



# Changes to casual employment laws

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The laws around casual work in the Fair Work system are changing. From 26 August 2024, there will be a new definition of **casual employee**. There will also be a new pathway to full-time or part-time (permanent) employment for casual employees.

We can deal with disputes about this new pathway.

## A new definition of casual employee

There is a new definition of **casual employee** in section 15A of the *Fair Work Act 2009* from **26 August 2024**. This includes a general rule that an employee is a casual only if:

- there is **no firm advance commitment to continuing and indefinite work**, and
- they are entitled to a casual loading or a specific rate of pay for casuals under a Fair Work instrument or their employment contract

An exception to this general rule applies to some academic and teaching staff at higher education institutions engaged on fixed term contracts.

## Firm advance commitment to continuing and indefinite work

When assessing whether an employee has a **firm advance commitment to continuing and indefinite work**, the employer and employee need to consider the **real substance, practical reality and true nature** of the employment relationship.

A firm advance commitment might be found in the employment contract, or in a mutual understanding or expectation between the employer and employee.

Specific matters need to be considered when making an overall assessment of whether there is a firm advance commitment to continuing and indefinite work. These include:

- whether the employer can choose to offer or not offer work, and whether the employee can choose to accept or reject work (and whether this actually happens)

- whether it is likely that there will be future continuing work available, considering the nature of the business
- whether permanent employees perform the same kind of work that the employee usually performs, and
- whether the employee performs a regular pattern of work.

Other matters may also be considered.

## A new pathway to permanent employment

The Employee Choice Pathway is available from 26 February 2025 for most employees, or 26 August 2025 for employees of small business employers.

The current laws about offers and requests for Casual Conversion will continue to apply until then.

## Pathways to permanent employment under the NES

### Employers other than small business employers



### Small business employers\*



- Existing obligations in relation to Casual Conversion for eligible employees continue until **26 February 2025** for employers other than small business employers.
- For small business employers, existing obligations in relation to Casual Conversion for eligible employees continue until **26 August 2025**.
- By 26 August 2025, the process for changing employment status from casual to permanent will be via the Employee Choice pathway only.

\* Small business employer is defined in the Fair Work Act. To find out what is a small business employer, visit us at [fwc.gov.au](http://fwc.gov.au).

## Employee choice pathway

This starts with an employee notifying their employer of their choice to become a permanent employee. A casual employee who wishes to remain a casual employee can choose to remain casual and not use this process.

## Employee notification

A casual employee who chooses to, can give their employer a written notification of their choice to become a permanent employee if:

- they have worked for the employer for at least 6 months, or 12 months for a small business employer, and
- they believe they no longer meet the definition of casual employee.

A casual employee can't give their employer a written notification if they are currently in dispute with their employer about changing to permanent employment, or if in the previous 6 months certain events have occurred under the casual conversion or employee choice pathways.

## Employer response

The employer **must respond within 21 days** after the employee gives them the notification.

If the employer accepts the notification, the casual employee will become a permanent employee.

The employer may refuse the notification on the following grounds:

- where the employee still meets the definition of casual employee
- where there are fair and reasonable operational grounds to do so, or
- accepting the notification would result in the employer not complying with a recruitment or selection process required by law.

## Casual employees will remain casual unless their status changes

Casual employees engaged after 26 August 2024, under the new definition of casual employee, will stay casual unless their employment status changes:

- under the Casual Conversion or Employee Choice pathways
- because of a Fair Work Commission order
- under a Fair Work instrument, or
- because they accept an alternative offer of employment (other than as a casual employee) by their employer.

Casual employees engaged before 26 August 2024, under the current definition of casual employee, will stay casual under the new definition, unless they move to permanent employment.

## Disputes about casual employment status

We can deal with some disputes about casual employment status when they can't be resolved at the workplace level.

Currently, we can only deal with disputes about Casual Conversion by arbitration if both sides agree to it. If a modern award or enterprise agreement covers the employee, we can only deal with the dispute in accordance with its dispute resolution procedure.

Under the new laws, we will be able to arbitrate all disputes about the Employee Choice pathway (if other methods of resolving the dispute have failed).

A Commission Member can make any orders they consider appropriate, including that the employee:

- continues to be treated as a casual employee, or
- will be treated as a permanent employee.

## Workplace rights

The general protections provisions of the Fair Work Act don't allow (prohibit) adverse action to be taken against an employee because they have a workplace right. This will now include an employee's right to:

- give a notification or to receive a response under the Employee Choice provisions
- become a permanent employee if their employer accepts their notification
- receive and accept an offer or notice under the Casual Conversion provisions
- participate in a dispute about changing to permanent employment.

An employer must not reduce or vary an employee's hours of work, change their pattern of work or dismiss them to avoid the rights and obligations relating to changing from casual to permanent employment status.

## Find out more



### About the changes to the Fair Work Act

Visit the Fair Work Ombudsman's website to learn more [changes to casual employment](#).

Visit our website to learn more about changing from [casual to permanent status](#).



## Where to get help

You can ask your union or employer organisation, contact the [Fair Work Ombudsman](#), or seek independent legal advice about the changes to casual employment. You can find out [where to find legal help](#) on our website.