
CIRCULAR: GEN/070/NAT/070/18
DATE: Monday 1 October 2018
SUBJECT: Modern Award Updates
ATTENTION: Chief Executive Officer

The Fair Work Commission have produced several award updates as part of the 4 yearly review of Modern Awards. The updates include amendments to minimum engagement provisions for casual and part-time employees, rostering arrangements and most significantly, the insertion of the casual conversion model term in many Modern Awards. These determinations come into operation from today, Monday 1 October 2018.

A list of all Modern Award draft determinations can be viewed here:

https://www.fwc.gov.au/documents/sites/awardsmodernfouryr/am2014196-197-schedule-determinations-210918.pdf?utm_medium=email

Casual Conversion Model Clause

The draft determinations insert a casual conversion clause into 84 Modern Awards.

The model clause stipulates that, a regular casual employee, has the right to request that their employment be converted to full-time or part-time. Under the model clause, a regular casual employee, is a casual employee who, during the prior 12 months, has worked a pattern of hours on an ongoing basis, which they could continue to perform as a full-time or part-time employee, without any significant adjustments. An employee must provide the request in writing and the employer can only refuse the request on reasonable grounds, after consultation with the employee. A reasonable refusal must be based on known, or reasonably foreseeable facts, which could include matters such as:

- engaging the casual employee as full-time or part-time would require a significant adjustment to their hours of work;
- it is known or reasonably foreseeable that the casual employee's position will no longer exist within the next 12 months;
- it is known or reasonably foreseeable that the hours worked by the casual employee will be significantly reduced within the next 12 months; and
- it is known or reasonably foreseeable that there will be a significant change in the casual employee's days or hours of work within the next 12 months and they are unable to be accommodated within the employee's availability to work.

If refusing a request an employer must, within 21 days of the request being made, respond in writing and outline the reasons for refusal. If this explanation is refused by the employee, a dispute may arise and the employee may follow the formal dispute resolution procedure. If the request is accepted, it is applicable from the beginning of the next pay cycle, unless agreed otherwise. The acceptance must be recorded in writing, making note of whether the conversion is to full or part-time employment.

Further, employers will be required to provide casual employees, employed as at 1 October 2018, a copy of this clause by 1 January 2019. For casual employees, employed after 1 October 2018, employers must provide them with a copy of this clause within their first 12 months of employment.

Finally, employers must not engage and re-engage casual employees, or reduce or vary their hours, in an attempt to evade the application of this clause.

The Model Casual Conversion Clause in **Appendix 1**.

In relation to the Modern Awards serviced by SIAG, links to the draft determinations for casual conversion for relevant Modern Awards, can be accessed at **Appendix 2**.

Minimum Engagement Provisions for Casual and Part-Time Employees

For Modern Awards that did not previously contain such a provision, the draft determinations vary the minimum engagement period for casual employees to 2-hours. This includes the *Banking, Finance and Insurance Award 2010*, *Medical Practitioners Award 2010* and *Miscellaneous Award 2010*.

Rostering Arrangements

In both the *Aged Care Award 2010* and the *Social, Community, Home Care and Disability Services Industry Award 2010*, there will be an update to allow rostering arrangements and changes to 'be communicated by telephone, direct contact, mail, email, facsimile or any electronic means of communication'.

If you have any questions or if you require further information, please contact the SIAG National Advisory Service on 03 9644 1400 or 1300 (SIAG HR) / 1300 742 447.



Brian Cook
Managing Director

Disclaimer:

By agreeing to use this summary of information, the user agrees that siag does not give any guarantee, undertaking or warranty whatsoever in relation to the summary, including in relation to the accuracy, completeness or currency of the summary; and to indemnify and hold harmless siag from and against any loss or liability suffered by a user or a third party, arising out of the provision of the information, howsoever caused, including due to negligence of siag.

APPENDIX 1

Model Casual Conversion Clause

XX 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 X. 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 X.

(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 clause XX(p).

APPENDIX 2

Links to Draft Determinations

- *Aged Care Award 2010:*
<https://www.fwc.gov.au/documents/awardsandorders/html/pr700532.htm>
- *Amusement, Events and Recreation Award 2010:*
<https://www.fwc.gov.au/documents/awardsandorders/html/pr700541.htm>
- *Banking, Finance and Insurance Award 2010:*
<https://www.fwc.gov.au/documents/awardsandorders/html/pr700545.htm>
- *Clerks Private Sector Award 2010:*
<https://www.fwc.gov.au/documents/awardsandorders/html/pr700553.htm>
- *Dry Cleaning and Laundry Industry Award 2010:*
<https://www.fwc.gov.au/documents/awardsandorders/html/pr700560.htm>
- *General Retail Industry Award 2010:*
<https://www.fwc.gov.au/documents/awardsandorders/html/pr700568.htm>
- *Health Professionals and Support Services Award 2010:*
<https://www.fwc.gov.au/documents/awardsandorders/html/pr700571.htm>
- *Medical Practitioners Award 2010:*
<https://www.fwc.gov.au/documents/awardsandorders/html/pr700586.htm>
- *Miscellaneous Award 2010:*
<https://www.fwc.gov.au/documents/awardsandorders/html/pr700588.htm>
- *Nurses Award 2010:*
<https://www.fwc.gov.au/documents/awardsandorders/html/pr700591.htm>
- *Real Estate Industry Award 2010:*
<https://www.fwc.gov.au/documents/awardsandorders/html/pr700606.htm>
- *Social, Community, Home Care and Disability Services Industry Award 2010:*
<https://www.fwc.gov.au/documents/awardsandorders/html/pr700613.htm>