

Important: New casual employees also need to be given the Fair Work Information Statement. Visit fairwork.gov.au/fwis
New employees on a fixed term contract also need to be given the Fixed Term Contract Information Statement. Visit fairwork.gov.au/ftcis

 For help in your language visit fairwork.gov.au/language-help

Summary

From 26 August 2024, there are changes to casual employment. These include:

- ▶ a new definition of 'casual employee'
- ▶ a new pathway for employees to request to change from casual to permanent (full-time or part-time) employment
- ▶ new requirements for providing the Casual Employment Information Statement (CEIS).

If your employment started before 26 August 2024 and you were correctly classified as a casual then you are still casual under the new definition. Go to our website for more information at fairwork.gov.au

Read this statement to find out more.

When should I get this statement?

The CEIS needs to be given to new casual employees before they start employment, or as soon as possible after. The CEIS also needs to be provided to all casual employees again after:

- ▶ 12 months of employment for casual employees of small businesses
- ▶ 6 months of employment, 12 months of employment, and every subsequent period of 12 months of employment for casual employees of non-small businesses.

Who is a casual employee?

You may be a casual if when you start employment:

- ✓ there is no firm advance commitment to ongoing work, taking into account a number of factors, including the real substance and true nature of the employment relationship; and
- ✓ you're entitled to a casual loading or specific casual pay rate under an award, registered agreement, or employment contract.

This requires consideration of the practical reality and true nature of the employment relationship, not just what is in the employment contract. You can also look at any additional mutual understandings or expectations about the relationship.

Employees who start as a casual will stay casual until their employment status changes either through:

- ▶ changing to permanent employment under a pathway in the National Employment Standards (NES), a Fair Work instrument such as an award or enterprise agreement, or a Fair Work Commission order, or
- ▶ accepting an alternative employment offer and starting work on that basis.

Not sure if you're covered by an award or agreement?

Some awards and agreements have additional entitlements for casual employees.

Visit fairwork.gov.au/awards
and fairwork.gov.au/agreements

What is a 'firm advance commitment'?

To work out if there is a firm advance commitment to ongoing work, you'll need to consider if:

- ▶ your employer can offer or not offer work to you (and whether this is happening)
- ▶ you can accept or reject work (and whether this is happening)
- ▶ it's reasonably likely there will be future work available of the kind that you usually perform in the employer's business, based on the nature of the business
- ▶ you have a regular pattern of work
- ▶ there are full-time or part-time employees performing the same kind of work in the employer's business that you usually do.

There may also be other relevant factors. Not all factors need to be satisfied and there is no single deciding factor that determines whether you are casual or not. The practical reality and true nature of the employment relationship needs to be considered.

Example of no firm advance commitment

Priya starts a new role as a shop assistant. The shop owner has hired Priya to work during the Christmas period, when the shop is busier than normal, and they need extra staff.

Priya is offered shifts a week in advance and the shifts vary week-to-week based on how busy the store is. Priya can decide whether or not she wants to work the shifts, and her pay rate includes a casual loading. Towards the end of the Christmas period, business starts slowing down and Priya receives fewer shifts.

Priya is a casual employee because:

- ▶ there's no firm advance commitment to ongoing work
- ▶ she receives a casual pay rate.



How can I change from casual to permanent?

Eligible casual employees have the right to notify their employers in writing to change to permanent employment under the employee choice pathway in the NES. An employer can only not accept the notification on particular grounds.

You're entitled to notify your employer if:

- ▶ you've been employed for at least **6 months** (or 12 months if you work for a small business)
- ▶ you believe you're no longer meeting the definition of a casual employee
- ▶ you're not currently engaged in a dispute with your employer about changing to permanent employment under this pathway
- ▶ during the **last 6 months**:
 - > you haven't resolved a dispute with your employer about the pathway
 - > your employer hasn't refused a previous notification under this pathway.

i Note: Sometimes casual employees work a regular pattern of hours. This doesn't mean they're permanent.

What you need to do

If you're eligible and want to notify your employer to change to permanent, make the request in writing.

What your employer needs to do

If they're accepting the change, they must respond in writing within 21 days of receiving your notification. They must also consult with you about the following matters, which have to be included in the response:

- ▶ what your new employment status will be (for example, full-time or part-time)
- ▶ your new hours of work
- ▶ when the change will take effect (which must be the first day of your first full pay period that starts after the response, unless you and your employer agree to another day).

If they're not accepting the change, they need to consult with you and tell you the reasons why in writing within 21 days of receiving your notification.

An employer can only not accept a notification to change to permanent if any of the following apply:

- ▶ the employee still meets the definition of a casual employee
- ▶ accepting the change means the employer isn't complying with a recruitment or selection process required by law
- ▶ there are fair and reasonable operational grounds for not accepting it, such as:
 - > substantial changes to the way that work within the business is organised would be required
 - > there would be significant impacts on the operation of the employer's business
 - > substantial changes to employment conditions would be reasonably necessary to ensure the employer doesn't break rules (such as in an **award** or **agreement**) that would apply to the employee.

⚠ Important

Under the NES, all notifications and responses about an employee's choice to change to permanent employment must be **in writing**. 'In writing' can include handwritten, printed, and electronic formats.



More information

For more information about casual employment, an employee's choice about casual employment, and casual conversion prior to 26 August 2024, go to fairwork.gov.au/casual and fairwork.gov.au/employeechoice

What if my employer disagrees with me about changing to permanent?

If you and your employer disagree about changing to permanent employment, including the rules and requirements for changing from casual to permanent employment, there are steps you can take to resolve it.

- ✔ **Step 1:** In the first instance, you and your employer must try to resolve the dispute by discussions at the workplace level. You can use our free online courses linked below to help you do this. If you're covered by an **award or enterprise agreement**, you can also follow the process that it sets out for dealing with disputes about the NES.
- ✔ **Step 2:** If discussions at the workplace level don't resolve the dispute, either you or your employer can refer the dispute to the Fair Work Commission (the Commission). The Commission may deal with the dispute as it considers appropriate. This can include by mediation, conciliation, or by other informal ways.
- ✔ **Step 3:** If the dispute still isn't resolved, the Commission is able to arbitrate the dispute. This is a formal process and can result in a legally binding decision (for example, at a hearing). During arbitration, the Commission can also make orders relating to an employee's choice about casual employment including that the employee continues to be treated as a casual employee or that the employee be treated as a permanent employee.

Depending on your circumstances, you may be able to have someone to support or represent you through the dispute process. This could include a union entitled to represent you.



Get help with conversations in the workplace

Find free online courses to help you have conversations at work, including about notifying your employer of your intention to change to permanent at fairwork.gov.au/learning

Can my employer avoid following the rules?

Your employer can't do certain things to avoid their obligations or your right to change from casual to permanent employment, such as reducing or varying your hours of work, changing your pattern of work, or terminating your employment. These are called the anti-avoidance protections.

If your employer does any of these things, it may also be adverse action. You are protected against your employer taking adverse action against you because you have or exercised a workplace right (which includes notifying your employer to change from casual to permanent employment). If unlawful adverse action is found to have occurred, civil penalties could apply. For more information, visit fairwork.gov.au/protections.



Who can help?

Fair Work Ombudsman

- ▶ provides information and advice about your employment type (casual or permanent)
- ▶ provides information and advice about rights, pay and entitlements of casual employees, including entitlements to change to permanent employment
- ▶ has free calculators, templates and online courses
- ▶ helps fix workplace problems
- ▶ enforces workplace laws and seeks penalties for breaches of workplace laws.

Visit fairwork.gov.au or call 13 13 94.

Fair Work Commission

- ▶ deals with disputes about changes from casual to permanent employment under the NES where you're not able to resolve them directly with your employer
- ▶ can deal with your dispute through mediation, conciliation, making a recommendation or expressing an opinion
- ▶ if the dispute is not resolved or there are exceptional circumstances, can deal with your dispute through arbitration resulting in making a binding decision.

Visit fwc.gov.au or call 1300 799 675.