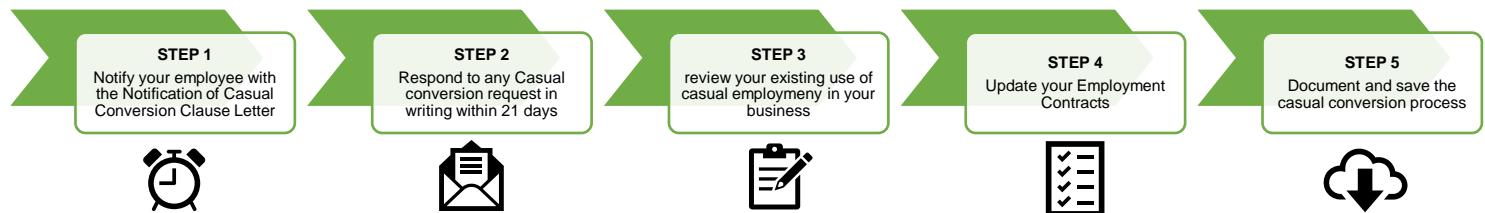


CASUAL CONVERSIONS ENSURING COMPLIANCE IN 5 STEPS



Under most modern awards, a "*regular casual employee*" can request to convert their employment if they have worked:

- for a period of 12 months or more; and
- a pattern of hours on an ongoing basis, which the employee could continue to perform as a full-time employee or part-time employee (as applicable), without significant adjustment.

The casual employee must put their request to convert in writing.

STEP 1 - Provide new and existing award-covered employees with a copy of the casual conversion clause

Ensure you read the award that applies to your employees carefully. Some awards contain more onerous requirements on employers to notify casual employees of their right to request casual conversion at 6 or 12 months of '*regular and systematic*' casual employment. This means you will need to be keeping a close eye on any casual employees that are reaching these milestones.

Once you have checked your award you can notify your employees regarding the casual conversion clause. You can use our [Notification of Casual Conversion Clause](#). Also copy the applicable section from the Award and staple to the back of the letter.

You will need to provide the clause ***within 12 months of their employment commencing***.

Shortly after the [Notification of Casual Conversion Clause](#) you will send a follow up letter that sets out the nature of a casual and that of a perm employee as well as the rates of pay for both. Also included is the [Casual Conversion Election Form](#) where the employees can advise if they wish to convert.

Employees have **4-weeks** to consider if they would like their employment converted to permanent employment or remain as a casual.

STEP 2: Respond to any casual conversion requests

Respond to any requests to convert to permanent in writing **within 21 days** to accept or reject the employee's request for conversion. You can only reject a request convert to permanent in accordance with the terms of the relevant award. Sometimes an award will include the '*reasonable grounds*' on which you can refuse a request.

legally responding to requests for casual conversion

Your business must comply with the obligations contained in any casual conversion clause in a modern award, this includes:

- Providing new and existing casual employees with a copy of the casual conversion clause;
- Responding to any request to convert within **21 day's**;
- If you reject a request, complying with the requirements in the relevant award such as rejecting the request on 'reasonable grounds' or 'not unreasonably refusing' a request;
- If you agree to convert a casual to permanent employment, complying with the provisions of any part-time employment clause in the relevant award and providing the employee with set days, hours and patterns of work (and a new contract of employment).

How to legally refuse the request for casual conversion

It is important to note that the new clause does not mean you have to approve all requests. It is best to double check the relevant award but generally, the scenarios where you may refuse on reasonable grounds include but not limited to:

- The conversion would require a significant adjustment to the employee's hours of work as a full-time or part-time employee;
- It is known, or reasonably foreseeable that the employee's position will cease to exist within the next 12 months or the hours of work which the employee is required to perform will be significantly reduced in the next 12 months;
- The employee's hours of work will significantly change or be reduced within the next 12 months.

STEP 3: Review your existing workforce

Review the use of casual employment in your business, particularly where the arrangement involves long-term, regular work patterns. We recommend that you consider doing a cost analysis between that of the cost of wages for casual employees compared to that of Perm employees.

The 25% loading is designed to compensate employees for not receiving some of the benefits of perm employees as well as for the insecurity of their employment. You may well find that the bottom-line figure is more favourable to employee permanent employees compared to casual.

- *Ask us about our analysis sheet that we have created for you to easily see over 12-months the cost differences to help you form your decision.*
- *For those employees, consider offering conversion to permanent employment to protect your business ask us about our casual employment contracts/ agreements.*

STEP 4: Update your employment contracts

Update your employment contracts and ensure you at least include provisions that make clear that the position of casual

- has no guaranteed hours of work;
- will usually work irregular hours;
- has no sick or annual leave entitlements
- They are not obligated to always be available; and
- can have their employment ended without notice, unless notice is required by a registered agreement, award, or employment contract.

We have casual employment contracts/ agreements available and highly recommend that if you have not done so in the last 12-24 months updated these then you do so.

STEP 5: Document and save the casual conversion process

"If it isn't written down, then it didn't happen". **ALWAYS** protect yourself and the business by ensuring that you keep documentation about any changes to workplace relationships. Keep these documents for at least 7-years so that any retrospective claims can be defended with copies of the clear and documented process.

Recent decisions impacting on Casual employment

In *WorkPac Pty Ltd v Rossato [2020] FCAFC 84* the Full Federal Court determined that Mr Rossato had entitlements under the National Employment Standards (NES) in the Fair Work Act 2009 (Cth) (FW Act) and the relevant Enterprise Agreement; These were - being paid annual leave, paid personal/carer's leave, paid compassionate leave, and payment for public holidays. This came about when the court made the finding that Mr Rossato was not a casual but a permanent employee.

The essential question asked was - " if an employee agrees to a contract that labels them a casual but their work is systematic (rostered well in advance for example) and regular (set hours and days) and longer-term (happening for years) are they still a casual?"

In the WorkPac decision, the Federal Court says **NO**

If you have questions then please feel free to reach out to us or you can pop over and check out our article posted June 4th 2020 <https://www.freshhrinsights.com.au/casuals-what-we-need-to-know/>