

## CASUAL CONVERSION

On 26 March 2021, the Fair Work Act 2009 (Cth) (the **Act**) was amended to include a definition of casual employment and a pathway for casual employees to move to full/part-time employment. In short, employers are now required to offer eligible casual employees the opportunity to convert to part or full-time work depending on their pattern of working hours over the preceding 6 months.

Eligible employees have a residual right to make a request to the same effect.

This document provides a guide for all non-small business employers who have casual employees about what they need to do to comply with the new rules.

The question-and-answer section outlines which employees are eligible to receive casual conversion offers and make casual conversion requests, as well as the reasoning and process by which these should be given or refused by employers.

The flow-chart on the back page of the document can be used as a primer or quick-reference guide to casual conversion eligibility.

### Definitions

'**Casual employee**' means an employee who accepts a job offer from an employer "knowing that there is no firm advance commitment to ongoing work with an agreed pattern of work".

The '**Reasonable grounds**' upon which an employer may decide to (1) not make a casual conversion offer to an eligible employee or (2) refuse a request for casual conversion include (but aren't limited to) the following:

- The employee's position will cease to exist in the period of 12 months after the time of deciding not to make the offer;
- The hours of work which the employee is required to perform will be 'significantly reduced' in that period;
- There will be a significant change in the times or days that the employee's work needs to be performed which cannot be accommodated within the days or times the employee is available to work.
- Making the offer would not comply with a recruitment or selection process required by law.

'**Small business**' means a business with less than 15 employees.

### Other Information

The obligation to make an offer for casual conversion **is not recurring** – an offer must be made on the eligible casual employee's 12-month anniversary, not every 12 months.

In determining whether **an employee who is not covered by a modern award or enterprise agreement** has worked the equivalent of full-time hours, regard may be had to the hours of work of any other full-time employees of the employer employed in the same position as (or in a position that is comparable to) the position of the employee.

**Small businesses do not have to proactively offer casual employees' conversion** to part or full-time work. Casual employees of these businesses may still request casual conversion.

## QUESTION AND ANSWER

**1. Which casual employees are eligible to receive an offer for casual conversion?**

You must make a casual conversion offer to an employee if the following 2 conditions are met:

- The employee has been working for you (the employer) for a year, beginning the day the employment started; and
- During at least the last 6 months of that period the employee has worked a regular pattern of hours on an ongoing basis which, without significant adjustment, the employee could continue to work as a full-time employee or a part-time employee.

You should identify which of your employees are casual employees and if there are written contracts, the following can be regarded as indicators that the employee meets the casual employee definition:

- describes the employment as casual;
- does not commit the employee to work in advance or to work when not required, or any provision which could be described as giving a firm advance commitment to continuing and indefinite work for an agreed pattern; and
- clearly and separately identified the employee's casual loading or casual rate of pay

**2. When and how should the offer be made?**

Casual conversion offers must be made in writing.

The offer must be given to the employee within 21 days of the of the employee's 12-month anniversary of employment. You should make note of your casual employees' commencement dates and the 21 days following that date.

You can use our [Offer of Conversion template](#) to do this.

**3. What kind of offer must be made (full-time or part-time)?**

If the employee has worked the equivalent of full-time hours during the 6-month period referred to above under heading 1, the offer must be to convert to full-time employment. If the employee has worked less than the equivalent of full-time hours, the offer must be to convert to part-time employment that is consistent with the regular pattern of hours worked in that 6-month period.

Put simply, if the employee has worked the same hours as a part-timer they're eligible to receive an offer for part-time employment. If the employee has worked the same hours as a full-timer they're eligible to receive an offer for full-time employment.

**4. Does the employee need to respond to a casual conversion offer?**

The employee must give the employer a written response to the offer within 21 days of receiving it, stating whether they accept or decline.

If the employee fails to do this, they are taken to have declined the offer.

Note, however, that the employee still has a residual right to request casual conversion, which they may exercise in the future (see below).

**5. When can I refuse to make a casual conversion offer?**

You are not required to make a casual conversion offer if:

- There's 'reasonable grounds' not to make the offer; and
- The reasonable grounds are based on facts that are known, or reasonably foreseeable, at the time of deciding not to make the offer (i.e., the grounds are not based on speculation).

**6. If I decide not to make a casual conversion offer, when and how do I do this?**

You must provide notice to an employee that they will not be offered a casual conversion if:

- The employee is otherwise eligible to receive an offer, but you decide not to make one; or
- The employee has been employed for the 12-month period, but over the 6-month period HAS NOT worked a regular pattern of hours on an ongoing basis which, without significant adjustment, the employee could continue to work as a full-time employee or a part-time employee.

The notice must:

- advise the employee that the employer is not making a casual conversion offer under section 66B of the Fair Work Act;
- include details of the reasons for not making the offer (including any reasonable grounds on which the employer has decided to not make the offer); and
- be given to the employee within 21 days following their first year of employment.

#### **7. What do I have to do once the employee has accepted a casual conversion offer?**

You must discuss with the employee the details of their new working arrangements and you must, within 21 days after the day the acceptance is given, give written confirmation to the employee of the following:

- converting to full-time employment or part-time employment;
- the employee's hours of work after the conversion takes effect; and
- the first day of the employee's first full pay period that starts after the day notice is given – This is the day the employee's conversion to full-time employment or part-time employment takes effect, unless the employee and employer agree on another day.

You can use our [Confirmation of Permanent Employment template](#) to do this.

## **The Employee's Residual right to request casual conversion**

### **8. When can an employee make a request for casual conversion?**

An employee can make a request for casual conversion if:

- They have been employed for a period of at least 12 months beginning the day the employment started; and
- They have, in the period of 6 months ending the day the request is given, worked a regular pattern of hours on an ongoing basis which, without significant adjustment, the employee could continue to work as a full-time employee or a part-time employee.

**However**, the employee may not make a request if any the following circumstances apply:

- the employee has already refused a casual conversion offer made by you in the six months preceding their request;
- you have already given the employee notice that they will not be receiving an offer for casual conversion in accordance with s 66(3)(a) (see the details under section 6 above);
- You have already given a response to the employee refusing a previous request for casual conversion; or
- You are a small business employer.

### **9. What kind of request can be made?**

As with employer offers for casual conversion, the kind of conversion the employee can make is determined by whether they have worked full-time or less than full-time hours in the 6 months' preceding the request (see question 3 above).

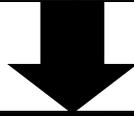
The request should be given in writing.

### **10. When can I refuse a casual conversion request?**

The grounds upon which a casual conversion request can be refused are the same as those regarding employer offers.

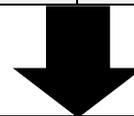
**1. Has your employee been with the company for at least 12 months?**

<p><b>Yes</b></p> <p>Continue to Question 2</p>	<p><b>No</b></p> <p>You do not need to make a casual conversion offer.</p>
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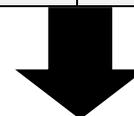
**2. In the last 6 months, has your employee worked a regular pattern of hours on an ongoing basis, which without significant adjustment, the employee could continue to work as a full or part-time employee?**

<p><b>Yes</b></p> <p>Continue to Question 3</p>	<p><b>No</b></p> <p>The employee doesn't meet the requirements for a casual conversion offer.</p> <p>Inform the employee within 21 days that no offer will be made. The notification must be in writing and explain why the offer isn't being made.</p>
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**3. Are there 'reasonable grounds' to not make an offer for casual conversion?**

<p><b>Yes</b></p> <p>You must notify the employee within 21 days that no offer is being made. The notification must be in writing and give the 'reasonable grounds' for the refusal to make an offer.</p>	<p><b>No</b></p> <p>In the absence of reasonable grounds to refuse to do so, the employee is entitled to receive a casual conversion offer.</p> <p>Within 21 days, provide the employee with a written offer to convert to full or part-time employment.</p>
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**4. Did the employee respond within 21 days?**

<p><b>Offer Accepted</b></p> <p>If the offer is accepted, you must, within 21 days, give written notice to the employee of the day their conversion takes effect and what their hours of work will be. You must discuss these details with the employee <b>before giving the written notice.</b></p>	<p><b>No response/ offer rejected</b></p> <p>If the employee doesn't give a response to the casual conversion offer, they are taken as having rejected the offer. The process ends.</p>
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