

Casual Employment

This infosheet is designed for Victorian and national system employees in Tasmania and Queensland.

If you are a **Victorian** employee, you can use this infosheet unless you were employed in a sector that provides essential services of core government functions, including state infrastructure services such as electricity and gas, and your employer is not covered by a nationally registered collective agreement.

If you are a **Tasmanian** employee, you can use this infosheet unless you were a State public sector employee not covered by a nationally registered collective agreement.

If you are a **Queensland** employee, you can use this infosheet unless you were a State public sector or local government employee not covered by a nationally registered collective agreement.

Casual employment is an increasingly widespread form of employment in Australia. This information provides a summary of the entitlements of casual workers and sets out how they vary from those of permanent workers.

What is casual employment?

Casual work is a term that is used to describe a range of employment situations where the work is not permanent (i.e. not ongoing). The essence of casual work is that there is no entitlement to ongoing employment or certainty in the days, hours or shifts that you will work. Casual workers are entitled to a **higher minimum rate of pay** and they have **different entitlements** to permanent employees.

Who is a casual employee?

Whether you are a casual employee will depend on what was agreed between you and your employer when you were initially offered the job.

A person is a casual employee if:

- An offer of employment was made to a person on the basis that the employer makes '*no firm advance commitment to continuing and indefinite work according to an agreed pattern of work*' for the person; and
- the person accepts the offer on that basis; and
- the person becomes an employee as a result of that acceptance

What does 'firm advance commitment to continuing and indefinite work according to an agreed pattern of work' mean?

There are four factors to consider in determining what is, or what is not, a firm advance commitment. These are:

1. whether the employer can elect to offer work and whether the employee can elect to accept or reject that work;
2. whether the employee will work as required according to the needs of the employer;

Disclaimer

This infosheet contains information of a general nature only and is not a substitute for professional legal advice. You should obtain legal advice from a lawyer about your particular situation before acting on any of the following information.

This infosheet is designed for Victorian and national system employees in Tasmania and Queensland only, with some exceptions. If this is not you, you should obtain specialist legal advice about your case as soon as possible.

What does 'firm advance commitment to continuing and indefinite work according to an agreed pattern of work' mean? (cont.)

3. whether the employment is **described** as casual employment; and
4. whether the employee will be entitled to a casual loading or a specific rate of pay for casual employees under the terms of the offer, a modern award or an enterprise agreement.

It is important to remember that no one factor will be determinative on its own. All the factors must be looked at together.

The law makes clear that a regular pattern of hours does not, in and of itself, indicate a firm advance commitment to continuing and indefinite work according to an agreed pattern of work.

Flexibility vs uncertainty

Casual work suits some employees because it offers a greater level of flexibility about working hours than other forms of employment. It also provides a higher rate of pay. This higher rate of pay is meant to compensate a casual worker for other entitlements that they don't receive. However, this flexibility can also be a disadvantage because it means that you have no certainty about your working hours and no guarantees about ongoing work.

If you are a casual employee, your shifts can be cancelled or you can be sent home early if you are not needed by your employer. While in theory you may decline work, it can be difficult to refuse hours if you are relying on your employer to offer you work in the future.

Casual loading

If you are a casual, you are not entitled to paid leave (this includes annual leave – or 'holiday pay' – and personal/carer's leave – or 'sick' pay). However, you are paid a higher hourly rate of pay to make up for this. This extra money is called a **casual loading** and it is generally an additional 25% of the hourly rate paid to permanent workers. This loading is also compensation for the uncertainty of your continuing employment.

Whether you should be paid a casual loading, and at what level, will depend upon what type of employment instrument, or arrangement, covers you.

Conditions and entitlements for casual workers

For Victorian employees and national system employees in Queensland and Tasmania, your minimum terms and conditions will be specified by one or more of the following:

- A **modern award** (this is a document that contains terms and conditions of employment for employees in particular occupations or industries);
- An **enterprise agreement** (this is a document that sets out the terms and conditions of your employment and is, unlike a modern award, specifically tailored to your workplace); and
- The **National Employment Standards** (this is a set of basic employment rights that cannot be displaced).

Case Example

Jin is offered a job at a bakery. She is told by her employer that she will probably be offered 4-hour shifts every Saturday and Sunday, however that it will be on an 'as needs' basis and that if it's inconvenient for her she can turn down the shifts. This is a regular pattern of hours, however given that there is no firm advance commitment to continuing and indefinite work, it is likely this will be seen as casual employment.

Contact the Fair Work Infoline on [13 13 94](tel:131394) to:

- find out the correct rate of pay for your type of work
- find out whether you are covered by a modern award

Casuals without an award or enterprise agreement

If you are a casual employee whose minimum terms and conditions are not regulated by an award or enterprise agreement, the following conditions apply (unless you can negotiate better terms with your employer):

Pay entitlements

- you are entitled to a flat hourly pay rate (including the casual loading) for every hour you work. You are **not entitled** to penalty rates for working **overtime** or on the weekend (unless you have a written contract that says you are);
- you are **not entitled** to payment if you do not work on a gazetted **public holiday**, even if the public holiday falls on a day when you would usually work.

Leave entitlements

- you **do not** accrue paid leave entitlements such as **annual leave** or **personal leave** (ie, you do not get paid sick or carer's leave);
- you are entitled to up to two days of unpaid **carer's leave** for each time a member of your immediate family or household requires care or support because of illness or injury or because of an unexpected emergency. This period of leave may be taken as a single unbroken period or it may be broken up as agreed between you and your employer;
- you are entitled to two days of unpaid **compassionate leave** for each occasion when a member of your immediate family or household contracts or develops a personal illness or sustains a personal injury that poses a serious threat to his or her life or dies. Strict notice and evidence requirements apply;
- you are entitled to five days of unpaid **family and domestic violence** leave in a 12 month period. This leave is available if:
 - you are experiencing family and domestic violence; and
 - you need to do something to deal with the impact of the family and domestic violence; and
 - it is impractical for you to do that thing outside your ordinary hours of work.
- you are entitled to be paid **long service leave** on a pro rata basis, however you need to have at least seven years of continuous employment with your employer;
- you are entitled to **unpaid parental leave** (including maternity, paternity and adoption leave) if you are a casual employee who has been engaged on a regular and systematic basis for at least 12 months.

Other entitlements

- there is **no minimum or maximum** number of hours that you must be rostered to work, although your hours must not unreasonably exceed 38 hours per week, as per the National Employment Standards;
- you are not entitled to notice of **termination** and you do not have to give notice if you wish to resign.

Casuals employed under an award or enterprise agreement

If your employment is covered by an award or enterprise agreement then your minimum terms and conditions of employment may be different than those outlined above. For example:

Note: Unpaid carer's leave is subject to you notifying your employer as soon as reasonably practicable that you need the leave and providing a medical certificate or statutory declaration.

Note: Unpaid family and domestic violence leave is available in full at the start of each 12 month period of employment. It does not accumulate from year to year. It can be taken as a single continuous five day period or in separate periods of one or more days each, or, by agreement between you and your employer, periods of less than one day.

To find out what your specific minimum entitlements are under an award or enterprise agreement, contact the Fair Work Infoline on [13 13 94](tel:131394).

Casuals employed under an award or enterprise agreement (cont.)

- you may be entitled to overtime and penalty rates if you are required to work outside of the normal span of hours (e.g. time and a half or double time for working at night or on weekends);
- you may be entitled to be paid long service leave on a pro rata basis after completing a period of continuous employment with your employer of less than seven years;
- there may be a minimum number of hours for which you must be rostered to work on any one shift.

Get more information about superannuation by reading the JobWatch infosheet on 'Superannuation'.

Rights for all Casuals

In addition, the following applies to all casuals in Victoria:

- an employer must make superannuation contributions into an approved superannuation fund for employees who earn more than \$450 gross per month. However, an employer does not have to make contributions for employees under 18 years of age who work less than 30 hours per week;
- like permanent employees, casual employees may be entitled to compensation for lost earnings and/or for medical expenses if they are injured at work;
- casuals are protected by the same occupational health and safety laws that protect other workers, meaning that employers are required to provide and maintain a safe and healthy workplace;
- casuals can use equal opportunity and anti-discrimination laws in the same way as other workers;
- casuals are entitled to join a union.

Conversion to permanent employment – from 27 September 2021

By 27 September 2021, employers (except for small business employers) must make a written offer to convert your existing casual employment to permanent employment within 21 days of your 12 month anniversary, if:

- you have worked for your employer for at least 12 months; and
- you have worked a regular pattern of hours on an ongoing basis for at least the last six months; and
- you could continue working these hours as a permanent employee without significant adjustment.

An employer can decline to offer conversion from casual employment to permanent employment on reasonable grounds, including if:

- you do not satisfy the above eligibility requirements;
- in the next 12 months, your position will no longer exist, your working hours will significantly decrease, or the days/times you work will significantly change and you won't be able to accommodate these changes;
- making such an offer would be in breach of a recruitment or selection process required by or under a Commonwealth, State or Territory law; or
- significant adjustments would need to be made to your work hours in order for the conversion to permanent employment to occur.

If you receive an offer of conversion to permanent employment:

- you must respond to the offer in writing within 21 days of receiving it;
- your employer can assume that you've declined the offer if you do not respond.

Note: If your employer declines to offer conversion on the above reasonable grounds, they must provide you with written notice and the reasons for not making the offer within 21 days of your 12 month employment anniversary.

Note: If you refuse an offer for casual employment or your employer declines to offer you casual conversion on reasonable grounds, you have a right to request casual conversion again after 6 months if you remain eligible according to the above eligibility requirements.

Small Business Employers

If your employer is a small business (meaning that they employ less than 15 employees):

- they are **not** required to offer you a conversion to permanent employment even if you meet the eligibility requirements;
- however, you have the right to request to convert to permanent employment on or after your 12 month anniversary, if you meet the above eligibility requirements;
- provided that you were a casual employee for a small business employer on 27 March 2021, you can make a request to convert to permanent employment at any time;
- your employer must respond to the request within 21 days and must provide a reason if the request is declined;
- your employer can only refuse a request if they have consulted with you and have reasonable grounds for refusing the request.

What you can do if a dispute arises between you and your employer in relation to casual conversion:

If you are covered by a modern award, enterprise agreement or a written contract of employment that contains a dispute resolution process for dealing with disputes, both you and your employer can follow that process to resolve the dispute. Often the dispute resolution process will require parties to attempt to resolve disputes at the workplace level before providing parties with an option to refer their dispute to the Fair Work Commission.

If you are **not** covered by an award or an enterprise agreement and there is **no** term in your written contract that provides a procedure for disputes regarding casual conversion, then under the *Fair Work Act 2009* parties can refer the dispute to the Fair Work Commission if discussions at the workplace level do not resolve the dispute. You can also seek a determination from the Federal Circuit Court about whether:

- you meet the requirements for your employer to make an offer of conversion to permanent employment;
- your employer has reasonable grounds to decline a request or not make for casual conversion;
- you meet the requirements to make a request to convert to permanent employment to your employer.

“Double Dipping”

If a court finds that your ‘casual’ employment is permanent employment, you will be entitled to any accrued entitlements which you would have received, had you not been misclassified as a casual employee.

However, employers will be able to offset clearly attributed casual loading against any amounts found to be owed to you. This ‘set-off’ provision is supposed to prevent employees from ‘double dipping’ on entitlements that they may already have been compensated for through the receipt of casual loading.

Casual Employment Information Statement

All employers must provide new casual employees with a 'Casual Employment Information Statement' when they start work. This statement can be found on the Fair Work Ombudsman website.

If you were already working as a casual worker before 27 March 2021, then your employer still has an obligation to provide you with this statement.

Termination of employment

As a casual employee, you are protected against unlawful adverse action by your employer as well as, in certain circumstances, unfair dismissal. If you are in any doubt about whether you are a casual employee or whether you have grounds for making a claim, it is important to ask for more information from JobWatch, your union or a lawyer. You must act urgently because there is a **time limit of 21 days** from the date of your dismissal to make an unfair dismissal or General Protections Dispute - Termination claim at the Fair Work Commission.

As an alternative to an unfair dismissal or a General Protections Dispute - Termination claim, consider whether your termination of employment was somehow discriminatory on the basis of one of the protected characteristics (eg, sex, race, disability, age etc) which might enable you to make a discrimination claim.

For more information about anti-discrimination laws, contact the Australian Human Rights Commission or the anti-discrimination body in your state - see contact numbers below. You have six months in the federal jurisdiction or 12 months in the state jurisdictions from the date the discrimination occurred to make a discrimination claim.

Where to get help

JobWatch

P: (03) 9662 1933 (Melb Metro), 1800 331 617 (Regional Vic, Qld, Tas)

W: jobwatch.org.au

Fair Work Infoline (Office of the Fair Work Ombudsman)	13 13 94
Fair Work Commission	1300 799 675
Victorian Equal Opportunity and Human Rights Commission (VEOHRC)	1300 292 153
Queensland Human Rights Commission	1300 130 670
Equal Opportunity Tasmania	1300 130 670
Australian Human Rights Commission	1300 656 419
ACTU Worker Information line (for referral to a union)	1300 362 223
Law Institute of Victoria's Legal Referral Service	03 9607 9311
Queensland Law Society (for referral to a lawyer)	1300 367 757
Law Society of Tasmania (for referral to a lawyer)	03 6234 4133

Note: If you work for a small business, you should have received the statement "as soon as possible" after 27 March 2021. For all other employers, they have until "as soon as possible" after 27 September 2021 to provide the statement to their casual employees.

For more information see JobWatch's 'Unfair Dismissal' and 'General Protections Dispute' infosheets.

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