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Parliament set to follow Fair Work Commission's casual conversion lead

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18 Mar 2019

Published by: Libby Pallot, Anthony Massaro, Ben Talboys, Abbey Burns and Caitlin Walsh.

The Federal Government is proposing to amend the *Fair Work Act 2009* to ensure that all casual employees have a right to request to convert to full-time or part-time employment.

Parliament is currently considering the *Fair Work Amendment (Right to Casual Conversion) Bill 2019* following the Fair Work Commission's decision to insert a model casual conversion clause into 85 modern awards, taking effect from 1 October last year.

The casual conversion right in the Bill essentially mirrors the right in the Commission's model casual conversion clause. In addition, it will require all enterprise agreements to contain a conversion clause.

Which employees will be able to access this right?

If the Bill is passed, the casual conversion right will be inserted into the National Employment Standards. All Australian casual employees captured under the Fair Work system will have access to this right if they are not covered by:

- an award with a casual conversion clause; or
- an enterprise agreement with a casual conversion clause that is the same as, or better than, the right in the award covering the employee (if any) or otherwise the Bill.

Under the proposed system, a casual employee will be eligible to make a written request for conversion when they have worked a regular pattern of hours over a 12-month period.

Employees will be under no obligation to make a request for conversion at any stage, and an employer will not be able to require a casual employee to convert to full-time or part-time employment.

How will the new right affect employers?

Importantly, unlike the model clause in some awards, employers are not required to notify their employees of this right to convert. However, if the Bill passes, the right will be contained in the Fair Work Information

People that can help

Libby Pallot
Principal
+61 3 9609 1668
lpallot@rk.com.au

Libby is the head of Russell Kennedy's Workp Relations, Employment and Safety practice a

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Bill passes, the right will be contained in the Fair Work Information Statement that employers are required to give all new employees.

The Bill provides that an employer will only be able to deny a request for conversion made by an eligible employee on reasonable grounds that are known or foreseeable, after consultation with the employee.

The Bill includes the following as examples of an employer's reasonable grounds for refusing a conversion request:

- The employer would need to significantly adjust the employee's hours to meet the request.
- The employee's position will cease to exist within 12 months of making the request.
- The employee's work hours will significantly reduce within 12 months of making the request.
- There will be a significant change to the days or times the employee is required to work within 12 months of making the request, which cannot be accommodated within the days or times of the employee's availability during that period.
- Granting a request would not comply with a recruitment or selection process required by Federal, State or Territory law.

Once an employee makes a conversion request, the employer must make a decision and inform the employee within 21 days. Where a request is refused, this written notice must include the reasons for the refusal.

The Bill also provides that enterprise agreements will need to include casual conversion terms. If an enterprise agreement does not include such a term, one will be read into the agreement.

Where an employee exercises their right to conversion, they can later revert back to casual employment, but only with the written agreement of their employer.

The Bill's second reading was moved in the House of Representatives on 13 February 2019. On 14 February, the Senate referred the proposed provisions to the Education and Employment Legislation Committee for inquiry and report by 26 March 2019. At this stage, it is unclear when the Bill will pass into law.

If you have any questions or concerns regarding the proposed casual conversion right and how this may affect your business, please contact the Workplace Relations, Employment and Safety Team.

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