



Mediation and Employment Relations Service

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By Chas Cini

What's Happening on 1st October 2018?

Award Variation – Some Casual Employees will be able to request conversion to Full Time and Part Time Employment.

From the 1st October 2018 an employee engaged on a regular casual basis will be able to request that their employment be converted from casual employment to full time or part time work.

An Award variation and new clause 10.5 reads in part as follows and will come into effect on 1st October 2018;

1. A **regular casual employee** is a casual employee who has worked in the previous 12 months in a pattern of hours on an ongoing basis with little change in the hours worked.
2. A **regular casual employee** who has worked equivalent full-time hours during the previous period of 12 months in casual employment.
3. A **regular casual employee** who has worked as per 1 and 2 above may request to have their employment converted to part-time or fulltime employment.
4. Any request under the provision of the new subclause must be in writing and provided to the employer.
5. When a regular casual employee seeks to convert to full-time or part-time employment, *the employer may agree to or refuse the request*, but the request may only be refused on reasonable grounds and after there has been consultation with the employee.

Reasonable Grounds for Refusing Request

The new provision defines reasonable grounds for refusal as;

1. A significant adjustment to the employee's hours of work is expected;
2. the casual employee is truly a casual employee (e.g. seasonal worker);
3. it is known or reasonably foreseeable that the regular casual employee's position will cease to exist within the next 12 months;
4. it is known or reasonably foreseeable that the hours of work which the regular casual employee is required to perform will be significantly reduced in the next 12 months;
5. it is known or reasonably foreseeable that there will be a significant change in the days and/or times at which the employee's hours of work are required



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For any ground of refusal to be reasonable, it must be based on facts which are known or reasonably foreseeable.

When the employer refuses a regular casual employee's request to convert, the employer must provide the casual employee with the employer's reasons for refusal in writing within 21 days of the request being made.

If the employee does not accept the employer's refusal, this will constitute a dispute that will be dealt with under the dispute resolution procedure in clause 9 of the Award.

Impact on Wages

If the employer and employee agree to the conversion the casual loading of 25% can be removed and substituted with paid annual leave, personal carers' leave and, payment for Public Holidays not worked. The cost of those entitlements is less than the casual loading.

Records

The employer and the employee must discuss and record in writing whether the employee is full time, part time or, casual.

If it is agreed that the employee will be part time then they must agree and record the regular pattern of work, as the hours worked each day and the days of the week and actual starting and finishing times each day as per clause 10(c) of the Pastoral Award 2010.

What do you have to do now?

You must provide a casual employee, *whether a regular casual employee or not*, with a copy of the provisions of the new subclause within the first 12 months of the employee commencing as your employee.

If the casual employees commenced employment before 1st October 2018, you must provide such employees with a copy of the provisions of this subclause before 1 January 2019.

Eligible Casual employees may not take up the offer because they may not want to forfeit the 25% casual loading for paid leave.

Copy of Award

A copy of this new provision can be accessed at

https://www.fwc.gov.au/documents/documents/modern_awards/award/ma000035/default.htm



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Model term prescribes process for handling flexibility requests

The Review into Modern Awards is continuing, and The Fair Work Commission and Unions and business groups have welcomed the FWC's approach in drafting a model award term that requires employers to genuinely try to reach agreement on requests for flexible working arrangements.

The FWC is about to seek feedback on a [model term](#) requiring employers to discuss flexibility requests from parents, carers, older workers, long-term casuals and those dealing with domestic violence and respond within three weeks with a detailed written explanation if they refuse.

Further information will be made available in due course.

If you have any queries or are seeking clarification please contact Chas Cini on 8331 2422 or by email info@mers.com.au As GPSA Members you are entitled to the first half hour free advisory service.