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LawTalk Blog



Casual employees win right to convert to permanent employment

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In a significant decision, as part of its ongoing regular review of modern awards, the Full Bench of the Fair Work Commission (“FWC”) has ruled that every modern award should provide the right to casual employees to request that their employment be “converted” to permanent (part-time or full-time) employment under certain conditions.

Currently some modern awards already contain such a right but the decision of the FWC means that this right will be available to many more workers.

To be entitled to claim this benefit a casual employee must:

- have been employed for at least 12 calendar months; and
- have worked a pattern of hours on an ongoing basis over that period which could continue to be worked on a permanent full-time or part-time basis without significant adjustments.
- Employers of casual employees covered by modern awards are required to advise all casual employees within twelve months of the commencement of their employment of their right to convert to permanent employment.

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The FWC agreed to do this because, in its view, the unrestricted use of casual employment could undermine the fairness and relevance of the modern award system and the [National Employment Standards](#), which are supposed to provide a “safety net” of entitlements to workers.

Although casual employees are paid a loading (usually at the rate of 25%) on their hourly rate of pay to compensate for the fact that they are not entitled to receive certain entitlements such as paid personal (sick) leave and paid annual leave, the FWC was of the view that the lack of security of ongoing casual employment was potentially detrimental to workers.

An employer can refuse to convert the employment to permanent part-time or full-time employment if:

- the conversion would require a significant adjustment to the hours of work; or
- it is reasonably foreseeable that the casual employees position will cease to exist; or
- the hours of work of the employee will significantly be changed or reduced within the next 12 months; or
- on other reasonable grounds which are based on facts which are known or reasonably foreseeable.

At this stage the Fair Work Commission’s decision is preliminary and the FWC has invited parties to make further submissions over coming weeks.

It is entirely possible that many casual employees will choose not to seek conversion to permanent employment after 12 months because, although permanency provides greater security of employment and benefits like paid personal (sick) and annual leave and a right to redundancy pay, in the short term, the take home pay of casual workers who convert to permanent employment will be reduced as the 25% casual loading will be removed from their pay.

If you have any questions about your employment entitlements, whether under a modern award, enterprise agreement, or individual contract, please contact Andersons’ Employment and Industrial Law team, led by Special Counsel [Margaret Kaukas](#).

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