



SMALL BUSINESS

PEAK

What's changing with Casual Employment?

The Closing Loopholes No. 2 Act 2024 introduced further significant changes to the Fair Work Act 2009, including a revised definition of 'casual employee'.

We're here to help you with

- New casual employee definition
- Changing from casual to permanent employment



smallbusinesspeak.org.au



peak@cosboa.org.au

June 2024

Casual Employment Changes



What's changing?

The Closing Loopholes No. 2 Act 2024 introduced further significant changes to the Fair Work Act 2009, including a **revised definition of 'casual employee'**.

As a small business owner, you must **stay informed** about the **recent updates** to casual employment laws in Australia.

These changes come into effect on
26 August 2024

These changes come into effect on 26 August 2024 and primarily affect what it means to be a casual employee and the rules for becoming a permanent employee.

How can small businesses best prepare for these changes?



Review existing **employment relationships** with casual employees



Review and amend existing **casual employment agreements**



Review workplace **instruments** and **pay rates**



Update your **policies** and **procedures**

Additional details on what's involved can be found in this summary guide.



Communicate these **changes** to your employees

Casual Employment Changes



Why is the government making changes to casual employment?

The philosophy behind the changes to casual employment law revolved around the perceived need to **clarify the true nature** of **employment relationships**.

The changes aim to **provide clarity, fairness** and a pathway for casual employees, while ensuring **employers meet their obligations**.

Why do we need a new definition?

There was **previously no legal definition** of a casual employee.

The new definition of 'casual employee' is all about whether there's a **firm commitment to ongoing work**.

These changes aim to **provide clarity** around casual employment and address issues related to **casual conversion** and **entitlements**.



The new definition of 'casual employee' is all about whether there's a firm commitment to ongoing work



Casual Employment Changes

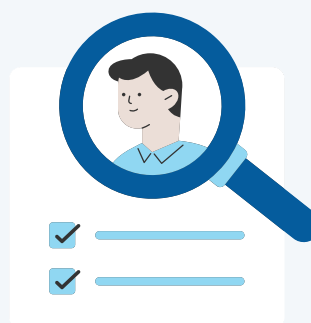
What is a casual employee?

A casual employee was previously described as a person who accepts an offer of employment knowing there is no firm advance commitment to continuing and indefinite work.

From 26 August 2024, under the new definition, an employee will only be a casual if...



There is **no firm advance commitment** to **continuing and indefinite work**, when objectively assessed against multiple factors including the real substance, practical reality and true nature of the employment relationship.



The employee is **entitled to a casual loading**, or specific casual rate of pay, as outlined in their employment contract or a fair work instrument.

This means that an employee **will not be a casual employee just because it says so in the contract** of employment. Rather, the **true substance and nature of the employment relationship** must **reflect casual employment**, which is an assessment to be made based on several factors.

Casual Employment Changes

To ensure that **casual employees** are actually casual, it **must be objectively clear** that they are working in a manner expected of a casual employee.

For illustrative purposes, factors that will be relevant to consider include whether:



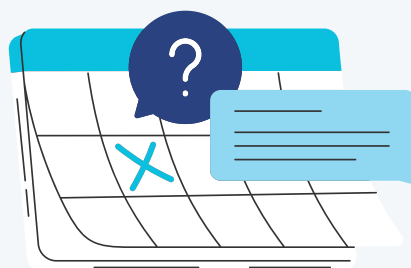
The **employer** can choose to **offer or not offer work** and the **employee can choose to accept or reject** such work



It is reasonably likely that, having regard to the employer's business, **there will be future availability of continuing work** of the kind **usually performed by the employee**



There are **full-time or part-time employees performing the same type of work** as the casual employee



The **employee engages in a regular pattern of work**

Importantly, **employees engaged on fixed term contracts cannot be casual employees** because they have a defined term of employment.

Under the new definition, people who were employed casually **before 26 August 2024** will **continue to be casuals** unless they **transition to permanent employment**.

Casual Employment Changes

Casual conversion – a pathway to permanence

From **26 August 2024**, casual **employees** can choose to **notify their employers of their intention to convert** from casual to permanent work if they believe their circumstances have changed and they no longer meet the 'casual employee' definition.

What does this mean for small businesses?

- For small businesses, a **casual worker must be employed for at least 12 months before they can request to convert** to permanent employment. For larger businesses, casual employees can do so after 6 months.
- The **employee** should **request conversion** to permanent employment in **writing**.
- The **employer must consult with the employee** before they respond. This consultation is an opportunity to discuss the details of the change requested.
- The **employer must give the employee a written response** within 21 days of the notification, either accepting or refusing the change.
- If an **employer accepts the change, the response must stipulate the employee's new employment status** (whether full-time or part-time), the hours of work and the effective date of the changes.
- If an **employer refuses the change**, the response **must provide detailed reasons** for the refusal.

What if there is a dispute?

If a dispute arises in relation to a casual conversion request, there **must be an initial attempt to resolve it** at the workplace level.

If the dispute cannot be resolved at the workplace level, it **can be heard by the Fair Work Commission (FWC)**.

The FWC ordinarily attempts to resolve such disputes informally by mediation or conciliation. However, if the dispute remains unresolved, the **FWC can arbitrate the dispute and issue legally binding orders**.

Reasons employers can refuse the offer

Grounds for refusal can include any of the following:

- the employer believes the employee is still correctly classified as a casual employee.
- it would be impractical for the conversion to occur because it would require substantial change to the way in which work is organised by the employer.
- it would have a significant impact on the employer's operations.
- accepting the notification would result in the employer not complying with recruitment or selection processes required by Commonwealth, State or Territory laws.

Note: this list is not exhaustive.

A small business employer is an employer with fewer than 15 employees at a particular time.

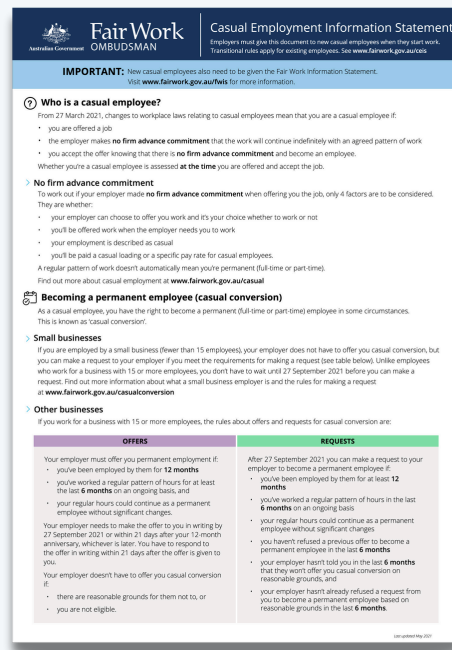
If an employer has 15 or more employees at a particular time, they are no longer a small business employer. When counting the number of employees, employees of associated entities of the employer are included. Casual employees are not included unless engaged on a regular and systematic basis.

Casual Employment Changes

Casual Employment Information Statement (CEIS)

The CEIS has information about:

- the definition of a casual employee
- when an employer has to offer casual conversion
- when an employer doesn't have to offer casual conversion
- when a casual employee can request casual conversion
- casual conversion entitlements of casual employees employed by small business employers
- the role of the Fair Work Commission to deal with disputes about casual conversion.



What do small business employers need to do?

From 26 August 2024, **small business employers must provide casual employees** with a CEIS before, or as soon as practicable after they start their job, and as soon as practicable after 12 months of employment.



Changes for large businesses

Larger business employers **must provide casual employees with a CEIS before, or as soon as practicable after, the commencement of employment**, and as soon as practicable after 6 months and 12 months of employment, and **every subsequent period of 12 months of employment**.

Casual Employment Changes

Small businesses next steps explained



Review existing employment relationships with casual employees

- **Consider** the **whole relationship** (including the real substance, practical reality and true nature) as well as their employment agreement and confirm whether all casual employees will still be classified as casual employees under the new definition.
- **Review** each **casual employee's current length of tenure** and **assess their need** to receive a copy of the CEIS.



Update your policies and procedures

- **Ensure** your **policies and procedures are in place** to manage notifications by casual employees seeking to convert to permanent employment.
- **Include** the **requirement** for **written notices**, a **consultation** process and **written responses** to such notifications.



Review and amend existing casual employment agreements

- **Incorporate changes** such as the revised casual conversion process.
- Ensure all **casual** employment **contracts** include a **copy of the new CEIS**.



Review workplace instruments and pay rates

- **Check** your **relevant industry awards** and your **pay rates for casual labour hire** employees to ensure your employees are **paid at least the same rate of pay** under their workplace instrument (industry award) with the **appropriate casual loading**.



Communicate these changes to your employees

- By **prioritising clear and effective communication**, businesses can navigate changes more successfully and foster a positive, resilient, and adaptive workplace culture.

Casual Employment Changes

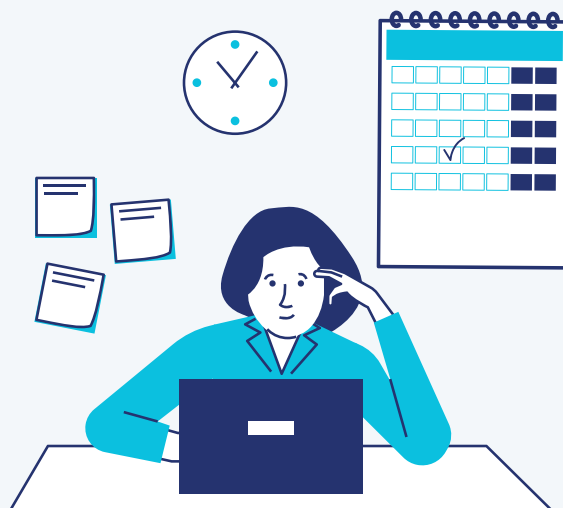
Key dates

From 15 December 2023

- Employees, unions and host employers can apply to the Fair Work Commission (FWC) for a regulated labour hire arrangement order.

From 26 August 2024

- New casual employment laws come into effect in Australia.
- A new definition for 'casual employee' will apply.
- Casual employees can choose to notify their employers of their intention to convert from casual to permanent work.
- Small business employers are required to provide casual employees with a CEIS at mandated intervals.



Not sure where to start?

If you're struggling to navigate these changes, you don't have to tackle them alone, find more information at Small Business Peak, or visit [fairwork.gov.au](https://www.fairwork.gov.au)



SMALL BUSINESS PEAK

A large white arrow graphic pointing upwards and to the right, with the text 'SMALL BUSINESS PEAK' integrated into its path.

Legal Disclaimer

The information contained in this, and all other guidance material published by The Council of Small Business Organisations Australia (COSBOA) is not intended to constitute, and should not be treated or relied upon as, legal advice or a substitute for legal advice.

Instead, all information, content, and materials available from COSBOA are published for general informational purposes only.

Readers of this material should contact a suitably qualified legal practitioner to obtain appropriate legal advice with respect to any particular legal matter. No person should act or refrain from acting on the basis of information published by COSBOA without first seeking appropriate legal advice from a suitably qualified legal practitioner.

If any reader requires legal advice or assistance in relation to a workplace or employment law matter, contact a suitably qualified legal practitioner.

Please note this publication has been funded by the Australian Government Department of Employment and Workplace Relations through the Productivity, Education and Training Fund grant program.