BusinessPlus+ Newsletter

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Fair Work Act: Amendments to Casual Employment

Amended legislation has recently been passed that will make changes to the Fair Work Act 2009 to include changes governing casual employment. Any business must now review their employment arrangements if they employ casual staff.

This is a landmark development as it aims to reform casual work. It now includes a definition of casual employment and for the first time allows long term casual employees the right to request being converted to permanent employment.

Casual Employment Defined

Under the amended Fair Work Act, **if a person is:**

*(a) offered employment without a "firm advanced commitment to continuing and indefinite work", **and***
(b) the person accepts that offer,

then the person is a casual employee, regardless of any changes in the employment relationship.

The considerations for determining whether a firm advance commitment to continuing and indefinite work exists include:

- whether the employer can elect to offer work and whether the employee can elect to accept or reject work
- whether the employee will work as required according to the needs of the employer
- whether the employment is described as casual employment
- whether the employee will be entitled to a casual loading or a specific rate of pay for casual employees under the terms of the offer or fair work.

When to Offer a Conversion from Casual to Permanent

The second key change is offering a conversion from casual to permanent employment.

Following lobbying by business groups, the initial casual conversion proposed provisions have been amended so the **obligation to offer conversion to casual employees <u>does not</u> apply to small businesses with a headcount of less than 15 employees.**

Businesses with More Than 15 Employees

Employers must offer to convert a casual employee to permanent employment if the employee:

1. *has been employed for 12 months, and*
2. *during the last six months has worked a regular and systematic pattern of hours without significant adjustment.*

The offer to convert must be to either:

- full-time employment (where the casual has worked the equivalent of full-time hours)
- part-time employment consistent with the casual's regular pattern of hours (where the casual worker has worked the equivalent of part-time hours).

You are not obliged to make an offer if there are "reasonable business grounds". These include: -

- where the conversion would require a significant adjustment to the employee's hours of work in order for the employee to be employed permanently;
- where the employee's position will not exist in the 12 months after the conversion right arises;
- where the hours of work which the employee is required to perform will be significantly reduced in the 12 months after the conversion right arises;
- if there will be a significant change in either the days or times which the employee's work hours are required to be performed in the 12 months after the conversion right arises.

What If You Don't Offer Conversion

Under the amended Fair Work Act, **unless there are reasonable business grounds**, employers have an obligation to offer conversion regardless of an employee request.

If you don't offer conversion, you must give notice of the decision to your employee within 21 days of when the right to be offered conversion arose. If not the employee has a right to request conversion at a later date.

Conversion Right Can Be Lost Temporarily

If an employee refuses an offer to convert, they lose the right to convert for the next six months.

If you determine there are reasonable business grounds to not make an offer of conversion and you notify the employee in accordance with the amended Fair Work Act, the employee will have no right to request conversion for the next six months.

New Casual Employment Information Statement

A new Casual Employment Information Statement is to be provided to each casual employee when they start their employment. This Statement is in addition to the Fair Work Information Statement that you already need to provide to all employees.

Casual Loading Offset Created

The amended Fair Work Act also deals with historical problems such as misclassifying employees as casuals which results in leave entitlements not being accrued.

In the situation whereby an employee is found to be incorrectly engaged as a casual (that is, by law they are a permanent employee), employers can offset any leave entitlements owed to the employee against the casual loading that is often paid to the casual employees. **To benefit from this offset arrangement, the loading paid must have had components that can be identified as being paid to the employee instead of one or more leave entitlements.**

What You Should Do Next

For most employers, it will be time to 'clean the house' in terms of the arrangements you have in place governing casual employment.

Your next steps:

- introduce new casual contracts that align with the amendments;
- introduce processes for dealing with casual conversion ensuring your operational requirements are considered whilst maintaining compliance with the amended Fair Work Act;
- seek appropriate specialist legal advice from an employment lawyer as required;

It may also be time to reassess your workforce mix and labour strategies to determine whether your existing arrangements can be optimised given the changed regulatory landscape.

It is important to note that the information provided in this article does not represent legal advice and you should seek specific legal advice for your business employment circumstances.