



Stand up for casual workers

The amendments make the definition of ‘casual employee’ fairer so that the practical reality of the employment relationship is relevant, not just the contractual description. There will be one single, clear pathway to change from casual to permanent employment in the National Employment Standards – the employee choice pathway.

What has changed?

A fair, objective definition of casual employee

The *Fair Work Legislation Amendment (Closing Loopholes No. 2) Act 2024* amends the definition of casual employee in section 15A of the *Fair Work Act 2009* (the Act).

The Act retains the concept that a casual employee is someone who has *no firm advance commitment to continuing and indefinite work*. A casual employee must also be entitled to a casual loading or specific rate of pay for casuals. The new definition will allow parties to consider the practical reality of the employment relationship, not just what was in the employment contract when the employee started working.

When assessing whether an employee has a firm advance commitment to continuing and indefinite work, employers and employees need to consider:

- whether the employer can choose to offer (or not offer) work to the employee, and whether the employee can choose to accept or reject an offer of work;
- whether continuing work is reasonably likely to be available given the nature of the business;
- whether part-time or full-time employees are undertaking similar roles in the same workplace;
- whether the employee has a regular pattern of work.

The existence of a regular pattern of work does not itself indicate a firm advance commitment to continuing and indefinite work. No single consideration is determinative of whether an employee is a casual. Employees engaged as casual employees remain casual until a specified event occurs, underpinned by an active employee choice, to change their status.

One clear and simple pathway to permanency

Employees who have worked for at least six months (or 12 months in a small business) will be able to choose to notify their employer where their circumstances have changed and, at that point in time, they believe they no longer meet the definition of ‘casual employee’.

Employers will have 21 days to respond to an employee notification and either convert the employee to full-time or part-time employment or give reasons why the notification is not accepted. Employers may refuse notification on specified grounds, including where the employee still meets the definition of a casual employee or where there are fair and reasonable operational grounds to do so. The Fair Work Commission (Commission) will be able to help resolve disputes, including by arbitration as a last resort.

Employment status will not change automatically. Status will only change if one of the following occurs:

- The employee and employer agree to status change under the new employee choice pathway
- The Commission resolves a dispute by ordering that the employee be treated as permanent
- The employee and employer agree to status change under processes set out in a Fair Work instrument that applies to them, such as an enterprise agreement
- The employee and employer otherwise agree to change status.

The existing casual conversion process in the Act will be repealed, meaning once the transitional period concludes, employers will no longer be required to offer eligible employees conversion.

Clear information to support employee choice

The Casual Employment Information Statement will be updated and all employers must continue to provide the Statement to a casual employee as soon as practicable after they start work. To ensure employees are reminded of their rights and ability to change to permanent work, employers will also be required to provide the Statement to casual employees:

- for small business employers – after 12 months of employment,
- for other employers – after six and 12 months of employment, and then after every 12 months of employment.

What do these changes mean?

Status change from casual to permanent (part-time or full-time) will only happen where an employee wants to change. If an employee wants to remain casual, nothing will force them to become permanent.

For employees who are effectively working like a permanent employee, they will have a clear and simple way to choose to change to permanent work. For employees that make this choice, they will no longer be entitled to a casual wage loading and will instead receive paid leave entitlements and job security that permanent work provides.

Status change will be forward looking and there will be no backpay for permanent employee entitlements where an employee is correctly classified as a casual from the commencement of their employment. This will provide certainty for employers and employees about status, rights, and entitlements at all times.

Employers will no longer be required to offer eligible new employees conversion after 12 months. Transitional arrangements will ensure the existing casual conversion rights and obligations will continue to apply until an employee is eligible under the new employee choice pathway.

When do these changes come into effect?

The measure will commence on 26 August 2024.

For more information on the Closing Loopholes legislation, visit: <https://www.dewr.gov.au/workplace-relations>