



# 1 January 2019 is coming - Employers Casual Conversion Obligations

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## What is casual conversion

Casual conversion occurs when a casual employee, who meets certain criteria, may request a permanent position (either full time or part time) after a certain period of being employed in their casual position.

## Who does it affect?

Casual employees employed under a Modern Award and their employers. This includes casual employees employed by labour hire employers. From 1 October 2018 a model “conversion term” has been included in Modern Awards. If your casual employee is covered by one of the Modern Awards then the casual conversion clause will apply to that employee. Most employees are likely to be covered by a Modern Award.



The clause does not mean that employers must offer permanent employment to eligible casual employees; rather it has the result of giving eligible employees the right to request conversion to permanent employment.

Not all employees entitled to request casual conversion will do so however if they do then employers must comply with their obligations in respect of casual conversion.

## How does it work?

The casual conversion clause sets out the steps which must be taken by both employer and employee in respect of casual conversion however in summary:

- )] To request casual conversion:
  - o the employee must have worked for the employer for a period of 12 months or more (in most cases); and
  - o the employee must, over the preceding 12 month period, have worked a pattern of hours on an ongoing basis, which they could continue to perform as a full time or part time employee, without significant adjustment.
- )] Employees engaged for short periods and/or who work irregular shifts or hours will not meet the criteria to convert.
- )] The right to request conversion is a continually exercisable right while an employee has worked the relevant pattern of hours “in the preceding 12 month period”, which means if a casual employee’s hours become regular for the required period before the request then they have acquired the right to request conversion.
- )] A request for casual conversion by the employee to the employer must be in writing.
- )] Employers can reject a request, provided that there **has been consultation** with the employee **and** there are **reasonable grounds** to do so based on facts which are known or reasonably foreseeable (for example, where the casual employee’s position could cease or the hours could significantly change).
- )] An employer’s refusal must be put in writing with the reasons set out clearly.
- )] If the employee seeks to challenge the employer’s refusal, then this will be resolved through the dispute resolution provision of the Award.
- )] If a request is granted, it:
  - o must be **discussed and** recorded in writing; and
  - o will begin at the commencement of the next pay cycle.

### **What Do I have to do?**

If you are an employer and have casual employees covered by a Modern Award then:

- )] you must give all casual employees (not just regular casual employees) a copy of the conversion clause (which applies to their particular Award as there are some differences) **within the first 12 months of their first engagement**; and
- )] for casual employees already employed as at **1 October 2018**, employers must provide them with a copy of the conversion clause **by 1 January 2019**.

Failure of an employer to comply with the obligation to provide the conversion clause to their casual employees is a breach of the Fair Work Act.

Some of the Modern Awards with casual conversion clauses which have widespread coverage include:

- ) Banking, Finance and Insurance Award 2010
- ) Cleaning Services Award 2010
- ) Clerks – Private Sector Award 2010
- ) Fast Food Industry Award 2010
- ) General Retail Industry Award 2010
- ) Professional Employees Award 2010
- ) Restaurant Industry Award 2010
- ) Security Services Industry Award 2010
- ) Storage Services and Wholesale Award 2010

#### **How can JHK Legal help?**

JHK Legal can help by:

- ) advising you on the requisite conversion clause applicable to your casual employees
- ) reviewing your employment agreements to ensure they are compliant – and for new casual employees include the required casual conversion clause
- ) assisting you in reviewing any requests for casual conversion from employees and advising you on your obligations and rights as an employer
- ) preparing compliant documentation to record any causal conversion matters in accordance with the requirements of the Awards (there are slight differences in the obligations in some of the Awards) including preparing responses and conversion documentation
- ) assisting you generally with your employment matters