

Casual Employment Relationships

The status of your employment relationship is important as a **casual employee** may not be entitled to a range of entitlements (eg; paid annual leave, paid personal/carer's leave and paid public holiday entitlements under the National Employment Standards (NES)), certain employment protections (eg; protection from unfair dismissal) and notice of termination or redundancy pay.

How is a casual employee defined?

A person is a casual employee if they are employed as a result of accepting an employment offer 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 (s 15A(1) *Fair Work Act 2009* (Cth) ('FWA')).

The focus is on what was agreed at the time of entering into the employment contract, reflected in the terms of that contract and not the subsequent conduct of the parties.

What is a firm advance commitment to continuing and indefinite work?

A regular pattern of work hours is not sufficient. The relevant factors for no firm advance commitment are:

- a) your employer can choose to offer you work and it is your choice whether to work or not;
- b) you will be offered work when your employer needs you to work;
- c) your employment is described as casual;
- d) you will be paid a casual loading or a specific pay rate for casual employees.

You do not need to satisfy all these factors and no one factor is determinative. It is about weighing them up.

These factors are assessed on the basis of the offer of employment that you accept and not the subsequent conduct of you or your employer.

I work regular hours. Why is this casual?

The key issue is not the regularity of the hours you work, it is the basis of the advance commitment to work that matters. Even though your employer may regularly need you to work, under the employment contract they may not be obligated to provide you with this regular work. You may also have the right to choose not to work. The fact that you choose to work whenever requested by your employer, is not relevant. It is the existence or otherwise of a commitment from your employer to ongoing work that matters.

Why is the label of my employment as 'casual' important?

While your description as a 'casual' employee is not determinative, it does provide evidence that at the time of the offer of employment and the employment contract, you and your employer intended that the relationship was one of casual employment.

As a casual, do I have any employment protections?

Casuals are still entitled to rights such as a safe workplace, freedom from discrimination (eg; age, sex, disability) and unpaid parental leave. Where a person is a regular casual employee, their service may count toward the minimum employment period required for protection from unfair dismissal. A regular casual employee is still a casual but has a reasonable expectation (not a right or commitment to) of ongoing employment on a regular and systematic basis.

Can I convert from casual to permanent employment?

Under the NES, casual employees have the right to convert to permanent employment (full-time or part-time). In certain circumstances, an employer must offer you casual conversion or alternatively you may request casual conversion. Broadly, the requirements include that you have been employed for 12 or more months and you have worked a regular pattern of hours on an ongoing basis for at least the last 6 months and you could continue working that pattern of hours as a permanent employee without significant changes.

If you feel you are experiencing an issue relating to the casual employment factsheet, solicitors at Marrickville Legal Centre can help you assess your employment status and your entitlements and rights.

[Submit an enquiry online](#) or call us on 02 9559 2899.