

Schools - danger zone!

New laws for casual employees in schools

Engaging casual employees in schools – how the rules have changed

On 22 March 2021 the Commonwealth Government passed legislation aimed to address uncertainty around the engagement of casual employees. This article discusses the new amendments and actions required to ensure that you are meeting your employment law obligations in relation to casual employees in schools.



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Definition for casual employees

There is a new definition of casual employment which provides that a person will be considered a casual employee if they are offered employment with “*no firm advance commitment to continuing and indefinite work according to an agreed pattern of work*”.

Factors that will be considered in determining whether there has been “*no firm advance commitment*” are whether the:

1. School can elect to offer work, and whether the employee can accept or reject the work offer;
2. Employee will only work as required;
3. Employment is described as casual employment; and
4. Employee is entitled to casual loading, or specific rate of pay for casual employees under the terms of the offer or an industrial instrument.

Importantly the assessment of whether the definition is met is to be made on the basis of the offer of employment not the subsequent conduct of either party during the course of the employment.

Existing casual relationships captured

Notably the definition will apply retrospectively to offers of casual employment that were given before the commencement of the amendments. This means that the definition will apply to all current casuals in schools.

Casual Loading Offset

Schools will now be able to use the casual loading to offset Relevant Entitlements, if it is found that the employee has been incorrectly classified as a casual employee.

Relevant Entitlements include:

1. Annual leave;
2. Personal/carer’s leave;
3. Compassionate leave;

A Strategic Partnership



4. Payment for absence on a public holiday;
5. Payment in lieu of notice on termination; and
6. Redundancy pay.

Again, this will apply retrospectively to offers of casual employment that were given before the commencement of the amendments.

Casual Conversion to Permanent Employment

Schools, must now offer casual employees conversion to part time or full time if:

1. The employee has been employed for at least 12 months;
2. In the last 6 months of employment, the employee has worked a regular pattern of hours on an ongoing basis;
3. This pattern of hours could continue on a permanent part time or full time basis without significant adjustment.

The conversion offer must be made in writing to the employee with 21 days of the 12 month anniversary. Employees then have 21 days to accept or reject the offer. A failure to respond will be considered to be a rejection of the offer. Within 21 days of acceptance by an employee, the school must give a written notice to the employee confirming the hours of work and the date of effect and hold discussions with the employee about the details of the offer.

Importantly, a school is not required to make a casual conversion offer if there are “*reasonable grounds*” for not doing so.

Reasonable grounds will include that in the following 12 months:

1. The employee’s position will cease or the hours will significantly reduce; or
2. There will be a significant change in the employees work days or hours of work and the employee cannot accommodate those changes.

Schools have until 27 September 2021 to assess casual employees who meet the eligibility requirements and either provide casual conversion offers or a notice of a reasonable ground exemption.

Casual Employee Right to Request Conversion to Permanent Employment

All casual employees have a right to request conversion to permanent employment if they satisfy the eligibility requirements referred to above and in the past 6 months:

1. They have not refused a school’s offer for conversion;
2. They have not received a reasonable business grounds exemption notice from the school;
3. The school has not refused a previous conversion request and;
4. The request is not made during the 21 days after the school’s offer of conversion.

A school must respond to the request by the employee within 21 days. Again a school may invoke a reasonable grounds exemption.



Significant Penalties for Breach

A breach of any of the provisions discussed above carries the possibility of substantial civil penalties. Notably these conversion rights will also be considered “a workplace right” for the purposes of the general protections provisions of the Fair Work Act.

Casual Employment Information Statement

Schools must provide casual employees with a casual employment information statement before or as soon as practicable after the commencement of the employment.

Action Required by Schools

1. By 27 September 2021 you must review employment arrangements for each casual employee in your school to ascertain whether they meet the eligibility requirements for the making of an offer of conversion of permanent employment.
2. Carefully review your employment arrangements of all casual employees in your school when they reach their 12 month anniversary of their employment to determine whether an offer of conversion to permanent employment should be made.
3. Review all casual employment contracts and templates used by your school to ensure that the casual loading is specifically identified and that the wording aligns with the recent amendments.
4. Ensure that all new casual employees in your school are provided with the Casual Employment Information Statement.

This is an important reminder for schools to be proactive and seek legal advice in relation to all current and future casual employment arrangements.

If you need assistance with your casual employee arrangements, please contact our workplace relations team on 08 8236 7688.



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