

## Workplace Relations and Safety

You have probably heard through the media that the Australian Government has passed changes to the *Fair Work Act 2009 (Cth)* (**FW Act**) legislation regarding casual employees.

### Date of Effect

The new FW Act revisions regarding casual employees came into effect on 27 March 2021.

### What has Changed?

There are essentially four primary changes that have been made to the FW Act:

1. the definition of a casual employee (section **15A**);
2. positive obligation on employers to make offers in writing to eligible casual employees for conversion to permanent (full or part time) employment (sections **66A to 66M**);
3. an offset clause, that permits employers who have misclassified permanent employees as casuals, to offset clearly identified casual loading amounts previously paid to the employee against any claims made by the employee for statutory entitlements – thus ending the possibility of double dipping (section **545A**); and
4. the introduction of a Casual Employment Information Statement (sections **125A** and **125B**. Please see overleaf for copy of the statement).

### Definition of a Casual Employee

An employee is a casual if:

- an employer makes an offer of employment to the employee on the basis that there is no firm advance commitment to continuing and indefinite work according to an agreed pattern of work; and
- the employee accepts the offer on the above basis; and
- the individual becomes an employee as a result of the offer and acceptance.

### What You Need to Do Now

Hicksons suggest organisations commence a program of systematically monitoring the engagement, ongoing employment, and future engagement of all casual employees to ensure:

1. **Employment agreements:** all casual employees have a casual employment agreement which identifies:
  - (a) that the employment is described as casual;
  - (b) an ordinary hourly rate of pay and the addition or identification of a 25% casual loading;
  - (c) that the employee will only work as required; and
  - (d) that there is no advance commitment to

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a minimum number of hours, or indeed any continuing work.

2. **Pay slips:** that a casual employee's pay slips reflect that they are described as casual and identify the ordinary hourly rate of pay and separately identify the additional 25% casual loading.
3. **Rosters:** roster are allocated no more than a fortnight – or at a maximum – one month in advance. Where possible, vary their hours from time to time from roster to roster.
4. **Policies:** there be no requirements in your policies for casual employees to apply for 'leave' or otherwise justify their decision to withdraw from a roster – beyond notifying you that they will not be available. There is no requirement for a casual employee to provide a medical certificate.
5. **Casual conversion:** if there are any casual employees, who:
  - (a) have been employed for at least 12 months; and
  - (b) have worked a regular pattern of hours for the last six months on an ongoing basis; and
  - (c) whose regular hours could continue as a permanent employee without significant changes;

that they are asked in writing by the organisation if they wish to convert to permanent employment.

If an employee accepts the conversion offer, your organisation must, within 21 days from the date of the employee's acceptance, confirm in writing to the employee:

- the permanent status of either full-time or part-time employment;
  - the employee's hours of work after the conversion takes effect (noting if part time to state, the guaranteed minimum number of hours, start and finish time, days of work, and times of meal and tea breaks); and
  - the date that the employee's conversion to full-time employment or part-time employment will take effect.
6. **Casual Employment Information Statement:** a copy of the Casual Employment Information Statement must be issued to:
    - (a) existing casual employees (employed before 27 March 2021) as soon as possible after 27 September 2021 (i.e. when they may have worked a regular pattern of hours for six months on an ongoing basis); and
    - (b) newly engaged casual employees at the time of employment commencement, or as soon as possible after.

### Final Comments

Hicksons recommends speaking to one of our Workplace Relations team members today to seek specific advice regarding:

- what changes may need to be made within your organisation to ensure compliance with the newly passed FW Act inclusions;
- making and responding to offers for casual conversion;
- determining retrospective casual arrangements and whether an existing casual employee meets the new FW Act casual definition; and
- how best to approach and respond to casual employees bringing claims for retrospective entitlements.