

# Permanent or casual employee: which one are you?

## employment law factsheet

This factsheet applies to employees who work in the private sector in Australia or the Australian government. It does not apply to public sector employees who are employed by a state or territory government.

## WHAT IS A PERMANENT EMPLOYEE?

A permanent employee is an employee engaged on an ongoing basis. Permanent employees may be full time or part time. Continuity of employment, regular work and access to accrued entitlements are the main advantages of permanent employment.

### What is a permanent full-time employee?

A permanent full-time employee is someone who generally works around 38 ordinary hours per week on an ongoing basis, however, the hours can vary. An applicable modern award, enterprise agreement or employment contract will say how many hours per week an employee must work to be considered full time. It may also allow for an employee's weekly hours of work to be averaged over a certain period of time.

An employer must not request a full-time employee to work more than 38 hours per week, unless the additional hours are reasonable. Employees may refuse to work unreasonable additional hours.

### What is a permanent part-time employee?

A permanent part-time employee is someone who works regular and ongoing hours, but fewer hours per week than someone working full time. An employer must not request a part-time employee to work more than their ordinary hours per week, unless the additional hours are reasonable. Employees may refuse to work unreasonable additional hours.

### What entitlements do permanent employees have?

Permanent employees have various minimum entitlements under the National Employment Standards (NES) including leave, public holidays, notice of termination and redundancy pay.

#### Leave

Full time employees are entitled to accrue leave entitlements in accordance with their modern award or enterprise agreement, including at least four weeks of annual leave and ten days of personal leave per year. Part-time employees have access to the same entitlements accrued on a pro-rata basis according to the hours worked. Permanent employees are also entitled to paid compassionate leave, unpaid community service leave and parental leave.

#### Public holidays

Permanent employees are entitled to be absent on a public holiday and still receive their ordinary pay for that day. Employers can request a permanent employee to work on a public holiday where the request is reasonable. An employee may refuse their employer's request to work on a public holiday if the request to work is unreasonable or the employee's refusal is reasonable, having regard to the nature of the workplace, the employee's personal and family circumstances, whether the request to work was reasonably expected, the amount of notice given of the request/refusal and the entitlement to receive additional compensation for working on the public holiday (i.e. overtime or penalty rates).

#### Notice of termination

Where an employer terminates a permanent employee's employment, the employer must provide the employee with notice of termination, or pay them in lieu, according to their length of service or the notice required under the employment contract.

A permanent employee may also be required under their employment contract or industrial instrument to give their employer notice when they resign from their employment.

### **Redundancy pay**

If a permanent employee is made redundant, they may also be entitled to be paid redundancy pay by their employer.

## WHAT IS A CASUAL EMPLOYEE?

Casual employees are employed on the basis that they have no guarantee of ongoing work.

You will be a casual employee if your employment contract offers you employment on the following basis:

- The employment is described as 'casual employment'.
- The employer can choose to offer you work whenever it is needed and you can choose to accept or reject that work.
- You will be required to work in accordance with the needs of the employer's business.
- You will be entitled to a casual loading or a specific casual rate of pay for your hours worked.

### What entitlements do casual employees have?

Casual employees have different entitlements to permanent employees.

#### **Pay rate**

Casual employees are entitled to receive casual loading in addition to the minimum rate of pay. This could be paid by a separate loading or a higher rate of pay inclusive of the casual loading. The rate of casual loading is usually determined in accordance with the applicable modern award or enterprise agreement, or, if neither apply to the employment relationship, must be a minimum of 25% of the national minimum wage. The payment of a casual loading is to compensate a casual employee for not having an entitlement to paid annual leave, paid personal/carer's leave, paid compassionate leave, payment for absence on a public holiday, notice of termination and redundancy pay.

While casual employees do not have an expectation of ongoing work, some modern awards and enterprise agreements provide for a 'minimum engagement' per shift (e.g. three hours). This means a casual employee is entitled to be paid for this minimum number of hours if they are required to work a shift of a shorter duration (e.g. two hours).

#### **Leave**

Casual employees are not entitled to paid annual leave, personal/carer's leave or compassionate leave.

Unpaid carer's leave is available to casual employees. Casual employees can take up to two days of unpaid carer's leave for each occasion an immediate family or household member needs care or support because of illness, injury or an unexpected emergency. Casual employees are entitled to up to two days unpaid compassionate leave, also known as bereavement leave, each time an immediate family or household member passes away or sustains a life-threatening illness or injury.

A casual employee is entitled to take unpaid carer's leave or compassionate leave in a single continuous period of two days or in separate periods of one day each as agreed between the employer and employee.

Casual employees may be entitled to a reasonable period of unpaid leave to partake in a voluntary emergency management activity.

#### **Long-service leave**

Casual employees may be entitled to long-service leave, with their service as a casual counting towards the calculation of long-service leave unless the continuity of service with a particular employer was 'broken' at some point. Continuous service will only be broken if there was a continuous period of at least three months where the casual employee did not work for the particular employer. More information on casual long-service leave entitlements is provided in our [Long-service Leave factsheet](#).

#### **Parental leave**

A casual employee is entitled to parental leave if they:

- are a regular casual employee who has been employed for at least 12 months
- but for the birth or adoption, they would have a reasonable expectation of continuing employment with the employer on a regular and systematic basis.

Under the NES, casual employees who meet these criteria will be entitled to take a period of unpaid parental leave in the same way as permanent employees.

#### **Requests for flexible working arrangements**

Under the NES, a casual employee can ask their employer for flexible work arrangements such as varying work hours or working from home if they:

- are a regular casual employee who has been employed for at least 12 months
- have a reasonable expectation of continuing employment with the employer on a regular and systematic basis.

In addition, a casual employee can only request flexible work arrangements if they:

- care for a child of school age or younger
- are a carer under the [Carer Recognition Act 2010 \[Cth\]](#)
- have a disability
- are 55 years or older
- are experiencing family or domestic violence
- provide care or support to an immediate family or household member who is experiencing family violence.

An employer can only refuse a request for flexible work arrangements if the refusal is on reasonable business grounds and given in writing.

### **Notice of termination**

Casual employees are generally employed on the basis that their employment terminates at the end of each shift or block of shifts they have been offered. Casual employees have no entitlement to ongoing work past each discrete engagement and, unless required by an enterprise agreement, modern award or employment contract, do not need to be provided with notice of the termination of their employment.

### **Redundancy**

Casual employees are offered work in accordance with the needs of the employer's business and, if there is no longer a need, will not be offered any further work. A casual employee is not entitled to redundancy pay if the employer no longer requires anyone to perform the job the casual employee was engaged to do.

## **Casual conversion**

Casual employees who work on a regular basis may have the opportunity to convert to permanent employment if they wish to do so.

Employers are required to offer their casual employees to convert to permanent employment where they have completed 12 months of employment and, during at least the last six months of employment, have worked a regular pattern of hours on an ongoing basis that they could continue to work as a full-time or part-time employee. Employers do not have to make an offer to a

casual employee if there are reasonable grounds not to convert their employment to permanent.

An employer's offer for an employee to convert to permanent employment must be made within 21 days of the employee's 12-month anniversary of employment. The employee must then respond within 21 days of receiving the offer to convert, or they will be taken to have declined. If the employer fails to make the offer to the employee within 21 days of the employee's 12-month anniversary and has not advised they have reasonable grounds not to make an offer, the employee can write to the employer requesting to convert to permanent employment.

Some modern awards and enterprise agreements contain a casual conversion clause that entitles a casual employee to request to be converted to permanent part-time or full-time employment after a period of less than 12 months employment, in which case, the employee and employer must follow the requirements of the award or agreement to request conversion.

If an employee and employer agree for the employee to convert to permanent employment, the employee must be issued a new employment contract that states if they are a full-time or part-time employee and their new conditions of employment.

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