

## WHEN CAN A CASUAL REQUEST TO BE TREATED AS FULL OR PART TIME EMPLOYEE?

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During October 2018, the Fair Work Commission determined to include in most (but not all) Modern Awards a "casual conversion" provision.

This provision means that an employee who is engaged as a casual employee, who had been employed for at least 12 months and who during that period worked a pattern of hours on an ongoing basis which, without significant adjustment, the employee could continue to perform as a full-time or part-time employee, is entitled to request "conversion" from a casual employee to either a full-time or a part-time employee (as applicable).

Any request is to be provided in writing to the employer. The employer may agree or refuse the request but the request can only be refused on "reasonable grounds" and after consultation.

Reasonable grounds for refusal include:-

- The request would require significant adjustment to the employee's hours, that is, the casual employee is not truly a "regular casual employee".
- It is known or reasonably foreseeable that the employee's position will cease to exist within the next 12 months.
- It is known or reasonably foreseeable the hours of work which the employee is required to perform will be significantly reduced in the next 12 months.
- It is known or reasonably foreseeable that there will be a significant change in the days and/or times at which the employee's hours of work are required to be performed in the next 12 months which cannot be accommodated within days or hours which the employee is available to work.

The grounds of refusal must be based on facts that are known or reasonably foreseeable. If the employer refuses the conversion, the employer must provide the casual employee with the reasons in writing within 21 days of the request being made.

If the casual conversion takes effect, then the parties must document the nature of the conversion, that is full-time or part-time together with the hours to be worked. The conversion is to take effect from the start of the next pay cycle following the agreement, unless otherwise agreed.

Once the conversion has been agreed, the employee can only revert to casual employment with the written agreement of the employer.

A casual employee is not to be engaged or re-engaged or refused to be re-engaged or have their hours reduced or varied for the purposes of seeking to avoid a casual conversion obligation.

A request for casual conversion is entirely at the discretion of the employee.

A copy of the casual conversion provision is to be provided to casual employees who have been engaged together with any new casual employees.

Currently, the casual conversion does not appear in all Modern Awards. As yet, there is no general obligation contained in the National Employment Standards, however, such a provision has been foreshadowed by the Commonwealth Government. If so, the casual conversion provision will then apply to all employees whose conditions of employment are governed by the Fair Work Act.

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