

Fact Sheet – Permanent or casual employee: which one are you?

1. What is a permanent employee?

A permanent employee is an employee engaged on a permanent basis and may be “full-time” or “part-time”. Continuity of employment and access to entitlements are the main advantages of permanent employment.

1.1 What is a permanent full-time employee?

A permanent full-time employee is someone who works the “ordinary hours” for the occupation defined by the award or agreement covering the work. Ordinary hours usually means regular and ongoing work for at least 38 hours per week.

1.2 What is a permanent part-time employee?

A permanent part-time employee is someone who works regular and ongoing hours, but fewer hours a week than someone working full-time. Part-time employees have access to the same entitlements as a full time permanent employee, but on a pro-rata basis according to the hours worked. For example, an employee who works 19 hours per week accrues half the entitlements of a 38 hour per week full-time employee.

1.3 What entitlements do permanent employees have?

The National Employment Standards (**NES**) provide a safety net of minimum entitlements to permanent employees covered by the *Fair Work Act 2009* (**FW Act**).

(a) Payment

Minimum rates of pay are primarily guaranteed in “modern awards”, formerly released by the Australian Industrial Relations Commission (**AIRC**) and now released, and reviewed annually, by the Fair Work Commission (**FWC**).

The applicable modern award depends on an employee's categorisation of employment. The FW Act sets out the requirements for the content of modern awards.

The current national system adult minimum wage is \$18.93 per hour for permanent employees. The state adult minimum wage for permanent employees is \$19.13 per hour.

(b) Maximum ordinary hours of work

The NES provide that a permanent employee must not be required or requested by an employer to work more than:

- 38 hours per week; or
- an average of 38 hours per week over an averaging period no longer than 26 weeks agreed in writing;

plus reasonable additional hours, which are determined by taking into consideration:

- any risk to the employee's health and safety;
- the employee's personal circumstances, including family responsibilities;
- the needs of the workplace or enterprise in which the employee is employed;
- whether the employee is entitled to receive overtime payments, penalty rates or other compensation for working additional hours, or a salary that reflects an expectation of working additional hours;
- any notice given by the employer or employee;
- the usual patterns of work in the industry in which the employee works;
- the nature of the employee's role and level of responsibility; and
- whether the additional hours are in accordance with the averaging terms provided for in the FW Act.

(c) Annual leave

Under the NES, for each completed year of continuous service with an employer, a permanent employee is entitled to 4 weeks of paid annual leave. Shift workers are entitled to 5 weeks of paid annual leave per year.

The NES also set out a number of rules in relation to annual leave, for example, that it accrues on a pro rata basis and is cumulative. Your employer cannot unreasonably refuse to agree to a request to take annual leave. Under the NES, employees cannot cash out their annual leave unless the award or enterprise agreement that applies to them allows for it or they agree in writing to do so, leaving them with no less than 4 weeks' annual leave.

(d) Personal leave

Personal leave is paid sick leave and paid or unpaid carer's leave. Under the NES, for each completed year of service with an employer, a full-time permanent employee is entitled to 10 days of paid personal leave per year.

Permanent employees are also entitled to 2 days of paid compassionate leave for each "permissible occasion", and 2 days of unpaid carer's leave if required.

(e) Parental leave

The NES provide an entitlement both to unpaid leave and to return to work in respect of leave associated with:

- the birth of a child of an employee or the employee's spouse or de facto partner; or
- the placement of a child with the employee for adoption.

Both parents have the right to separate periods of up to 12 months of unpaid leave, or alternatively, one parent can request an additional 12 months. An employer can only refuse such a request if there are reasonable business grounds. This entitlement applies to all permanent employees covered by the FW Act.

(f) Requests for flexible working arrangements

Under the NES, some permanent employees can ask their employer for flexible work arrangements such as varying work hours or working from home. This entitlement is available to permanent employees who have completed 12 months of continuous service.

Employees who have the right to request flexible work arrangements include employees who:

- care for a child of school age or younger;
- are carers under the *Carer Recognition Act 2010* (Cth);
- have a disability;
- are 55 or older;
- are experiencing family violence; or
- provide care or support to an immediate family or household member who is experiencing family violence.

An employer can only refuse a request for flexible work arrangements if the refusal is on reasonable business grounds and given in writing.

(g) Community service leave

Under the NES, permanent employees are entitled to unpaid leave for a voluntary emergency management activity, such as fire fighting. Full-time permanent employees are also entitled to 10 days' paid leave for jury service.

(h) Long service leave

The NES preserves all long service leave entitlements existing under former awards and Western Australian law.

(i) Notice of termination and redundancy pay

Under the NES, permanent employees are entitled to a minimum period of notice prior to termination, or payment in lieu of notice. Employees also have a right to redundancy pay if their employment is terminated either:

- at the employer's initiative, because the employer no longer requires the employee's job to be done by anyone, or
- because of the insolvency or bankruptcy of the employer.

The right to redundancy pay will only apply to employees working for an employer with more than 15 employees. Some employees are excluded from the entitlement to redundancy pay. See ELC Fact Sheet – “Redundancy” for further information.

(j) Fair Work Information Statement

Under the NES, employers must provide employees with a Fair Work Information Statement which includes information regarding the NES, modern awards, agreement-

making under the FW Act, the right to freedom of association and the role of the FWC and the Fair Work Ombudsman.

(k) Other national system minimum conditions

Equal opportunity – it is unlawful to terminate employment on certain grounds, including union membership, race, sex, sexual preference, age, disability, marital status, pregnancy, religion and nationality.

Equal pay for work of equal value – the FWC can make orders to ensure equal remuneration for male and female employees performing work of equal value.

Meal breaks – since 1 January 2010, employees' entitlement to meal breaks have been contained within modern awards.

Public holidays – an employer may request an employee to work on a public holiday but the employee may refuse that request if they have reasonable grounds to do so.

Employee records – employers must record the name of employer and employee, the date on which employment commenced and whether it is full time, part-time, temporary or casual. Where there is an agreement as to average hours, a written copy of that agreement must be kept.

Pay slips – under the FW Act, payslips must be issued within a day of the payment of wages.

Superannuation – employers are required to make minimum contributions to employees in order to avoid a levy. The contribution is currently 9.5% of an employee's salary.

Workers' compensation – permanent employees fall within the definition of "worker" found in workers' compensation legislation and therefore are covered for work-related claims for injury.

Termination of employment – as well as being entitled to a minimum period of notice, employees also have access to a range of remedies upon the termination of their employment. The remedies may be sought by alleging breach of contract, unfair dismissal, unlawful termination, anti-discrimination and defamation (depending on the circumstances).

2. What is a casual employee?

Casual employees are employed on an irregular basis, with no set roster or routine. They have no guarantee of ongoing employment. Instead, casuals are retained on an "as needs" basis.

You could be a casual employee if you:

- are recognised as a casual from the beginning of your employment;
- usually work for short periods of time on an irregular basis with the actual hours varying from week to week;
- are employed and paid by the hour and do not have access to annual leave or sick leave;
- do not have a consistent starting or finishing times or regular hours of work;

- are generally contacted regularly and asked to work, rather than just knowing when you are required;
- have no expectation of ongoing work; and
- are free to refuse offers of work at any time due to other commitments.

2.1 What entitlements do casual employees have?

Casual employees have a more limited set of entitlements than permanent employees.

(a) Payment

Casual employees are generally paid an hourly rate. Some awards and agreements contain a provision for the minimum engagement of one or two hours, so that even if there is no work the casual employee will still be paid for those hours. Casual employees generally receive a loading of 20-25% to compensate them for their lack of entitlements compared to permanent employees.

The national minimum wage for adult casual employees is \$23.66. The state minimum wage for adult casual employees is \$22.95.

(b) Annual leave

Casual employees generally do not qualify for annual leave because their “service” is broken into irregular periods.

(c) Sick leave

Casual employees are excluded from paid sick leave entitlements unless expressly included by the relevant award or agreement.

(d) Long service leave

The NES preserves long service leave entitlements existing under pre-modernised awards and state law, including for some casual employees. The situation can arise where the employer employs a “casual” who has worked continuously enough to entitle them to long service leave. Factors such as regularity of work, notification of sickness when unable to work, weekly wages paid, tax deduction with group certificate and participation in employer-sponsored schemes, such as savings or superannuation, are considered relevant.

Western Australian awards and agreements are governed by the Long Service Leave Standard Provisions, which entitles employees to 8 2/3 weeks’ paid leave after 10 years’ continuous service with one employer. See also ELC Fact Sheet – “Long service leave”.

(e) Parental leave

Casual employees are entitled to parental leave in certain circumstances. The NES maintains the term “eligible casual employee”, introduced by the *Workplace Relations Act 1996* (Cth). An eligible casual employee is a casual employee who has been engaged by the employer on a regular and systematic basis for at least 12 months and who, but for the birth or adoption, would have a reasonable expectation of a continuing engagement on a regular and systematic basis. Under the NES, employees who meet this criterion will be entitled to parental leave in the same way as permanent employees.

(f) Carer's leave

Unpaid carer's leave is available to all casual employees, whether "eligible" or not. The NES entitles casuals to a period of up to 2 days' unpaid carer's leave, which needs to be taken in a single, unbroken period as agreed between the employer and employee. The employee must provide notice as soon as reasonably practicable.

(g) Bereavement leave

Casual employees are entitled to up to 2 days' unpaid bereavement leave.

(h) Requests for flexible working arrangements

Under the NES, some casual employees can ask their employer for flexible work arrangements such as varying work hours or working from home if they:

- are long term casuals; and
- have a reasonable expectation of continuing employment on a regular and systematic basis.

Employees who have the right to request flexible work arrangements include employees who:

- care for a child of school age or younger;
- are carers under the *Carer Recognition Act 2010* (Cth);
- have a disability;
- are 55 or older;
- are experiencing family violence; or
- provide care or support to an immediate family or household member who is experiencing family violence.

An employer can only refuse a request for flexible work arrangements if the refusal is on reasonable business grounds and given in writing.

(i) Community service leave

Under the NES, casual employees are entitled to a reasonable period of unpaid leave for a voluntary emergency management activity.

(j) Workers' compensation

Casual employees fall within the definition of "worker" found in workers' compensation legislation and therefore are covered for work related claims for injury.

(k) Notice of termination

Casual employees are generally not entitled to a minimum period of notice prior to termination.

3. Permanent or casual employment status?

There has been an increase in the number of casual employees who are actually employed permanently, but are still listed as casual. There are a number of established factors which determine whether an employment relationship described as “casual” is in fact a permanent employment relationship.

If you are currently employed as a casual employee, but think you might be entitled to permanent employment status entitlements, you should consider the following:

- the number of hours worked each week;
- whether a roster system is published in advance;
- whether the employment pattern is regular;
- whether you have a mutual expectation of continuity of employment;
- whether your employer requires notice before you are absent or on leave;
- whether you have a reasonable expectation that work will be available; and
- whether you work to consistent starting and finishing times.

These factors are a guide only – each case should be considered on its own facts and merits. If you think your employment status is in fact permanent, you should seek advice and information regarding your entitlements.

4. Further information

The Employment Law Centre of WA (Inc)

Advice Line 1300 130 956 or 08 9227 0111

Web www.elcwa.org.au

Wageline

Tel 1300 655 266 or 08 6251 2100

Web www.dmirr.wa.gov.au/wageline

Western Australian Industrial Relations Commission

Tel 08 9420 4444

Web www.wairc.wa.gov.au

From outside Perth Metropolitan (FREECALL 1800 624 263)

Fair Work Commission

Address Level 16
111 St George’s Terrace, Perth 6000

Tel 1300 799 675

Web www.fwc.gov.au

Email perth@fwc.gov.au

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