

**SMALL BUSINESS**

**PEAK**

# 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'.

## Casual workers employed in small businesses

- What is the new casual employee definition
- Requesting a change from casual to permanent employment is now different

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# 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 came 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 Government sought to **clarify the true nature of employment relationships** to provide greater clarity, and a pathway for casual employees, while ensuring employers meet their obligations.

## Why do we need a new definition?

There was **no legal definition of a casual employee until the Federal government made changes to the Fair Work Act 2009 in March 2021** through the Fair Work Amendment (Supporting Australia's Jobs and Economic Recovery) Act 2021.

Since then, a **casual employee** has been **legislatively described as a person who accepts an offer of employment knowing that there is no firm advance commitment to continuing and indefinite work** according to an agreed pattern of work.

However, **this definition was replaced on 26 August 2024**, and instead an employee will only be a casual employee where:

1. the employment relationship is characterised by the absence of a firm advance commitment to continuing and indefinite work, to be objectively assessed against multiple factors including the real substance, practical reality and true nature of the employment relationship; and
2. the individual is entitled to a casual loading or specific casual rate of pay as outlined in a fair work instrument or their contract of employment.

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 primarily about the overall substance and true nature of the relationship between the parties.**

# Casual Employment Changes

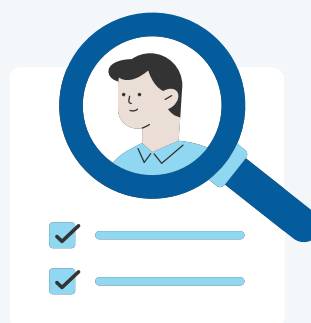
## What is a casual employee?

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.

Factors that will be relevant to consider include whether:



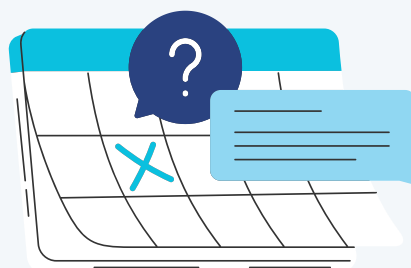
The **employer** can choose to **offer or not offer work** and the **employee can choose to accept or reject** such work



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, depending on the circumstances of the relationship, **employees engaged on fixed term contracts may be casual employees** even though 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, **employers are no longer required to offer casual employees the option of converting to permanent employment.** Instead, casual employees may notify their employers of their intention to convert.

### What does this mean for small businesses?

- For **small businesses**, that is, an employer with less than 15 permanent employees, **a casual worker must be employed for at least 12 months before they can request to convert to permanent employment.** For non-small 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 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 issues addressed in the new CEIS issued by the Fair Work Ombudsman (FWO) are:

- the definition of a casual employee
- when a casual employee can and how to notify their employer that they want to change to permanent employment
- what an employer needs to do when a casual employee notifies them that they want to change to permanent employment
- the grounds upon which an employer may not accept a notification by an employee
- the steps employers and employees should take in dealing with disputes

**Fair Work Ombudsman** | Casual Employment Information Statement  
Employers must give the documents to new casual employees when they start work. Transitional rules apply for existing employees. See [www.fairwork.gov.au/ceis](http://www.fairwork.gov.au/ceis).

**IMPORTANT:** New casual employees also need to be given the Fair Work Information Statement. Visit [www.fairwork.gov.au/wis](http://www.fairwork.gov.au/wis) for more information.

**Who is a casual employee?**  
From 27 March 2021, changes to workplace laws relating to casual employees mean that you are a casual employee if:

- you are offered a job
- the employer makes **no firm advance commitment** that the work will continue indefinitely with an agreed pattern of work
- you accept the offer knowing that there is **no firm advance commitment** and become an employee.

Whether you're a casual employee is assessed **at the time** you are offered and accept the job.

**No firm advance commitment**  
To work out if your employer made **no firm advance commitment** when offering you the job, only 4 factors are to be considered. They are whether:

- your employer can choose to offer you work and it's your choice whether to work or not
- you'll be offered work when the employer needs you to work
- your employment is described as casual
- you'll be paid a casual loading or a specific pay rate for casual employees.

A regular pattern of work doesn't automatically mean you're permanent (full-time or part-time).  
Find out more about casual employment at [www.fairwork.gov.au/casual](http://www.fairwork.gov.au/casual)

**Becoming a permanent employee (casual conversion)**  
As a casual employee, you have the right to become a permanent (full-time or part-time) employee in some circumstances. This is known as 'casual conversion'.

**Small businesses**  
If you are employed by a small business (fewer than 15 employees), your employer does not have to offer you casual conversion, but you can make a request to your employer if you meet the requirements for making a request (see table below). Unlike employees who work for a business with 15 or more employees, you don't have to wait until 27 September 2021 before you can make a request. Find out more information about what a small business employer is and the rules for making a request at [www.fairwork.gov.au/casualconversion](http://www.fairwork.gov.au/casualconversion)

**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
Your employer must offer you permanent employment if: <ul style="list-style-type: none"><li>• you've been employed by them for <b>12 months</b></li><li>• you've worked a regular pattern of hours for at least the last <b>6 months</b> on an ongoing basis, and</li><li>• your regular hours could continue as a permanent employee without significant changes.</li></ul> Your employer needs to make the offer to you in writing by 27 September 2021 or within 21 days after your 12-month anniversary, whichever is later. You have to respond to the offer in writing within 21 days after the offer is given to you.	After 27 September 2021 you can make a request to your employer to become a permanent employee if: <ul style="list-style-type: none"><li>• you've been employed by them for at least <b>12 months</b></li><li>• you've worked a regular pattern of hours in the last <b>6 months</b> on an ongoing basis</li><li>• your regular hours could continue as a permanent employee without significant changes</li><li>• you haven't refused a previous offer to become a permanent employee in the last <b>6 months</b></li><li>• your employer hasn't told you in the last <b>6 months</b> that they won't offer you casual conversion on reasonable grounds, and</li><li>• your employer hasn't already refused a request from you to become a permanent employee based on reasonable grounds in the last <b>6 months</b></li></ul>

casual conversion table 2021

## What do small business employers need to do?

From 26 August 2024, **small business employers must provide casual employees with a CEIS** issued by the FWO before, or as soon as practicable after they start their job, and as soon as practicable after 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.



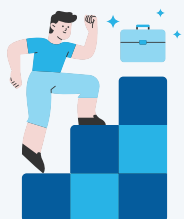
### Update your policies and procedures

- **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 when a regulated labour hire arrangement order is effective**.



### Communicate these changes to your employees

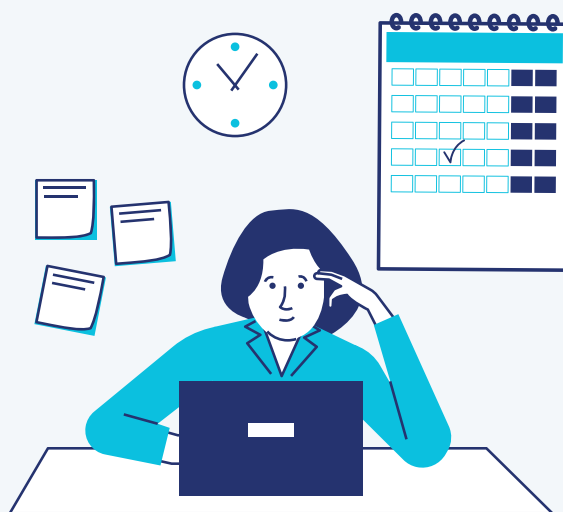
- By **prioritising clear and effective communication**, businesses can navigate changes more successfully and foster a positive, resilient, and adaptive workplace culture.

# Casual Employment Changes

## Key dates

### From 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 **provided certain qualifying criteria are met**.
- 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, stylized arrow graphic that starts as a horizontal line at the bottom, then curves upwards and to the right, ending in a triangular arrowhead. The text 'SMALL BUSINESS PEAK' is written in white, bold, sans-serif capital letters, with 'SMALL BUSINESS' on the top line and 'PEAK' on the bottom line, following the curve of the arrow.

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