# Engaging Casual Employees – Fact Sheet

The information in this fact sheet applies to employers engaging casual employees under the national employment system, governed by the *Fair Work Act 2009* (Cth) (‘FWA’).

27 March 2021 saw amendments to the FWA, regarding casual workplace rights and obligations, take effect.

There are three key changes to be aware of:

1. The definition of casual employment
2. The creation of the Casual Employment Information Statement (CEIS)
3. Obligations for employers and employees in converting to permanent (part-time or full-time) employment

# Defining a Casual Employee

From 27 March 2021, an employee will be a “casual employee” if:

* offered a job with a business; and
* the offer does not include a firm advance commitment that the work will continue indefinitely with an agreed pattern of work; and
* the person accepts the offer with the knowledge that there is no firm advance commitment; and
* As a result of the acceptance, the person becomes an employee.

## Casual Employment Information System (CEIS)

The CEIS outlines information for casual employees on their rights and obligations. Similar to the Fair Work Information Statement, it is mandatory for employers to issue this document to new casual employees.

For existing casual employees, the requirement to issue the CEIS is dependent upon the business size. Small business employers must issue the CEIS to their casual employees as soon as possible. A large business employer is required to give their existing casual employees a copy of the CEIS as soon as possible after 27 September 2021. A business employing less than 15 employees is considered a small business employer, while a large business employer engages 15 or more employee. When counting the number of employees engaged, the employees of an employer’s associated entities are included.

The CEIS simplifies the rights and obligations of employers and employees regarding casual engagement. It outlines:

* the definition of a casual employee;
* when an employer has to offer casual conversion;
* when an employer does not have to offer casual conversion;
* when a casual employee can request casual conversion;
* casual conversion entitlements of casual employees employed by small business employers; and
* the role of the Fair Work Commission to deal with disputes about casual conversion.

The CEIS can be issued in person, mail, email, or via a link to the Fair Work Ombudsman website (with employee agreement). While not required, it is recommended that an acknowledgement of issue and receipt is signed by the employee to prevent future disputes.

## Converting Casuals – Obligations and Rights

The amendment provides a pathway to convert from casual to permanent. An employer’s obligations under the amendment are dependent upon the size of the business.

#### Small Business Employers

A small business employer is not obligated to offer casual conversion to existing casual employees.

Whilst there is no obligation to offer conversion to a casual employee, a casual employee can request conversion to permanent engagement (as set out below).

#### Large Business Employers

Large business employers have some time before action needs to be taken, with 27 September 2021 being a key date. From this date, or at the date an employee reaches 12 months of service with the employer (whichever is later), an employer is required to make a written offer to a casual employee who meets the following criteria:

* the employee has been engaged by the business for at least 12 months;
* the employee has worked a regular pattern of hours for the last six months on an ongoing basis; and
* regular hours could continue to be worked as a permanent employee without significant change.

Casual conversion does not have to be offered if there are reasonable grounds not to (as outlined below). In this case, the employer is to notify the employee in writing of the reasons for not making the offer (including reference to the reasonable grounds relied upon), and this must be given to the employee in writing 21 days after 27 September 2021, or 21 days after the date an employee reaches 12 months of service with the employer (whichever is later).

Casual employees engaged by large business can also request conversion to permanent engagement.

### Employee Rights to Request

A casual can request conversion to permanent engagement. Such a request can be made if:

* the employee has been employed by the employer for at least 12 months;
* the employee has worked a regular pattern of hours in the last six months on an ongoing basis;
* the regular pattern of hours could continue to be worked as a permanent employee without significant change;
* the employee has not refused a previous offer to become a permanent employee in the last six months;
* the employee has not been informed by the employer that they won’t offer casual conversion on reasonable grounds; and
* the employer has not already refused a request from the employee to become a permanent employee based on reasonable ground in the last 6 months.

The request must be made in writing by the employee and consultation between the employee and employer must occur prior to a decision being made. The employer must inform the employee of the decision in writing within 21 days of the request being received. If refusing the request, reasons for the refusal based on reasonable grounds must be outlined.

## Refusing on Reasonable Grounds

An employer is not obliged to make an offer for casual conversion or accept a conversion request if there are reasonable grounds based on known or foreseeable facts. Some examples of reasonable grounds not to make an offer include:

* the role will no longer exist in 12 months;
* the employee’s hours of work will be significantly reduced in the next 12 months;
* the employee’s days or times of work will significantly change in the next 12 months, which cannot be accommodated within the employee’s available days or times of work; and
* the employer would have to make a significant adjustment to the employee’s work hours for them to be employed on a permanent basis.

## Checklist of actions

**Small Business Employer**

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| Step | Action | Timeframe | Completed |
| 1 | Issue the Casual Employment Information Statement to all casual employees. | ASAP |  |
| 2 | Respond to employee requests to convert in writing. | Within 21 days of receiving request |  |

### **Large Business Employer**

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| Step | Action | Timeframe | Completed |
| 1 | Determine the 12 month anniversary date for all casual employees –   * If prior to 27 September 2021, the anniversary date for action will be 27 September 2021. * If actual 12 month anniversary is later than 27 September 2021, this is the anniversary date for action. | Prior to 27 September 2021 |  |
| 2 | Assess the employees’ eligibility to convert –   * In the past 6 months has the employee worked a regular pattern of hours on an ongoing basis? | Prior to 27 September 2021 |  |
| 3 | Taking into consideration each role –   * Are there reasonable grounds for an offer not to be made? | Prior to 27 September 2021 |  |
| 4 | Issue the Casual Employment Information Statement to all casual employees. | 27 September 2021 |  |
| 5 | For casual employees whose anniversary action date has been determined as 27 September 2021, provide them with either:   * An offer to convert; * A written explanation outlining the reasonable grounds for refusing to make the offer; or * A written explanation outlining why the employee does not satisfy the 6 month regular pattern of hours requirement.   For casual employees whose anniversary date is later, ensure that this action is completed within 21 days of reaching the anniversary. | Prior to  18 October 2021 (21 days from 27 September 2021) |  |
| 6 | Deadline for employee to respond to offer (if made).  If offer is accepted by the employee, a new contract of employment should be issued.  If offer is rejected, no further action is to be taken. | 8 November 2021 |  |