

IMPORTANT: New casual employees also need to be given the **Fair Work Information Statement**.

Visit www.fairwork.gov.au/fwis



Who is a casual employee?

You are a casual employee if you meet all the following criteria:

- you are offered a job
- the employer makes **no firm advance commitment** that the work will continue indefinitely with an agreed pattern of work, and
- you accept the offer knowing that there is **no firm advance commitment** and become an employee.

Whether you're a casual employee is assessed **at the time** you are offered and accept the job.

What is 'no firm advance commitment'?

To work out if your employer made **no firm advance commitment** when offering you the job, **only 4 factors are to be considered**. They are whether:

- ▶ your employer can choose to offer you work and it's your choice whether to work or not
- ▶ you'll be offered work when your employer needs you to work
- ▶ your employment is described as casual
- ▶ you'll be paid a casual loading or a specific pay rate for casual employees.

There isn't 1 deciding factor and you don't need all 4 of them for there to be 'no firm advance commitment'. It's about weighing up the factors that are there (and those that aren't) and deciding whether overall your employer was or wasn't intending to make a firm advance commitment.

Example of 'no firm advance commitment'

Priya is offered a job as a shop assistant. The job was advertised as a casual position.

The shop owner says Priya will need to work when the shop is busy or other staff are on leave. When business is quiet, Priya will get less work. Priya will be offered shifts a week in advance and the shifts will vary week-to-week. Priya can decline shifts if she wants to. Priya's pay rate will include a casual loading. Priya accepts the job.

There was 'no firm advance commitment' in Priya's situation. Her employer didn't commit to giving Priya ongoing work. The shop owner made it clear that Priya's shifts could vary, and that Priya wasn't obligated to accept shifts. The job was advertised as casual and Priya will be paid a casual rate of pay. Because this was clear at the time Priya was offered and accepted the job, she is considered a casual employee.

Note: Sometimes casual employees work a regular pattern of hours. This doesn't mean they're permanent (full-time or part-time), but if the arrangements continue, they might be entitled to casual conversion in the future (usually after 12 months).



How do I become a permanent employee if I'm a casual employee?

Under the National Employment Standards (NES), some casual employees have the right to become a permanent (full-time or part-time) employee. This is known as 'casual conversion'.

Some casual employees must be offered casual conversion by their employer while others can only request it. You must have completed 12 months of work and meet other criteria.

The next page outlines when your employer has to offer you casual conversion, and when you are entitled to request it.

Small businesses

If you are employed by a **small business** (fewer than 15 employees), your employer does not have to offer you casual conversion. However, in some circumstances you're still entitled to request it.

The next page outlines when you are entitled to request casual conversion if you work for a small business.



In writing

Under the NES, all offers, requests, refusals, and responses for casual conversion must be **in writing**. 'In writing' can include handwritten, printed, and electronic (for example, email) formats.

Some casual employees will be covered by awards and agreements with additional casual conversion entitlements. Go to www.fairwork.gov.au/casual for more information.



Need help?

Not sure if you're covered by an award or agreement? Visit www.fairwork.gov.au/awards and www.fairwork.gov.au/agreements



Does my employer have to offer me casual conversion?

Only businesses with 15 or more employees have to offer casual conversion to their casual employees.

They **have to offer** you casual conversion if you meet all the following criteria:

- ☒ you've been employed by them for **12 months**
- ☒ you've worked a **regular pattern of hours** on an ongoing basis for at least the last **6 months**, and
- ☒ you could continue working that regular pattern of hours as a permanent employee **without significant changes**.

Your employer **doesn't have to offer** you casual conversion if one of the following applies to you:

- ☐ there are **reasonable grounds** for your employer not to offer you casual conversion, or
- ☐ you haven't worked a regular pattern of hours for at least the last 6 months.

What your employer needs to do

- **If you are eligible for casual conversion** – Make the offer to you, in writing, within 21 days after your 12-month anniversary.
- **If they aren't offering casual conversion** – Tell you the reasons why in writing, within 21 days after your 12-month anniversary.

What you need to do

- **If your employer offers you casual conversion** – Respond in writing within 21 days. You can accept or decline the offer.
- **If you disagree with their decision not to offer you casual conversion** – Follow the steps outlined in the 'What if there is a disagreement?' section on the next page.

Example of 'regular pattern of hours'

Alex is a casual employee who works every Friday and Saturday night at a restaurant on a regular basis. His hours and days don't change.

Over a 6-month period, Alex misses 2 shifts due to illness. By agreement with his employer he also takes 1 week off during uni exams.

Even though Alex has taken some time off, this still meets the definition of a 'regular pattern of hours'.



More information

For more information about casual employment and casual conversion, go to www.fairwork.gov.au/casual and www.fairwork.gov.au/casualconversion



Can I request casual conversion?

You are entitled to request casual conversion if you meet all the following criteria:

- ☒ you've worked for the business for at least **12 months and 21 days** (12 months if you work for a **small business**)
- ☒ you've worked a **regular pattern of hours** on an ongoing basis for at least the last **6 months**
- ☒ you could continue working that pattern of hours as a permanent employee without significant changes, and
- ☒ during the **last 6 months** you haven't:
 - refused an offer of casual conversion
 - been told you aren't being offered casual conversion due to reasonable grounds, or
 - made a request for casual conversion that was refused on reasonable grounds.

What you need to do

- **If you are eligible and want to request casual conversion** – Make the request in writing.

What your employer needs to do

- **If they are granting your request** – Consult with you and respond in writing within 21 days of receiving your request.
- **If they are refusing your request on reasonable grounds** – Consult with you and tell you the reasons why in writing within 21 days of receiving your request. If you meet the criteria again in 6 months, you can make another request then.



What are 'reasonable grounds'?

What counts as 'reasonable grounds' will depend on your circumstances and your employer's circumstances.

They can include that within the next 12 months:

- your position won't exist
- your hours of work will significantly reduce
- the days or times your employer needs you to work will change significantly, and you won't be available to work the revised schedule.

Reasonable grounds can also include that making the offer or granting the request would not comply with a recruitment or selection process required by or under a Commonwealth, State or Territory law.

What if I disagree with my employer about casual conversion?

If you and your employer have a disagreement about casual conversion, including the rules and requirements for making (or not making) a request or an offer, there are steps you can take to resolve it.

Depending on your circumstances, you may be able to have someone to support or represent you through the dispute process (which could include a union entitled to represent you).

Step 1. First, check if you're covered by an **award or agreement**. Not sure? Visit www.fairwork.gov.au/awards and www.fairwork.gov.au/agreements

- If you are covered by an award or agreement, you need to follow the process that it sets out for dealing with disputes about the National Employment Standards (NES). See the 'Who can help?' section below if you need further help.
- If you're not covered by an award or agreement, move to step 2.

Step 2. If you aren't covered by an award or agreement you need to check if your **employment contract** or any **other kind of written agreement** has a process for dealing with disputes about the NES or casual conversion.

- If it does, you need to follow the process that it sets out for dealing with the dispute. See the 'Who can help?' section below if you need further help.
- If it doesn't, move to step 3.

Step 3. If the dispute resolution processes in **steps 1 and 2 don't apply to you**, try to resolve the disagreement directly with your employer by discussing it with them (you can use our free courses linked below to help you do this). If you can't resolve the issue this way, see the 'Who can help?' section below for where you can get help.

Get help with conversations

Find free online courses to help you have conversations at work (including about casual conversion) at www.fairwork.gov.au/learning

WHO CAN HELP?

If you'd like information or assistance, or you have an unresolved dispute, a third party may be able to help. Depending on your situation and how you want to resolve the issue, there are a few different places that can help you.

The Fair Work Ombudsman and Fair Work Commission can help.

You can also seek help from the Federal Circuit and Family Court in some situations.

FAIR WORK OMBUDSMAN	FAIR WORK COMMISSION
• provides information and advice about your employment type (casual or permanent) • provides information and advice about rights, pay and entitlements of casual employees, including casual conversion entitlements • has free calculators, templates and online courses • helps fix workplace problems • enforces workplace laws and seeks penalties for breaches of workplace laws. www.fairwork.gov.au - 13 13 94	• deals with disputes about casual conversion (if you are not able to resolve them directly with your employer) • can deal with your dispute through mediation, conciliation, making a recommendation or expressing an opinion • if you and your employer agree, can deal with your dispute through arbitration (making a binding decision). www.fwc.gov.au - 1300 799 675

FEDERAL CIRCUIT AND FAMILY COURT OF AUSTRALIA (SMALL CLAIMS COURT)

You can seek help from the small claims court of the Federal Circuit and Family Court if your casual conversion dispute is about whether:

- you meet the requirements for your employer to make an offer to you to become a permanent employee
- you meet the requirements to request casual conversion
- your employer has reasonable grounds to not offer casual conversion
- your employer has reasonable grounds to refuse your request for casual conversion.

www.fcfcoa.gov.au - 1300 352 000