

# ALERT

## **IMPORTANT DEVELOPMENT FOR EMPLOYERS WITH CASUAL EMPLOYEES**

The Fair Work Commission recently announced a number of changes to the modern award system which will affect the employment of casual employees. The most significant change announced by the Commission is that all modern awards should include provisions which will allow casual employees to elect to convert to full-time or part-time employment, subject to certain rules and restrictions. At present the majority of awards do not include such provisions. The Commission also announced a number of other changes to the casual employment provisions contained in particular awards, including but not limited to the *General Retail Industry Award 2010*.

### **Casual employment**

In its purest form, the concept of casual employment refers to the arrangement whereby an employee is engaged on an “as needed basis” without any set or guaranteed hours of work. It is the informality, uncertainty and irregularity of the engagement that gives it the characteristic of being casual. Since casual employees are not afforded certain financial benefits to which permanent full-time or part-time employees are entitled (including paid annual leave, paid personal/sick leave, public holidays and statutory redundancy pay), they must be paid a casual loading in addition to the ordinary rate of pay.

Interestingly, in its recent decision the Commission determined that the casual loading does not compensate casual employees for a number of other non-financial detriments which they may suffer as a result of the nature of their employment. This includes but is not limited to being more likely to attend work while sick, a greater inability to achieve a proper work and life balance, greater difficulty in obtaining loans from financial institutions, and diminished access to training and promotion opportunities. According to the Commission, a casual conversion clause will help safeguard casual employees against these types of potential detriments.

### **Casual conversion clause**

The Commission has developed a draft model casual conversion clause to be inserted into those modern awards which do not currently contain such a clause. Under the clause, a casual employee will only be eligible to elect to convert to full-time or part-time employment if the employee has over a period of 12 months worked a pattern of hours on an ongoing basis which, without significant adjustment, could continue to be performed in accordance with the full-time or part-time employment provisions of the relevant award. An employer may lawfully refuse a request from a casual employee to become a full-time or part-time employee on the following grounds:

- it would require a significant adjustment to the casual employee’s hours of work to accommodate them in full-time or part-time employment; or
- it is known or reasonably foreseeable that the casual employee’s position will cease to exist; or
- the employee’s hours of work will significantly change or be reduced within the next 12 months; or
- on other reasonable grounds based on facts which are known or reasonably foreseeable.

Importantly, employers will be required to provide all casual employees (whether they become eligible for conversion or not) with a copy of the casual conversion clause within the first 12 months after their initial engagement.

### **Other noteworthy changes**

In addition to the new casual conversion clause, the Fair Work Commission has announced a number of other changes to the modern award system in relation to casual employees. This includes that those modern awards which do not currently contain some form of minimum engagement period for casual employees should be varied to include a 2-hour minimum engagement period. Further, the *General Retail Industry Award 2010* will be amended to expand the right of casual employees to be paid overtime rates in specified circumstances.

### **Implications for employers**

The Commission is yet to announce a date for the introduction of the above changes. Nevertheless, it would be prudent for employers to review their existing arrangements with casual employees to ensure they are currently complying with any applicable award obligations and will be ready for the new changes. This is bearing in mind that some awards already contain casual conversion clauses. If an internal review suggests that some casual employees would more properly be described as full-time or part-time employees, employers may wish to be proactive and offer those employees permanent employment.

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