with 15 or more employees the rules about offers and requests for casual conversion are:

OFFERS	REQUESTS
<p>Your employer must make an offer to you to become a permanent employee if:</p> <ul style="list-style-type: none">• you've been employed by them for at least 12 months• you've worked a regular pattern of hours for the last 6 months on an ongoing basis, and• your regular hours could continue as a permanent employee without significant changes. <p>Your employer needs to make the offer to you in writing before 27 September 2021 or within 21 days after your 12-month anniversary, whichever is later.</p> <p>Your employer does not have to offer you casual conversion if:</p> <ul style="list-style-type: none">• there are reasonable grounds for them not to, or• you are not eligible. <p>If this applies, they have to tell you in writing.</p> <p>You have 21 days to respond to the offer in writing.</p> <p>If you're an existing casual employee at 27 March 2021, your employer needs to assess whether to make you an offer for casual conversion before 27 September 2021. If you don't meet the requirements because you haven't been employed for 12 months, your employer needs to tell you that in writing within 21 days of making the assessment.</p>	<p>After 27 September 2021 you can make a request to your employer to become a permanent employee if:</p> <ul style="list-style-type: none">• you've been employed by them for at least 12 months• you've worked a regular pattern of hours in the last 6 months on an ongoing basis• your regular hours could continue as a permanent employee without significant changes• you haven't refused a previous offer to become a permanent employee in the last 6 months• your employer hasn't told you in the last 6 months that they won't offer you casual conversion on reasonable grounds, and• your employer hasn't already refused a request from you to become a permanent employee based on reasonable grounds in the last 6 months. <p>You need to make the request in writing, and you can make the request from 21 days after your 12-month anniversary. Your employer has to respond within 21 days. Your employer can only say no after consulting you, and only if there are reasonable grounds. They have to tell you in writing.</p> <p>If your employer refuses a request on reasonable grounds, you won't be able to make another request for 6 months. You'll need to meet the requirements to make another request.</p>

What do I do if an existing casual employee is found not to be a casual employee under the statutory definition?

The Amendment Bill provides a statutory offset rule that requires a court to reduce amounts for any entitlements found owing to the employee, by an amount equal to any identifiable casual loading already paid to the employee. This will ensure that where an employee is found by a court not to be a casual employee under the statutory definition, employers will not have to pay the same entitlements twice.

Where can I find additional resources?

Detailed information regarding the changes to casual employment – industrial relations reform can be found on the Australian Government's Fair Work Ombudsman website:

<https://www.fairwork.gov.au/about-us/news-and-media-releases/website-news/reforms>

Further information can also be sourced on the Attorney-General's Department website:

<https://www.ag.gov.au/industrial-relations/industrial-relations-reform>