



SADA IR UPDATE



Email sada@sada.asn.au

Andrew 0419 037 569

John 0418 406 400

Friday 23 April 2021

CHANGES TO CASUAL EMPLOYMENT

We recently provided Member Updates regarding two cases when casual employees were found to be eligible for annual leave as well as their 25% casual loading. There is an appeal to the High Court which is expected to hand down its decision later this year.

In the meantime, on 26 March 2021, the Federal Parliament amended the Fair Work Act 2009 ("FW Act") resulting in some changes for casual employment.

These changes came into effect on Saturday 27 March 2021. These changes include;

1. Introduction of the [Casual Employment Information Statement](#)
2. definition of casual employment
3. conversion of casual employment to full-time or part-time employment.

Casual Employment Information Statement

A copy can be accessed at <https://www.fairwork.gov.au/employee-entitlements/national-employment-standards/casual-employment-information-statement>

Impact of the FWA amendments

Employers have to give every new casual employee a Casual Employment Information Statement (the CEIS) before, or as soon as possible after, they start their new job.

[Small business employers](#) (less than 15 employees) are required to provide their existing casual employees a copy of the CEIS as soon as possible after 27 March 2021.

Larger employers are required to give their existing casual employees a copy of the CEIS as soon as possible after 27 September 2021.

Definition of a casual employee

The amendments to the FW Act include a new definition of a casual employee. The new provision defines an employee, as casual when;

- a) they are advised by an employer before they commence employment that their engagement will be on a casual basis
- b) the employee accepts the job offer knowing that there is no firm advance commitment to ongoing work with an agreed pattern of work.

Once employed as a casual, an employee will continue to be a casual employee until they, either:

- a) become a part time or fulltime employee through:
 - casual conversion, or
 - are offered and accept the offer of full-time or part-time employment, or
 - ceases employment with that employer.

What you now Need to do.

The processes are different for casual employees based on their commencement date of casual employment, and whether the employer has fewer than 15 employees (small employer) or an employer who has more than 15 employees.

Impact on employees who commenced casual employment before 27th March 2021.

Small Employer (fewer than 15 employees),

Small employers do not have to offer casual conversion before 27 September 2021, but a casual employee may make a request to the employer if the employee meets the requirements for making a request (see table in the Casual Employment Information Statement).

Employees in a small business (less than 15 employees), may make that request before 27 September 2021

An employer who has more than 15 employees has to offer their casual employee an opportunity to convert to full-time or part-time (permanent) when the employee:

- has worked for that employer for 12 months
- has worked a regular pattern of hours for at least the last 6 of those months on an ongoing basis
- could continue working those hours as a permanent employee without significant changes.

Some exceptions apply, including:

- small business employers
- if an employer has ‘reasonable grounds’ not to make an offer to a casual employee for casual conversion.

Making and responding to offers and requests

There are rules for how employers and employees need to make and respond to offers. There are also rules for offering casual conversion to existing casual employees.

Casual employees have a right to request to convert to full-time or part-time (permanent) employment in some circumstances. This applies:

- for casual employees working for a small business – at any time if they meet the requirements
- for other casual employees – after their employer has decided not to make an offer for casual conversion.

How should the request by an employee be made?

The request must:

- a) Be in writing; and
- b) Be given to the employer.

The employer must give the employee a written response to the request within 21 days after the request is given to the employer, stating whether the employer grants or refuses the request.

The employer must not refuse the request unless:

- a) The employer has consulted the employee; and
- b) There are reasonable grounds to refuse the request; and
- c) The reasonable grounds are based on facts that are known, or reasonably foreseeable, at the time of refusing the request.

Reasons to refuse

Reasonable grounds for refusing the request include the following:

1. It would require a significant adjustment to the employee's hours of work in order for the employee to be engaged as a full-time employee or part-time employee;
2. The employee's position will cease to exist in the period of 12 months after giving the request;
3. The hours of work which the employee is required to perform will be significantly reduced in the period of 12 months after giving the request;
4. There will be a significant change in either or both of the following in the period of 12 months after giving the request:
 - a) The days on which the employee's hours of work are required to be performed;
 - b) The times at which the employee's hours of work are required to be performed;
 - c) Which cannot be accommodated within the days or times the employee is available to work during that period;
5. Granting the request would not comply with a recruitment or selection process required by or under a law of the Commonwealth or a State or a Territory.

Pay rates and leave accrual when a casual employee converts to part-time or full-time employment.

Employers in discussing with the employee the impact of casual conversion, that the 25% casual loading will

1. be replaced by 4 weeks paid annual leave,
2. leave loading (if covered by an Award such as the Pastoral Award 2020 which makes this provision),
3. 2 weeks Personal Carers Leave,
4. Public Holidays not worked, and
5. if the position were to become redundant severance payments would be made.

All these provisions will replace the compensation of the 25% casual loading.

The employer must also put in writing that accrual for Annual and Personal Carers Leave commences on the day that conversion to full-time or part-time employment commences. Long Service Leaves accrues from the first day (including casual employment) commenced.

Taking legal action

Should a dispute arise, genuine efforts are first to be made in the workplace.

There is a new avenue to resolve some disputes about casual conversion through the Federal Circuit Court.

When an employee is described as casual, but through court proceedings it is determined that they are not casual, the Amendment Act also introduces a new rule that requires a court to reduce any amounts that the employee could be entitled to by reference to casual loading amounts already paid by the employer to the employee to compensate for those entitlements.