



CASUAL EMPLOYMENT CHANGES

Do you employ casuals? If you do, it is critical that you are aware of some upcoming changes, commencing on **26 August 2024**, which change how casual employment operates in Australia.

What's changing?

As a result of the Closing Loopholes legislation passed earlier this year, from 26 August 2024 the Fair Work Act will change to include:

- ✓ A new 'casual' definition.
- ✓ A new casual conversion process for employees who wish to move from casual to permanent employment.
- ✓ New obligations on employers when considering requests from employees to convert from casual to permanent.
- ✓ A new casual employment information statement and new and more regular timing obligations on employers to provide the statement to casual employees beyond just commencement.

1. The new casual definition - What's casual about casual employment?

From 26 August 2024, an employee is only a casual if:

- ✓ there isn't a firm advance commitment to continuing and indefinite work, taking into account a number of factors, including the real substance, practical reality and true nature of the employment relationship; and
- ✓ they're entitled to a casual loading or specific casual pay rate.

This new definition will apply to all new casual employees, employed from 26 August 2024.

Existing casuals (when the new casual definition starts on 26 August 2024) will remain casual unless they transition to permanent employment either by converting or accepting an alternative employment offer and starting work on that basis.

Just because the contract says casual doesn't mean they are:

Critically, when assessing whether an employee meets the 'casual definition' it will no longer be sufficient to simply rely on the written terms of a casual employee's contract of employment. This is because the definition now requires us to look at both the employee's contract and the 'real substance, practical reality and true nature' of the employment relationship (i.e. how you and your employee treat each other after the employment has begun).

In assessing the 'real substance, practical reality and true nature' of the employment relationship, there are a range of factors that a Court or Tribunal will take into account in deciding whether an employee has been correctly engaged as a casual, including (but not limited to) whether:

- ✓ the employer can elect to offer (or not offer) work;
- ✓ the employee can elect to accept or reject work;
- ✓ the employee has a regular pattern of work;
- ✓ the employee will work on an as-needed basis;
- ✓ the work to be performed by the employee is different to the work of permanent employees in the workplace; and
- ✓ there is a guarantee or not of future or continuing work being available to the employee.

There are no rules as to the weighting given to each of the factors in the decision-making process, with no one factor necessarily decisive.

What happens if you get it wrong? Penalties for Misclassification

Employers found to have misclassified employees may be liable to backpay the employee's entitlements (e.g., annual leave, personal leave) from the start of the employee's employment.

In addition, there are a range of new offences for employers who intentionally misuse casual employment including dismissing an employee to re-engage them as casual employee or knowingly making false statements to persuade or influence a person to be engaged as a casual employee. Penalties for such offences are up to \$93,900 for individuals and \$469,500 for companies per offence.

2. Changes to Casual Conversion - AGAIN

As a result of the Closing Loopholes changes, casual conversion arrangements (now known as 'Employee Choice') are changing.

Under the new casual conversion system, employers are no longer required to proactively offer conversion to regular casuals.

Instead, casual employees who have been employed for a least six months (or 12 months for small businesses) can make a written request to convert to permanent employment if they believe they no longer meet the requirements of the new casual employment definition.

Employers who receive a request to convert have new consultation obligations and must respond in writing within 21 days either accepting or rejecting the request to convert to permanency. Where an employer declines the request, they must specify the reason. **There are limited available grounds for declining under the Act.**

Employers should also be aware that the employee can raise a dispute in the Fair Work Commission if an employer fails to respond to a request to convert or where they wish to challenge an employer decision to decline a request to convert to permanency.

3. Changes to the requirement to provide the Casual Employment Information Statement

The Casual Employment Information Statement (CEIS) provides information about casual employment conditions under the Fair Work Act.

As a result of the Closing Loopholes changes, employers will now not only have to provide the CEIS on commencement to all new casuals, but at various other points during a casual employee's employment, depending on the size of the business, to remind casual employees of their rights and ability to convert to permanent work.

When do employers need to provide casual employees with the CEIS?

The below table summarises the new timings that employers must adhere to in providing the CEIS to casual employees:

The statement needs to be provided	Small Business Employers	Large Business Employers
On commencement	X	X
As soon as possible after 6 months of employment		X
As soon as possible after 12 months of employment	X	X
As soon as possible after every subsequent 12 months mark		X

Employers should ensure they download the most up to date and current version of the CEIS from the Fair Work Ombudsman's website before giving the CEIS to casuals and should keep a record of how and when the statement is provided.

As always, if in doubt reach out – The MTA Employment Relations Team is here to help.

In the meantime, if you require any specific assistance as a result any new legislation or Fair Work Act our team is available to assist. Please do not hesitate to contact us at eradvice@mtansw.com.au for tailored advice and support.