



Practical Tip: Some of the obligations in this handbook differ depending on whether or not you're a "small business employer", defined as an employer with fewer than 15 employees. This is the total number of individuals, not the full-time equivalent number. This can include employees who are:

- full-time and part-time employees; and
- casual employees only if they are employed on a regular and systematic basis

NEED HELP?

If any of the content in this handbook raises any issues or concerns for you and you would like further information, leaving you and your business vulnerable to non-compliance liabilities, particularly in light of the recent Closing Loopholes changes.

In this handbook we look to get things right from day one by walking you through the key obligations on employers throughout the life of employing a casual employee – from start to end.

The changes in this handbook apply from 26 August 2024.

STAGE 1 - CASUAL RECRUITMENT (iC frSTcerman5n524Tu8 (E)2t (i4t)11 55ET 0eer ti20.1 c -1. nd_vov0 7 (v)16 (11 6 (v) ((r)-1 8 3-1)-9 6 (T)(f)6 6 (r)1(c)-1 8 4(c)-2 2 (c)3 1ria ‘

Under the Closing Loopholes Bill changes there is a new definition of ‘casual employee’.

The new definition will only apply from 26 August 2024 onwards to all new casual employees.

Employers will need to carefully consider how any prospective new employees from this date (26 August 2024) should be employed.

Critically, this new definition means to determine whether a worker is a permanent or a casual, it will no longer be sufficient to simply look at the initial offer of employment or the terms of the written contract in isolation.

Instead what will be assessed is ‘real substance, practical reality and true nature of the employment relationship’, including how the contract will actually be performed in practice.

The Fair Work Act sets out specific factors which indicate things a Court or Tribunal will take into account in deciding whether an employee has been correctly engaged as a casual.

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. The factors are a guide, with the ultimate question being whether there is an ‘absence of a firm advance commitment to continuing and indefinite work’.

Casual Factors

Consider whether the terms your contract and any ‘mutual understanding’ or ‘expectation’ between yourself and the prospective employee. Does it indicate the employee is truly being engaged as a casual employee according to the new definition or a permanent employee by considering and weighing up the below factors.

STAGE 2 - CASUAL EMPLOYEE ONBOARDING

When onboarding a new casual employee it is important that a number of steps are followed to ensure the employee is properly engaged as a casual, and legislative requirements, such as providing the employee with the Casual Employment Information Statement, are followed.



What do you need to do when onboarding a casual employee?

Before the employees' first day ensure:

- You have clearly advised the employee that they are engaged on a casual basis and the implications of this – no firm advance commitment to continuing work.
- You have issued the employee with a contract of employment which clearly states the employee is being engaged as a casual and explicitly outlines terms applicable to their casual employment status. Please refer back to [Stage 1](#) of this Handbook for more information.
- You have provided the employee with a current copy of the Casual Employment Information Statement.
- You can obtain a current version of the statement in English and other languages on the [Fair Work Ombudsman's website](#)
- Considered how you will roster the employee? Remembering the employee should typically have the ability to accept and reject work as a casual.
- Be mindful a regular and systematic rostering pattern may be indicative of a permanent relationship, rather than a casual one, as it may infer that there is an advanced commitment. Please refer back to [Stage 1](#) of this Handbook for more information.

⁵ *Ace Insurance v Trifunovski* [2013] FCAFC 3 at [103], *CFMMEU v Personnel Contracting Pty Ltd* [2022] HCA 1 at [89].

Common Questions

1. Do employers have to provide the Casual Statement to current employees, who were employed before the Closing Loopholes changes and new casual definition?
Yes! All employees as soon as possible after any applicable employment anniversary (six months, 12 months, each subsequent 12 months) must be provided with the Casual Statement.

2. How long does an employer have after an employee's anniversary date (after six months, 12 months of employment etc.) to give the employee the Statement?


Employers must give the Casual Statement as soon as practicable after the casual employee's anniversary date (six months, 12 months, 24 months etc.).

3. What if an employer is classified as a small business when a casual employee commences employment but later (for example after six months of the casual being employed) the business has grown, and is no longer classified as a small business (employing 15 or more employees)?

The requirement to provide the Casual Statement applies at the time the obligation arises (e.g. on the casual employee's employment anniversary). This means in the above scenario the employer would be required to give the employee the Casual Statement at six months, as at that time when the obligation to provide the Casual Statement arose the business was a non-small business employer.

4. What about casuals who are engaged seasonally ____, during the Christmas period or holidays etc.? Does an employer have to provide a new Casual Statement every new time they are engaged?

Whilst at common law each occasion a casual employee is engaged is a separate contract of



The casual conversion arrangements are changing. Under the new system employers no longer have an obligation to proactively offer conversion to regular casual.

Important commencement information

One of the new eligibility criteria to access the new 'employee choice regime' is that the casual employee has been employed for either six months in the case of non-small business employers or 12 months for small business employer.

For this reason all existing casuals employed prior to 26 August 2024 will continue to have access to the previous casual conversion regime until they may become eligible to access the new 'employee choice regime'.

This means that the obligation on employer to offer casual conversion under the former casual conversion regime continues to apply until:

- 26 February 2025 for casuals employed prior to 26 August 2024 by non-small business employers; and
 - 26 August 2025 for casuals employed prior to 26 August 2024 by small business employers
- The new 'employee choice' regime will apply to all new casuals employed from 26 August 2024.

Overview of the new regime for employee changing from casual to permanent employment

Under the new arrangements employers will no longer have an obligation to proactively offer conversion to regular casual employees at 12 months of employment for all new employees.

Once a casual is correctly employed as a casual, they remain a casual (they cannot simply morph into permanent employees) until:

- the employee is offered permanent employment by their employer, and they accept;
- the employee converts to permanent employment under an applicable award or enterprise agreement; or
- the employee "elects" to convert to permanent employment under what is called the 'employee choice' process.

If none of the above occurs = the employee remains a casual.

The below section outlines the 'Employee Choice' Process and provides a step-by-step checklist to ensure that you are complying with any employer obligations under it.

'Employee Choice' Process (replaces the casual conversion process)

Certain eligible employees have the right to issue a written notification (e.g. request) that they would like to change to full/part time under the 'employee choice' process. Employers must respond to a notification in writing within 21 days.

Employers need to be aware that employees can raise a dispute related to the 'Employee Choice'



STEP 2 - Considering the notification

When considering and responding to a notification, employers can decide to do one of two things:

Accept the notification and convert the employee to part-time or full-time permanent employment OR

Not accept the notification on one or more of the accepted grounds

Consultation

Before you give a response to an employee you must first consult with the employee about the notification.

- If accepting the notification during the consultation you must discuss the following matters (which you will give detail of in your written response to the employee):
 - whether the employee is changing to full-time or part-time employment;
 - the employees' hours of work after the change takes effect; and
 - the day the change to full-time employment or part-time employment will take effect.

Note: If you accept a notification this does not require you to increase the hours of work of the employee

If not accepting the notification you can only do so under the Fair Work Act on one or more of the following grounds.

- The employee still meets the casual employee definition (see Step 1 for details of the definition);
- Accepting the notification would affect compliance with a recruitment or selection process required under a law of the Cth, a State or Territory;
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STEP 3 – Responding to a notification

Employers must provide a written response to all written notifications to convert to permanent employment within 21 days

Accepting a notification

TEMPLATE LETTER A – Acceptance of notification to convert to permanent employment

<Insert company letter head>

<Insert Date>

Private and Confidential

<Insert employee's full name>

<Insert employee's address>

Dear <Insert name of employee>

RE: Response to your notification to convert to permanent employment

I refer to your written notification dated <Insert date of request> where you gave notice that you wished to convert to permanent employment.

<Insert any relevant details contained in the notification>

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<Insert the name of your company> notifications on a case-by-case basis and looks to balance our operational requirements with the needs of our employees, clients, and team members.

We have carefully considered your notification and I am pleased to advise that we have decided to accept your notification to convert to permanency.

As discussed on <insert date>:

- you will be changing to <insert either full-time or part time> employment; and
- once you convert to full-time or part time> employment your hours of work will be <insert details

