

The law about casual conversion has changed.

WHAT IS CASUAL CONVERSION?

Casual conversion means the right of a casual employee to request that their casual employment be made permanent employment.

The Pastoral Award 2020 has been varied as of 27 September 2021 to incorporate the National Employment Standard about casual conversion.

The rules are different for small and large businesses.

OFFERS OF CASUAL CONVERSION (*businesses with 15 or more employees ONLY*)

Employer offers of casual conversion (after 27 September 2021)

Businesses with 15 or more employees will have to make offers of casual conversion to casual employees **after 27 September 2021** if a casual employee has been:

- employed by the employer for a period of 12 months, and
- during at least the last six months they have worked a regular pattern of hours on an ongoing basis, and
- without significant adjustment these hours could be worked by a permanent full time or part time employee.

Making an offer to convert

Employers are required to do the following:

- make an offer to convert in writing;
- make the offer to convert either to full time or part time work (whichever applies);
- give the offer to the employee within 21 days of the 12-month anniversary.

Employee response

Employees are required to give employers a written response, within 21 days of receiving the offer to convert, either accepting or declining the offer to convert and if they do not respond they are taken to have declined the offer.

Employer duties if offer accepted

If the employee accepts the offer to convert the employer must do the following:

- Discuss with the employee whether the employment will be full time or part time;

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- Discuss with the employee what the hours of work will be;
- Discuss the date the conversion will take effect – which must be the start of the first full pay period commencing after the day of the notice (see below) unless the employer and the employee agree otherwise;
- Put the above in writing (the notice) within 21 days of receiving the acceptance.

When an offer to convert is not required

Employers do not have to make an offer to convert if there are reasonable grounds not to do so, for example:

- the employee's position will not exist in the next 12 months;
- the employee's hours of work will be significantly reduced in the next 12 months;
- there will be a significant change in the days and times the employee will be required to work in the next 12 months which cannot be accommodated by the hours the employee is available to work.

Employer's duties when an offer to convert is not required

Employers are required to do the following if they decide not to make an offer to convert:

- give written notice to the employee within 21 days of the end of the 12 month period;
- advise the employee that the employer is not making an offer to convert;
- provide details of the reasons why the employer is not making the offer to convert.

What do businesses with 15 or more employees need to do before 27 September 2021?

Before 27 September 2021 businesses with 15 or more employees need to:

- assess whether they will be required to make an offer of casual conversion to any casual employees (see above) and
- assess whether or not they will be required to give a notice of offer to convert to any casual employees
- make a written offer to convert within 21 days of making the assessment if the casual employee meets the requirements for casual conversion (see above) OR
- notify the employee in writing before 27 September 2021 if the casual employee does not meet the requirements for casual conversion (see above)

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EMPLOYEE REQUESTS FOR CASUAL CONVERSION

The National Employment Standard about requests by employees for casual conversion is different for small businesses and other businesses.

Employees of businesses with 15 or more employees (after 27 September 2021)

Employees of businesses with 15 or more employees can make a request for casual conversion as of 27 September 2021 if they:

- have been employed by the employer for a period of 12 months, and
- during the six month period before the request they have worked a regular pattern of hours on an ongoing basis, and
- the hours could be worked without significant adjustment by a permanent full time or part time employee, and
- the employer has not refused a previous request in the last 6 months;
- the employee has not refused an offer to convert in the preceding 6 months;
- the employer has not given the employee a notice advising the employee that the employer is not making an offer to convert;
- the request is made 21 days after the 12 month anniversary.

Employees of businesses with less than 15 employees

Employees of businesses with less than 15 employees (small businesses) can make a request for casual conversion **as of 27 March 2021** if they:

- have been employed by the employer for a period of 12 months, and
- during the six month period before the request they have worked a regular pattern of hours on an ongoing basis, and
- the hours could be worked without significant adjustment by a permanent full time or part time employee, and
- the employer has not refused a previous request in the last six months.

Requirements for requesting casual conversion (all businesses)

The request

The employee must make the request:

- in writing, and

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- request to convert to either full time or part time employment whichever is consistent with the hours worked by the employee in the last six months

The response

The employer must

- respond in writing within 21 days, and
- if the employer refuses the written response must include the reasons why the request is refused.

Refusing a request to convert

Before refusing a request to convert, the employer must consult with the employee.

Employers may refuse the request to convert if there are **reasonable grounds** for example:

- a significant adjustment would be required to the employee's hours of work for the employee to be employed as a full time or part time employee;
- the employee's position will not exist in the next 12 months;
- the employee's hours of work will be significantly reduced in the next 12 months;
- there will be a significant change in the days and times the employee will be required to work in the next 12 months which cannot be accommodated by the hours the employee is available to work

Employer's duties when granting a request to convert

If the employer grants the request the employer must:

- discuss with the employee whether the employment will be full time or part time;
- discuss with the employee what the hours of work will be;
- discuss the date the conversion will take effect – which must be the start of the first full pay period commencing after the day of the notice (see below) unless the employer and the employee agree otherwise;
- put the above in writing within 21 days of receiving the request.

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CASUAL EMPLOYMENT INFORMATION STATEMENT

New employees

Employers must give new casual employees a copy of the Fair Work Ombudsman's Casual Employment Information Statement before or as soon as possible after they start work.

<https://www.fairwork.gov.au/ArticleDocuments/724/casual-employment-information-statement.pdf.aspx>

Existing employees

Businesses with 15 or more employees must give existing casual employees a copy of the Fair Work Ombudsman's Casual Employment Information Statement by 27 September 2021.

<https://www.fairwork.gov.au/ArticleDocuments/724/casual-employment-information-statement.pdf.aspx>

Businesses with less than 15 employees must give existing casual employees a copy of the Fair Work Ombudsman's Casual Employment Information Statement as soon as possible after 27 March 2021.

<https://www.fairwork.gov.au/ArticleDocuments/724/casual-employment-information-statement.pdf.aspx>