

Workplace Relations Circular

For the information of members of Australian Business Industrial

CIRCULAR No.	CASE FILE No.	CIRCULAR DATE	IMPORTANT INFORMATION
2020/049	ALL MEMBER	28/09/2021	

FAIR WORK COMMISSION CASUAL TERMS REVIEW IN MODERN AWARDS

On 27 March 2021, the *Fair Work Act 2009* (FW Act) was amended by the *Fair Work Amendment (Supporting Australia's Jobs and Economic Recovery) Act 2021*. Along with including a definition of casual employment in the FW Act, the amendment introduced a new casual conversion scheme in the National Employment Standards (NES).

Due to the inclusion of the new casual conversion scheme in the NES, the Commission was required to review and vary the modern awards interaction with the new casual employee definition and casual conversion arrangements in the FW Act as amended (the Casual terms review).

Changes made to the FW Act

Definition of Casual Employee

The FW Act now defines a casual employee as someone who:

- is offered employment on the basis that the employer makes no firm advance commitment to continuing and indefinite work according to an agreed pattern of work; and
- accepts the offer on that basis.

New NES Casual Conversion Clause

The new NES term gives casual employees a pathway to convert to permanency (Full Time or Part Time).

Under the NES term, an employer (other than a small business employer) needs to make a written offer to convert their casual employees to permanency within 21 days of the casual employee's 12 month anniversary if the casual employees

- have worked for their employer for 12 months;
- have worked a regular pattern of hours for at least the last 6 of those months on an ongoing basis; and
- can continue working those hours as a permanent employee without significant changes.

If an employer decides not to offer casual conversion, within 21 days of the casual employee's 12 month anniversary they need to advise the casual that

- they are not making an offer of casual conversion; and
- the reasons for not making the offer.

The only reasons for not making an offer are:

- the employee has not worked a regular pattern of hours:
 - on an ongoing basis for at least the last 6 months
 - which they could continue working as a full-time or part-time employee without significant changes
- the business has reasonable grounds for not making an offer, such as in the next 12 months:
 - the employee's position will not exist
 - the employee's hours of work will significantly reduce
 - the employee's days or times of work will significantly change, and that cannot be accommodated within the employee's available days or times for work.

Since 27 March 2021, any existing casuals working for a small business employer could make a conversion request at any time if they are eligible, while eligible existing casuals working for bigger employers can make a request to convert from 27 September 2021.

Casual Terms Review

The Commission reviewed the awards in two stages:

- The First Stage considered 6 awards (the priority awards) which determined the nature and scope of the review; and
- The Second Stage which reviewed the remainder of awards and was divided into 4 Groups.

The purpose of the review was to determine if an inconsistency, difficulty or uncertainty, exists in the modern award and the casual terms, and if so, vary the modern award.

Outcome

Broadly, the Commission determined that a large number of modern award casual conversion terms were inconsistent with the NES term and were to be replaced with the NES term.

A number of terms defining or restricting casual employment were also amended to ensure that they were not inconsistent with the new definition of casual employment.

It is important to note that some modern awards still contain their unique casual conversion terms which will still need to be complied with as well.

When did the changes come into effect?

The effective date of the amendments to the modern awards were 27 September 2021.

To view the decision [click here](#).

To view the schedule of determinations [click here](#).

Further information

The changes mentioned in this circular will be reflected in the copies of the modern awards that can be downloaded from our website. To view the full list of modern awards, [click here](#).

Please call the Workplace Advice Line on 13 29 59 or email advice@businessaustralia.com if you wish to discuss this circular or require further information.