

Introduction of Casual Conversion – Eligible casual employees have the right to request to convert to permanent employment.

As a result of the recent Fair Work Commission Casual Employment Decision, changes to 85 Modern Awards, including the Fitness Industry Award, now provide eligible casual employees an opportunity to request to convert to permanent full-time or part-time employment.

What will occur?

Employers have an obligation to provide **all existing casual employees** with a copy of the new Modern Award provision on casual conversion (provided below) by no later than **1 January 2019**.

All **new casual employees** are required to be given a copy of the clause **within the first 12 months** of their employment.

We recommend employers keep a record of how and when each employee is notified of the conversion clause (for example, via email) so that they have evidence of compliance with the notification obligation.

Who is eligible?

This decision impacts **casual employees** covered by the 85 Modern Awards, including the Fitness Industry Award. It does not apply to those who provide their services as independent contractors.

Not all casual employees will be eligible to convert to full-time or part-time employment.

First, a casual employee must be engaged on a 'regular' basis. Regular casual employees would have worked a pattern of hours over the last twelve months which, without any major adjustments, could continue to be performed as a full-time or part-time employee under the Award. This 12 month period will need to be unbroken for a casual employee to be eligible to make this request.

In addition, any request to convert must be put in writing by the employee with the requested alteration reflecting their current pattern of work. For example, if an employee works 15 hours per week on a casual basis and has done so for 12 months, they would be eligible to request to convert their employment to permanent part-time.

Dealing with a request.

If a request has been received an employer is required to consider the request and can only refuse it on 'reasonable business grounds'. Reasonable business grounds need to be based on facts which are known and/or reasonably foreseeable. This can include:

- it would require a significant adjustment to hours of work;
- it is known or reasonably foreseeable that the regular casual employee's position will cease to exist within the next 12 months;
- it is known or reasonably foreseeable that the hours of work which the regular casual employee is required to perform will be significantly reduced in the next 12 months; or
- it is known or reasonably foreseeable that there will be a significant change in the days and/or times at which the employee's hours of work are required to be performed in the next 12 months

which cannot be accommodated within the days and/or hours during which the employee is available to work.

Where an employer refuses a request they must provide a written response to the employee within 21 days outlining the reasons for the decision being made.

It is recommended that records are kept for any requests for conversion, including any responses or correspondence given during the process. If a casual employee does convert to permanent employment employers should implement a new part-time or full-time employment contract for the employee to recognise the new employment relationship.

Who isn't affected?

For employers and employees covered by Enterprise Agreements this change has not affected you. For all other fitness establishments who operate under the Fitness Industry Award, the change will have a direct impact you.

If you have any questions about this change please contact Fitness Australia's HR Hotline on 1300 211 311.



Copy of the Fitness Industry Award Casual Conversion Clause

13.6 Right to request casual conversion

(a) A person engaged by a particular employer as a regular casual employee may request that their employment be converted to full-time or part-time employment.

(b) A regular casual employee is a casual employee who has in the preceding period of 12 months worked a pattern of hours on an ongoing basis which, without significant adjustment, the employee could continue to perform as a full-time employee or part-time employee under the provisions of this award.

(c) A regular casual employee who has worked equivalent full-time hours over the preceding period of 12 months' casual employment may request to have their employment converted to full-time employment.

(d) A regular casual employee who has worked less than equivalent full-time hours over the preceding period of 12 months' casual employment may request to have their employment converted to part-time employment consistent with the pattern of hours previously worked.

(e) Any request under this subclause must be in writing and provided to the employer.

(f) Where a regular casual employee seeks to convert to full-time or part-time employment, the employer may agree to or refuse the request, but the request may only be refused on reasonable grounds and after there has been consultation with the employee.

(g) Reasonable grounds for refusal include that:

(i) it would require a significant adjustment to the casual employee's hours of work in order for the employee to be engaged as a full-time or part-time employee in accordance with the provisions of this award – that is, the casual employee is not truly a regular casual employee as defined in paragraph (b);

(ii) it is known or reasonably foreseeable that the regular casual employee's position will cease to exist within the next 12 months;

(iii) it is known or reasonably foreseeable that the hours of work which the regular casual employee is required to perform will be significantly reduced in the next 12 months; or

(iv) it is known or reasonably foreseeable that there will be a significant change in the days and/or times at which the employee's hours of work are required to be performed in the next 12 months which cannot be accommodated within the days and/or hours during which the employee is available to work.

(h) For any ground of refusal to be reasonable, it must be based on facts which are known or reasonably foreseeable.

(i) Where the employer refuses a regular casual employee's request to convert, the employer must provide the casual employee with the employer's reasons for refusal in writing within 21

days of the request being made. If the employee does not accept the employer's refusal, this will constitute a dispute that will be dealt with under the dispute resolution procedure in clause 9. Under that procedure, the employee or the employer may refer the matter to the Fair Work Commission if the dispute cannot be resolved at the workplace level.

(j) Where it is agreed that a casual employee will have their employment converted to full-time or part-time employment as provided for in this clause, the employer and employee must discuss and record in writing:

(i) the form of employment to which the employee will convert – that is, full-time or part-time employment; and

(ii) if it is agreed that the employee will become a part-time employee, the matters referred to in clause 12.2.

(k) The conversion will take effect from the start of the next pay cycle following such agreement being reached unless otherwise agreed.

(l) Once a casual employee has converted to full-time or part-time employment, the employee may only revert to casual employment with the written agreement of the employer.

(m) A casual employee must not be engaged and re-engaged (which includes a refusal to re-engage), or have their hours reduced or varied, in order to avoid any right or obligation under this clause.

(n) Nothing in this clause obliges a regular casual employee to convert to full-time or part-time employment, nor permits an employer to require a regular casual employee to so convert.

(o) Nothing in this clause requires an employer to increase the hours of a regular casual employee seeking conversion to full-time or part-time employment.

(p) An employer must provide a casual employee, whether a regular casual employee or not, with a copy of the provisions of this subclause within the first 12 months of the employee's first engagement to perform work. In respect of casual employees already employed as at 1 October 2018, an employer must provide such employees with a copy of the provisions of this subclause by 1 January 2019.

(q) A casual employee's right to request to convert is not affected if the employer fails to comply with the notice requirements in paragraph (p).