



PROPERTY & BUSINESS LAWYERS

Defining 'Casual Employment'

As of 26 August 2024, a new definition of casual employment under section 15A of *the Fair Work Act 2009* (Cth) applies to employees who began working on or after this date. This change, part of the *Closing Loopholes* reforms, redefines what it means to be engaged as a casual employee.

For employees engaged as casuals **before 26 August 2024**, their status continues under the new rules unless they transition to permanent employment. However, for any periods of casual employment before this date, the previous definition still applies.

Previous casual employee definition

Before 26 August 2024, a person was considered a casual employee if:

1. They were offered a job without a **firm advance commitment** that the work would continue indefinitely, or with a fixed pattern; and
2. They accepted the offer, understanding that no firm advance commitment existed at the time.

An example of casual status might be an employee with a changing roster based on the employer's needs, with the flexibility to refuse or swap shifts.

What is a 'firm advance commitment' criteria

The prior casual employee definition was based on four factors determining if there was no firm advance commitment:

1. The employer could offer work, and the employee could choose whether to accept it;
2. The employee was only offered work as the business required;
3. The employment was described as casual;
4. The employee received casual loading or a specific casual pay rate;

New casual employee definition

Disclaimer

This publication is intended only to provide a brief summary of the subject matter it covers. It does not mean to be comprehensive or render legal advice. You should not act of any matter referred to in this publication without first obtaining relevant professional advice.

Now, a person is a casual employee if:

1. there is **no firm advance commitment** to continuing and indefinite work; and
2. the employee is entitled to receive a “**casual loading**”.

Therefore, if you are trying to determine the validity of a casual employment arrangement, consideration of the real substance, practical reality and true nature of the relationship **must** be considered. The written terms in the employment contract will NOT be sufficient. Factors for consideration of the ‘true nature’ of the relationship include:

- whether the employer can offer or withhold work, and if the employee can, in practice, accept or reject work;
- the likelihood of future work being available within the business, based on the nature of the business;
- whether full-time or part-time employees are performing the same kind of work; and
- whether the employee has a regular pattern of work.

What does this mean?

The terms of the employment contract must be considered but also the totality of the employment relationship. There must be an examination of the intention of the parties when they first enter the employment relationship, but also after the fact, and so, consideration of whether the intention and reality of the parties has changed during the course of the employment relationship can be given.

What should employers do?

Employers should take reasonable steps to ensure that their employment contracts not only correctly reflect the intended casual employment relationship, but also ensure that casual employees are treated as true casual employees (under the new definition), if it is intended for these employees to remain casual.

For more information on casual workplace arrangements, please contact our office.

Suite 1, 86 Henry Street, Penrith N.S.W. 2750
+61 2 4702 5905
Email: info@grassassociates.com.au
Web: www.grassassociates.com.au

Disclaimer

This publication is intended only to provide a brief summary of the subject matter it covers. It does not mean to be comprehensive or render legal advice. You should not act on any matter referred to in this publication without first obtaining relevant professional advice.