

# Casual or not Casual, this is the question....

The recent federal court decision and media headlines such as “casual workers win leave entitlements” have inevitably caused concerns among employers of casual workers.

While the case impacts the manner in which casual employees are engaged and paid, and employers should re-assess their current arrangements, this decision does not automatically mean that all casual employees are eligible for paid leave.

The core of this decision is the nature of the employment relationship. In this case, the court determined that the employment was ‘other than casual’ due to the full time, ongoing and ‘rostered in advance’ nature of the employment arrangement. As a result the employee was inaccurately defined as a casual employee and entitled to paid leave in the same manner as a full time ongoing employee.

The Fair Work Ombudsman has indicated they will review the decision to determine if any changes to the characteristics of casual employment have changed as a result. This is likely to focus on long term casual arrangements and indicates increased attention on perceived ‘sham’ casual arrangements.

In the meantime consider;

## Reassessing your casual employment arrangements and contracts of employment

A casual employee has no guaranteed hours of work, usually works irregular hours and can end employment without notice, unless notice is required by a registered agreement, award or employment contract.

Employers of casuals should urgently review the substance of the work being performed to determine if the relationship may have become ‘other than casual’ - meaning continuing, constant and predictable.

There are several criteria to determine if the substance of the work is casual rather than ongoing;

- The contract specifies that the employer can choose whether to offer employment on a particular day, time or shift and the employee is able to decline this.
- The contract describes the employment relationship as casual and contains clauses relating to payment of a casual loading. Note that this loading may not be set-off against leave entitlements if the employment is in fact ‘other than casual’.
- Work patterns are unpredictable in that work is ‘on demand’ rather than set up front or pre-determined;
- There is no firm advance commitment of continuing and indefinite work;

## Staying informed

The Fair work website is a good resource to stay in touch with developments on this issue.

<https://www.fairwork.gov.au/employee-entitlements/types-of-employees/casual-part-time-and-full-time/casual-employees>

You can also register your interest in receiving regular updates by contacting us and requesting a newsletter.

## Seeking Help

Employment arrangements can be complex, contact us if you would like assistance.



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