



# Guide to employing casuals



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Using casual employees offers many benefits – flexibility, a more diverse workforce, and the ability to rapidly adjust staffing levels to meet demand. But casual employment also comes with a minefield of issues. You still have legal obligations when you employ casuals and you need to understand the differences between casual and permanent employees. Getting it wrong can cost your business money and damage its reputation.

## What is a casual employee?

For many years there was ongoing debate and litigation over whether some employees were “casual” or not. **As of 26 August 2024, the Fair Work Act 2009 was amended to insert a definition of “casual employee”, which can be summarised as follows:**

- An employee is only a casual where:
  1. There is no firm advance commitment to continuing and indefinite work; and
  2. The employee is entitled to a casual loading or rate of pay for casual employees under a fair work instrument or contract of employment.
- When assessing whether there is a firm advance commitment to continuing and indefinite work, regard has to be had to:
  3. the ‘real substance, practical reality and true nature of the employment relationship’, not just the employment contract;
  4. whether there is an inability of the employer to elect to offer, or not offer, work or an inability of the employee to elect to accept or reject work;
  5. if it is reasonably likely that there will be future availability of continuing work in the enterprise, given the nature of the business;
  6. whether there are full-time or part-time employees performing the same kind of work; and
  7. whether there is a regular pattern of work for the employee.



**Note** that casual employees who establish a regular pattern of employment over a specified minimum time period (usually either 6 months or 12 months for small businesses), and who have a reasonable expectation of continuing employment, may then qualify for other entitlements. These include the opportunity to convert to permanent employment, some leave entitlements and legal protection from unfair dismissal. These provisions are discussed further below.

### Important: specify the employment type upfront

Although whether an employee is “casual” is partly assessed according to the terms of the original employment offer and acceptance of it, it is also important to note that the practical reality of the employment relationship (as set out above), will ultimately determine whether an employee is characterised as a casual or not.

## Casual v permanent employees

“Permanent employment” can be either full-time or part-time. Permanent employees work agreed (by contract) working days and hours and under agreed conditions and entitlements until the employment is terminated by either party, e.g. resignation, retirement, dismissal, redundancy. Therefore, employees have agreed to continue working for an indefinite period of time.

This entitles them to a range of benefits and entitlements that include paid annual leave, paid sick and carer’s leave, paid long service leave, parental leave (paid and unpaid), other forms of leave, notice of termination of employment, redundancy pay (upon qualifying for it) and others. Part-time employees receive the same benefits on a pro rata (based on hours) basis.

Because casual employees do not receive the same commitment to ongoing employment as permanent ones, they do not receive most of these entitlements. This is because effectively their employment “ends” at the completion of each work shift. There is no guarantee they will be offered further shifts, but on the other hand they are free to reject any further shifts if they wish. To compensate for the loss of job security, they are paid a casual loading, that is, a higher hourly rate of pay.

A typical casual loading is 25%, but you need to check the relevant award or registered agreement that covers the work, or in the absence of one the National Minimum Wage Order.

**Example:** From 1 July 2024, the National Minimum Wage is \$24.10 per hour. A 25% loading on that is \$6.03, providing a casual pay rate of \$30.13 per hour.

### **Fixed-term employees**

Fixed-term employees differ from casuals in that they have the same employment entitlements as permanent employees, with the exception that their employment is for a fixed period, e.g. six months, one year, which is specified upfront in the employment contract. A common fixed-term scenario is using someone to fill in while a permanent employee is on parental leave, but the temporary replacement is not a casual employee.



# Why use casual employees?

The two main benefits of using casual employees are economic savings and greater business flexibility.

Although casual employees must be paid a higher hourly rate, they need only be employed when required. Thus, you can cope with fluctuations in business activity, such as seasonal variations in customer demand. When demand increases, hire more casuals to cope with the extra workload for however long it continues. There is no ongoing obligation to continue offering work shifts when the demand is no longer there.

In that way, you can maintain an optimal staffing level at all times instead of sometimes having too many or not enough employees.

Some employees prefer casual work as it fits better around their other commitments, for example, school or university studies, or as a second job. They also have the flexibility to accept or reject work shifts according to their needs at the time.

Despite the higher hourly pay rate, there will also usually be cost savings, as casual employees do not receive many of the entitlements of permanent employees.

Making the best use of casual employees requires analysing trends and fluctuations in business activity. You are still likely to require a “core” workforce of permanent employees, but most businesses will also benefit from having a “pool” of casual employees to fill gaps when required.

# What the law says

From 26 August 2024, the Fair Work Act 2009 contains a new definition of “casual employee” as set out above. The Act covers most Australian businesses, except those (mainly public sector) covered by State industrial relations legislation.

Awards and registered agreements may contain provisions on casual employment. If those provisions are more generous than those in the Fair Work Act, they are the ones that apply.

**Other recent changes made to the Fair Work Act cover the following:**

- Issuing a new and revised Casual Employment Information Statement to new employees as well as at their 6 month anniversary or 12 month anniversary for small businesses (see below)
- Casual employees can seek to be converted to permanent employees once they meet some qualifying conditions (see below)
- Loopholes that had allowed “double dipping” (e.g. where some casual employees could claim similar leave entitlements to permanent employees) were closed off

Other entitlements apply to casual employees, such as some leave entitlements and protection from unfair dismissal. In most cases these are employees classified as “regular” casual employees because they have worked a consistent pattern of shifts for a specified period of time. For more detail, see “Other casual employee entitlements” below.

# How to pay casual employees

The award or registered agreement that covers an employee's work will set out either the required hourly rate of pay, or the loading % to be applied to the standard pay rate. The most common loading is 25%.

In the absence of any such provision, the rate set by the current National Minimum Wage Order applies.

As casual employment has no guarantee of ongoing/further work, you need to pay employees separately for each individual work shift. The usual requirements for information on pay slips apply.

Casual employees are not entitled to redundancy pay or notice of termination of employment (or pay in lieu of notice).

As with permanent employees, you need to keep records of all shifts worked, payments made and employee personal details.

## Overtime payments

**Casual employees may become entitled to overtime pay if they are covered by an award and either:**

- work more than 38 hours in a week
- work more than a specified number of hours on one day
- work outside the spread of hours set by the award.

**Depending on what the award says, there are three ways of paying an employee:**

- 8 Substitution method – pay the permanent base rate plus overtime rate (e.g. 50%), but exclude casual loading, so 150% of base pay
- 9 Cumulative method – pay base rate plus both overtime rate (e.g. 50%) and casual loading (e.g. 25%), so payment becomes 175% of base rate
- 10 Compound method – overtime rate is added to the casually loaded rate (e.g. 125% X 150%) of base rate.





# Other casual employee entitlements

## Leave provisions

Casual employees have no entitlement to annual leave, sick leave or paid personal/carer's leave. They are entitled to the following forms of unpaid leave:

- personal/carer's leave
- compassionate leave (e.g. for bereavement)
- family/domestic violence leave
- community service leave.

In the case of jury service, you do not have to pay any make-up pay – all they receive is what the court pays them.

In the case of parental leave, “regular” (see definition above) casual employees are entitled to unpaid parental leave, including pre-adoption leave and “no safe job” leave. The latter refers to pregnant employees who cannot continue working their usual job and no alternative “safe” job is available.

Long service leave is regulated by State legislation. In general, casual employees who have been with an employer for the qualifying period (usually 10 years) in “continuous” service have a pro rata entitlement. Provisions vary from State to State, so you need to check the relevant State legislation in each case.

## “Double-dipping” prevented

If a court or tribunal rules that a “casual” employee was in fact permanent, an employer can apply to the court/tribunal to reduce the amount of employee entitlements owing by the amount of casual pay loading the employer has already paid the employee.

For this reason, a casual employment contract should clearly state the entitlements the pay loading is intended to offset.

## Public holidays

If a casual employee is not required to work on a public holiday, you do not have to pay them for that day – even if the employee’s pattern of work might normally include that day (e.g. has a shift every Monday).

However, a casual employee who does work on a public holiday may be entitled to penalty rates – check the award or enterprise agreement that applies.

## Protection against unfair dismissal

If a casual employee has been employed on a regular and systematic basis for at least six (if business has at least 15 employees overall) or 12 months (if less than 15 employees) and has a reasonable expectation they will continue to be employed, they are covered by the unfair dismissal provisions of the Fair Work Act. “Dismissal” includes refusing to offer any further work shifts.

If dismissal is found to be unfair, the employee may be entitled to reinstatement and/or financial compensation.

For a dismissal to be fair, a “small business employer” (less than 15 employees) must comply with the [Small Business Fair Dismissal Code](#).

# Casual Employee Information Statement

You must provide casual employees with a new and revised Casual Employee Information Statement (CEIS) before, or as soon as possible after, they start their first work shift. Furthermore, there is now an additional requirement for the employer to provide the CEIS as soon as practicable after the employee has been employed by the employer for a period of 12 months, and after each period of 12 months for which the employee is employed by the employer.

Employers who are not small businesses will also need to provide the CEIS at 6 months from when the employee commenced employment. As with permanent employees, you must also provide a Fair Work Information Statement.

## Workers' compensation

Casual employees are covered by workers compensation in the same way as permanent ones.



# Conversion to permanent employment

Amendments to the Fair Work Act 2009 in 2024 have resulted in new casual conversion arrangements (now known as 'Employee Choice'). Under the new casual conversion system, from 26 August 2024 employers will no longer be required to proactively offer conversion to regular casuals.

Instead, casual employees who have been employed for a least six months (or 12 months for small businesses) can make a written request to convert to permanent employment if they believe they no longer meet the requirements of the new casual employment definition.

Employers who receive a request to convert have new consultation obligations and must respond in writing within 21 days either accepting or rejecting the request to convert to permanency. Where an employer declines the request, they must specify the reason. There are limited available grounds for declining under the Act which include:

- 1 the employee meets the definition of a casual employee;
- 2 there are fair and reasonable operational ground for not accepting the notification or
- 3 accepting the request would result in the employer not complying with a recruitment or selection process required by a Federal, State or Territory law.

Fair and reasonable business grounds for not accepting an employee request include:

- (a) substantial changes would be required to the way in which work in the employer's enterprise is organised;
- (b) there would be significant impacts on the operation of the employer's enterprise;
- (c) substantial changes to the employee's terms and conditions would be reasonably necessary to ensure the employer does not contravene a term of a fair work instrument that would apply to the employee as a full-time employee or part-time employee (as the case may be).



Note that many casual employees may not be interested in converting to permanent employment. They may prefer the flexibility and/or higher upfront pay of casual employment, and the right to reject work shifts that do not suit them. Regular catchups and dialogues with employees are good practice, so you will remain aware of how they feel and what their circumstances are.

## **Award/agreement clauses**

Most awards now have casual employment conversion clauses, as do many registered agreements. If their provisions are more generous than those in the Fair Work Act, they apply instead.



## Your obligations to casual employees

Whether casual or permanent, employees perform at their best when they are motivated and engaged in their work. With regular casual employees, it is worth making the effort to “include” them in business activities as much as possible. This includes keeping them informed of new developments, providing training and induction, scheduling meetings so they can attend, and having regular one-on-one discussions with them on how things are going at work. Feeling part of a team, having clear work goals, and understanding how your work role contributes towards business success are all important if you want the best results from casual employees. Providing a permanent employee “buddy” for each casual employee is also recommended.

Recognition and reward for good work should not be overlooked just because someone is casual instead of permanent.

Given the new ‘Employee Choice’ casual conversion arrangements, those discussions should also focus on an employee’s longer-term work goals and aspirations. Due to changing circumstances, these can alter over time, so make sure you stay in touch with developments.

# Checklist for employing casual employees

1. Carefully analyse current and future business needs. If business activity fluctuates a fair bit, such as during the week or between seasons, you may benefit from using casual employees.
2. Consider that if you regularly hire casual employees, they may request the opportunity to convert to permanent full-time or part-time employment. This may mean analysing and predicting long-term business needs.
3. If you require an employee to fill a short-term vacancy, temporary work peaks, or if business fluctuations mean that you cannot make reliable long-term predictions, a casual employee may be your best option.
4. The employment contract must clearly state that it is for casual employment. Do not commit the employee to any advance work, e.g. fixed workdays or hours. Specify the casual pay loading as a dollar amount (on pay slips as well as the contract) and state the specific employee entitlements it will offset (e.g. leave).
5. Provide a Casual Employee Information Statement and Fair Work Information Statement.
6. If the employee is repeatedly hired for casual shifts, monitor the “real substance, practical reality and true nature of the employment relationship” (as well as the various other factors set out above), to ensure the employment remains casual. Also keep track of if/when the employee may be entitled to request, conversion to permanent employment. If that occurs, have a procedure to respond to the offer and changeover processes.

# How we help

HR can be tricky to navigate – but we've got your back.

Get your HR stuff sorted with My Business Workplace. We offer step-by-step checklists and templated documents for hiring new starters, paying correctly, managing your team, and separating when the time is right. Easily create and assign contracts, keep up to date with award changes, remunerate employees correctly, and use our easy-to-follow guides and checklists to manage resignation, termination, misconduct, and redundancy.

**My Business Workplace has a range of resources and documents to help employers with casual employees, including how to navigate the casual conversion process.**

Casual Employee Information Statement

Casual Conversion - Confirmation of Employment Status Letter

Casual Conversion - 'No Offer' Letter to Employee

Contract of Employment - Casual (Comprehensive)

Contract of Employment - Casual (Simple)

**When you sign up to My Business Workplace, you can also access our Workplace Advice Line. Talk to a HR specialist for tailored advice relating to your business and your people.**

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