



Australian Meat Industry Council Casual Conversion Webinar

Presenter: Steve Caslick, Workforce Services Officer.

House-Keeping

- The Webinar will be recorded and along with the PowerPoint presentation will be uploaded to the AMIC members only portal.
- 10 min Q&A at the end of the webinar.
- Please address any questions to me scaslick@amic.org.au

Introduction.

1. Become familiar with the definitions of a casual employee,
2. Understand the amended casual conversion clauses,
3. Know how to apply the new casual conversion clauses.

Agenda

1. History,
2. Definition of Casual Employment,
3. Casual Employment Information Statement,
4. Employing a casual under the new provisions
5. Conversion of a casual to:
 - I. Permanent employment status,
 - II. Daily Hire employment status.

History

1. In 2021 the Fair Work Commission undertook a review of the casual clauses in the Fair Work Act 2009,
2. Amendments to the Fair Work Act reflecting the recommendations of the review,
3. Development of model Award clauses reflecting the changes to the Fair Work Act 2009,
4. Insertion of the model wording into 6 selected awards,
5. A trial period for the model clause to ensure they are robust,
6. Amend all other relevant awards with the same model clauses.

History cont...

Changes to the Meat Industry Award 2020:

- An updated definition of casual employment and long-term casual
- Clarification of the casual conversion process.
- Daily hire conversion provisions are maintained for meat processing establishments.

Exceptions

- Small Businesses - less than 15 employees - are exempt from casual conversion.
- Casual conversion to daily hire is only available in the Meat Processing sector.

Definitions

A Casual Employee

1. The employer makes no firm advance commitment that the work will continue indefinitely with an agreed pattern of work,
2. The employee accepts the offer knowing that there is no firm advance commitment of on-going work,
3. The employee may either accept or decline an offer of a shift,
4. The employee will be entitled to a casual loading as per the Fair Work Act.

Definition

Regular Casual

A casual employee who is employed by an employer on a regular and systematic basis for several periods of employment or on a regular and systematic basis for an ongoing period of employment during a period of at least 12 months.

Note: Regular Casual replaces the term “Long Term Casual”

Casual Employment Information Statement

This statement must be given to all new casual employees and provides information on:

- The definition of a casual employee,
- When an employer has to offer casual conversion,
- When an employer doesn't have to offer casual conversion,
- When a casual employee can request casual conversion,
- Casual conversion entitlements of casual employees employed by small business employers,
- The role of the Fair Work Commission to deal with disputes about casual conversion.

Employing a Casual

The changes to the Fair Work Act 2009 and the Meat Industry Award 2020 place greater onus on the employer to inform the employee of the changes and to ensure the employee understands the changes

Employing a Casual cont...

Unchanged:

1. Advertising, interviewing and probation,
2. Remuneration,
3. Conditions of employment,
4. Work Health and Safety,
5. Workers Compensation,
6. The same or similar pattern of hours after conversion.

Employing a Casual cont...

Changes:

- The job offer and the response must be in writing,
- If the person accepts the job they are doing so as a casual under the new definition,
- The job offer must contain the following wording:
 - The employer makes **no firm advance commitment** that the work will continue indefinitely with an agreed pattern of work.

No Firm Advance Commitment

Definition

1. Whether the employer can choose to offer the employee work and it's the employee's choice to work or not,
2. Whether the employee will be offered work when the business needs them to work,
3. If the employment is described as casual,
4. If the employee is paid a casual loading (a higher pay rate for being a casual employee), or a specific pay rate for casual employees.

Casual Conversion Employee Records

An employer MUST keep employee records including the date of commencement and patterns of work.

1. If the casual employee meets the casual conversion criteria, the employer must within 21 days of the employee's 12-month anniversary date,
2. Inform the employee if they have met the criteria for casual conversion AND offer the employee casual conversion if applicable,
3. The offer to and the response of the employee must be in writing.

Casual Conversion Criteria

- (a) The employee has been employed by the employer for a period of 12 months beginning the day the employment started, and
- (b) During at least the last 6 months of that period, the employee has worked a regular pattern of hours on an ongoing basis which, without significant adjustment, the employee could continue to work as a full-time employee or a part-time employee
- (c) An employee who meets the requirements of paragraphs (a) and (b) would also be a regular casual employee because the employee has been employed by the employer on a *regular and systematic basis*.

Regular and Systematic Definition Fair Work Act s.12

“The term 'regular' implies **a repetitive pattern** and does not mean frequent, often, uniform or constant. The term 'systematic' requires that the engagement be 'something that could fairly be called a system, method or plan”

Casual Conversion Employers Offer

The offer must:

1. Be in writing,
2. Be equivalent to the hours the regular casual has been working for the six months prior to the offer,
3. Be given to the employee within the period of 21 days after the end of the employees 12-month period.

Casual Conversion Employee Response

1. There must be a written response to the offer within 21 days after the offer is given to the employee, stating whether the employee accepts or declines the offer,
2. If the employee fails to give the employer a written response the employee is taken to have declined the offer.

Casual Conversion Acceptance of Offer

If the employee accepts the offer, the employer must, within 21 days after the day the acceptance is given to the employer, give written notice to the employee of the following:

1. Whether the employee is converting to full-time or part-time employment,
2. The employee's hours of work after the conversion takes effect,
3. The day the employee's conversion to full-time employment or part-time employment takes effect.

Note: Permanent shifts commence the first day of the next pay period.

Casual Conversion Decline of Offer

If an employee has been offered conversion and has declined (or failed to respond) to the offer, there is *no ongoing obligation* on the employer to make subsequent Conversion offers to that employee. The obligation then rests with the employee to exercise their right to request conversion.

Casual Conversion Offer Not Made

If an employer decides to not make an offer or refuses to accept a request for a casual employee to convert to permanent on 'reasonable grounds', the reasonable grounds they rely on have to be based on facts that are known or reasonably foreseeable.

The employer must continue to assess the casual's status for conversion every 12 months on the casual's employment anniversary

Casual Conversion Offer Not Made

Reasonable grounds for deciding not to make an offer can include that, in the next 12 months:

1. The employee's position won't exist,
2. The employee's hours of work will significantly reduce,
3. The employee's days or times of work will significantly change, and that can't be accommodated within the employee's available days or times for work.

Casual Conversion Dispute Process - Form 10A

The Dispute is about:

- Whether or not the employee worked for the required length of time before requesting conversion to part-time or full-time employment (s.66B(1)(a))
- Whether or not the employee worked a regular pattern of hours on an ongoing basis which they could continue to work as a part-time or full-time employee(s66B(1)(b))
- Whether the employee should have their employment converted to either full-time or part-time employment (s.66B(2)(b))
- Whether or not the employee is entitled to request conversion to part-time or fulltime employment (s.66F)
- Whether or not the employer has reasonable grounds to not offer conversion to part-time or full-time employment or to refuse a request for conversion to part-time or full-time employment (s.66C and 66H)
- Other

Summing Up

1. A clear definition of what is a casual employee,
2. The addition of the term regular employee,
3. A written Offer of Employment must include the wording “The employer makes **no firm advance commitment** that the work will continue indefinitely with an agreed pattern of work.
4. Onus on the employer to inform a regular casual they are eligible for conversion to a permanent.
5. If a casual employee declines the offer of permanent employment the employer has no obligation to offer conversion to a permanent role,
6. If an offer is not possible the employer must still write to the qualifying casual explaining why a conversion is not possible at that time,
7. If an employer cannot make an offer, their yearly obligation to offer conversion to a permanent role remains,
8. A casual employee may make a request in writing for conversion at any reasonable time.

Questions and Answers