

Casual chaos



A recent decision and change to the rules around casual employment has caused outrage, shaken things up, and left employers with a lot to digest.

Here's your summary.

Casual conversion is here

A little over a year ago, we told you about the Fair Work Commission proposal to include a casual conversion clause into modern awards (see [here](#)), allowing casuals with 12 months' service and who are working regular casual shifts to request they convert to part-time or full-time employment. Well it's here. From 1 October nearly all modern awards adopted the model casual conversion clause.

As set out in our previous update, employers can refuse the conversion request on reasonable grounds.

Employers are also required to provide modern award covered casuals a copy of the conversion clause within their first 12 months of employment or, for casuals already employed, by 1 January 2019. Time's ticking.

Double-dip outrage

There's been a well-recognised understanding that many casuals are engaged on a regular and systematic basis even though this doesn't align with the true definition of casual employment (hence the need for the casual conversion clause). This has blurred the line between casual and permanent employment.

However, when it came to risks associated with mischaracterising the type of employment, employers were comforted with the idea that casuals are paid a casual loading that compensates for annual leave and other foregone permanent employment entitlements. If a casual employee challenged the nature of their engagement, the employer would argue that any back-pay related to unpaid permanent employment entitlements would amount to "double-dipping". In other words, a casual can't get the benefit of both the loading and permanent employment entitlements. The argument had some success. Until now.

The recent Federal Court decision *WorkPac Pty Ltd v Skene* has brought us back to traditional views on casual employment. If it's regular and systematic, it risks being "deemed" permanent, opening the door for the employee to seek back-pay for unpaid permanent employment entitlements. What about double-dipping? Doesn't matter. The Court found that it's up to employers to get the type of employment right or otherwise face the consequences.

The decision has led to widespread panic. Employers are exclaiming it will result in multimillion, or even billion, dollar back-pay claims, a complaint that's not without substance with one law firm confirming a \$325 million class action. IR Minister Kelly O'Dwyer is taking legal advice on the decision and business groups are lobbying for legislative change including the introduction of a new type of "Perma-Flexi" employment.

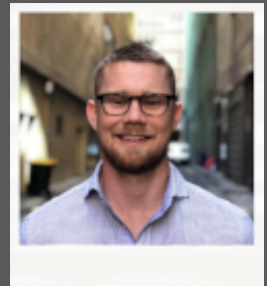
While this certainly won't be the last we'll hear about the matter, until this mess is sorted, it's time to review and confirm your casuals are in fact casual.

Questions? Give us a call.



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