

## **Division 4A—Offers and requests for casual conversion**

### **Subdivision A—Application of Division**

#### **66A Division applies to casual employees etc.**

- (1) This Division applies in relation to an employee who is a casual employee.
- (2) A reference in this Division to full-time employment or part-time employment is taken not to include employment for a specified period of time, for a specified task or for the duration of a specified season.

### **Subdivision B—Employer offers for casual conversion**

#### **66AA Subdivision does not apply to small business employers**

This Subdivision does not apply in relation to an employer that is a small business employer.

#### **66B Employer offers**

- (1) Subject to section 66C, an employer must make an offer to a casual employee under this section if:
  - (a) the employee has been employed by the employer for a period of 12 months beginning the day the employment started; and
  - (b) during at least the last 6 months of that period, the employee has worked a regular pattern of hours on an ongoing basis which, without significant adjustment, the employee could continue to work as a full-time employee or a part-time employee (as the case may be).

Note: An employee who meets the requirements of paragraphs (a) and (b) would also be a regular casual employee because the employee has been employed by the employer on a regular and systematic basis.

- (2) The offer must:
  - (a) be in writing; and
  - (b) be an offer for the employee to convert:
    - (i) for an employee that has worked the equivalent of full-time hours during the period referred to in paragraph (1)(b)—to full-time employment; or
    - (ii) for an employee that has worked less than the equivalent of full-time hours during the period referred to in paragraph (1)(b)—to part-time employment that is consistent with the regular pattern of hours worked during that period; and
  - (c) be given to the employee within the period of 21 days after the end of the 12 month period referred to in paragraph (1)(a).

Note: If an offer is accepted, the conversion to full-time employment or part-time employment has effect for all purposes (see section 66K).

- (3) For the purposes of paragraph (2)(b), in determining whether an award/agreement free employee has worked the equivalent of full-time hours, regard may be had to the hours of work of any other full-time

employees of the employer employed in the same position as (or in a position that is comparable to) the position of the employee.

### **66C When employer offers not required**

- (1) Despite section 66B, an employer is not required to make an offer under that section to a casual employee if:
  - (a) there are reasonable grounds not to make the offer; and
  - (b) the reasonable grounds are based on facts that are known, or reasonably foreseeable, at the time of deciding not to make the offer.
- (2) Without limiting paragraph (1)(a), reasonable grounds for deciding not to make an offer include the following:
  - (a) the employee's position will cease to exist in the period of 12 months after the time of deciding not to make the offer;
  - (b) the hours of work which the employee is required to perform will be significantly reduced in that period;
  - (c) there will be a significant change in either or both of the following in that period:
    - (i) the days on which the employee's hours of work are required to be performed;
    - (ii) the times at which the employee's hours of work are required to be performed;which cannot be accommodated within the days or times the employee is available to work during that period;
  - (d) making the offer would not comply with a recruitment or selection process required by or under a law of the Commonwealth or a State or a Territory.
- (3) An employer must give written notice to a casual employee in accordance with subsection (4) if:
  - (a) the employer decides under subsection (1) not to make an offer to the employee; or
  - (b) the employee has been employed by the employer for the 12 month period referred to in paragraph 66B(1)(a) but does not meet the requirement referred to in paragraph 66B(1)(b).

Note: If an employer fails to give notice to a casual employee, the employee has a residual right to request conversion to full-time or part-time employment in certain circumstances: see Subdivision C.

- (4) The notice must:
  - (a) advise the employee that the employer is not making an offer under section 66B; and
  - (b) include details of the reasons for not making the offer (including any grounds on which the employer has decided to not make the offer); and
  - (c) be given to the employee within 21 days after the end of the 12 month period referred to in paragraph 66B(1)(a).

### **66D Employee must give a response**

- (1) The employee must give the employer a written response to the offer within 21 days after the offer is given to the employee, stating whether the employee accepts or declines the offer.

- (2) If the employee fails to give the employer a written response in accordance with subsection (1), the employee is taken to have declined the offer.

#### **66E Acceptances of offers**

- (1) If the employee accepts the offer, the employer must, within 21 days after the day the acceptance is given to the employer, give written notice to the employee of the following:
- (a) whether the employee is converting to full-time employment or part-time employment;
  - (b) the employee's hours of work after the conversion takes effect;
  - (c) the day the employee's conversion to full-time employment or part-time employment takes effect.
- (2) However, the employer must discuss with the employee the matters the employer intends to specify for the purposes of paragraphs (1)(a), (b) and (c) before giving the notice.
- (3) The day specified for the purposes of paragraph (1)(c) must be the first day of the employee's first full pay period that starts after the day the notice is given, unless the employee and employer agree to another day.

#### **Subdivision C—Residual right to request casual conversion**

#### **66F Employee requests**

- (1) A casual employee may make a request of an employer under this section if:
- (a) the employee has been employed by the employer for a period of at least 12 months beginning the day the employment started; and
  - (b) the employee has, in the period of 6 months ending the day the request is given, worked a regular pattern of hours on an ongoing basis which, without significant adjustment, the employee could continue to work as a full-time employee or a part-time employee (as the case may be); and
  - (c) all of the following apply:
    - (i) the employee has not, at any time during the period referred to in paragraph (b), refused an offer made to the employee under section 66B;
    - (ii) the employer has not, at any time during that period, given the employee a notice in accordance with paragraph 66C(3)(a) (which deals with notice of employer decisions not to make offers on reasonable grounds);
    - (iii) the employer has not, at any time during that period, given a response to the employee under section 66G refusing a previous request made under this section;
    - (iv) if the employer is not a small business employer—the request is not made during the period of 21 days after the period referred to in paragraph 66B(1)(a).

**Note:** Nothing in this Subdivision prevents an employee from requesting to convert to full-time or part-time employment outside the provisions of this Division, or prevents an employer from granting such a request.

- (2) The request must:
- (a) be in writing; and

- (b) be a request for the employee to convert:
  - (i) for an employee that has worked the equivalent of full-time hours during the period referred to in paragraph (1)(b)—to full-time employment; or
  - (ii) for an employee that has worked less than the equivalent of full-time hours during the period referred to in paragraph (1)(b)—to part-time employment that is consistent with the regular pattern of hours worked during that period; and
- (c) be given to the employer.

Note: If a request is accepted, the conversion to full-time employment or part-time employment has effect for all purposes (see section 66K).

- (3) For the purposes of paragraph (1)(b), in determining whether an award/agreement free employee has worked the equivalent of full-time hours, regard may be had to the hours of work of any other full-time employees of the employer employed in the same position as (or in a position that is comparable to) the position of the employee.

## **66G Employer must give a response**

The employer must give the employee a written response to the request within 21 days after the request is given to the employer, stating whether the employer grants or refuses the request.

## **66H Refusals of requests**

- (1) The employer must not refuse the request unless:
  - (a) the employer has consulted the employee; and
  - (b) there are reasonable grounds to refuse the request; and
  - (c) the reasonable grounds are based on facts that are known, or reasonably foreseeable, at the time of refusing the request.
- (2) Without limiting paragraph (1)(b), reasonable grounds for refusing the request include the following:
  - (a) it would require a significant adjustment to the employee's hours of work in order for the employee to be employed as a full-time employee or part-time employee;
  - (b) the employee's position will cease to exist in the period of 12 months after giving the request;
  - (c) the hours of work which the employee is required to perform will be significantly reduced in the period of 12 months after giving the request;
  - (d) there will be a significant change in either or both of the following in the period of 12 months after giving the request:
    - (i) the days on which the employee's hours of work are required to be performed;
    - (ii) the times at which the employee's hours of work are required to be performed;
 which cannot be accommodated within the days or times the employee is available to work during that period;
  - (e) granting the request would not comply with a recruitment or selection process required by or under a law of the Commonwealth or a State or a Territory.

- (3) If the employer refuses the request, the written response under section 66G must include details of the reasons for the refusal.

### **66J Grants of requests**

- (1) If the employer grants the request, the employer must, within 21 days after the day the request is given to the employer, give written notice to the employee of the following:
- (a) whether the employee is converting to full-time employment or part-time employment;
  - (b) the employee's hours of work after the conversion takes effect;
  - (c) the day the employee's conversion to full-time employment or part-time employment takes effect.
- (2) However, the employer must discuss with the employee the matters the employer intends to specify for the purposes of paragraphs (1)(a), (b) and (c) before giving the notice.
- (3) The day specified for the purposes of paragraph (1)(c) must be the first day of the employee's first full pay period that starts after the day the notice is given, unless the employee and employer agree to another day.
- (4) To avoid doubt, the notice may be included in the written response under section 66G.

## **Subdivision D—Other provisions**

### **66K Effect of conversion**

To avoid doubt, an employee is taken, on and after the day specified in a notice for the purposes of paragraph 66E(1)(c) or 66J(1)(c), to be a full-time employee or part-time employee of the employer for the purposes of the following:

- (a) this Act and any other law of the Commonwealth;
- (b) a law of a State or Territory;
- (c) any fair work instrument that applies to the employee;
- (d) the employee's contract of employment.

### **66L Other rights and obligations**

- (1) An employer must not reduce or vary an employee's hours of work, or terminate an employee's employment, in order to avoid any right or obligation under this Division.

**Note:** The general protections provisions in Part 3-1 also prohibit the taking of adverse action by an employer against an employee (which includes a casual employee) because of a workplace right of the employee under this Division.

- (2) Nothing in this Division:
- (a) requires an employee to convert to full-time employment or part-time employment; or
  - (b) permits an employer to require an employee to convert to full-time employment or part-time employment; or
  - (c) requires an employer to increase the hours of work of an employee who requests conversion to full-time employment or part-time employment under this Division.

## **66M Disputes about the operation of this Division**

### *Application of this section*

- (1) This section applies to a dispute between an employer and employee about the operation of this Division.
- (2) However, this section does not apply in relation to the dispute if any of the following includes a term that provides a procedure for dealing with the dispute:
  - (a) a fair work instrument that applies to the employee;
  - (b) the employee's contract of employment;
  - (c) another written agreement between the employer and employee.

Note: Modern awards and enterprise agreements must include a term that provides a procedure for settling disputes in relation to the National Employment Standards (see paragraph 146(b) and subsection 186(6)).

### *Resolving disputes*

- (3) In the first instance, the parties to the dispute must attempt to resolve the dispute at the workplace level, by discussions between the parties.

### *FWC may deal with disputes*

- (4) If discussions at the workplace level do not resolve the dispute, a party to the dispute may refer the dispute to the FWC.
- (5) If a dispute is referred under subsection (4):
  - (a) the FWC must deal with the dispute; and
  - (b) if the parties notify the FWC that they agree to the FWC arbitrating the dispute—the FWC may deal with the dispute by arbitration.

Note: For the purposes of paragraph (a), the FWC may deal with the dispute as it considers appropriate, including by mediation, conciliation, making a recommendation or expressing an opinion (see subsection 595(2)).

### *Representatives*

- (6) The employer or employee to the dispute may appoint a person or industrial association to provide the employer or employee (as the case may be) with support or representation for the purposes of resolving, or the FWC dealing with, the dispute.

Note: A person may be represented by a lawyer or paid agent in a matter before the FWC only with the permission of the FWC (see section 596).

## **Division 5—Parental leave and related entitlements**

### **Subdivision A—General**

#### **67 General rule—employee must have completed at least 12 months of service**

##### *Employees other than casual employees*

- (1) An employee, other than a casual employee, is not entitled to leave under this Division (other than unpaid pre-adoption leave or unpaid no safe job leave) unless the employee has, or will have, completed at least 12 months of continuous service with the employer immediately before the date that applies under subsection (3).

- (1A) For the purposes of applying subsection (1) in relation to an employee who has had their employment converted under Division 4A of Part 2-2, any period for which the employee was a regular casual employee of the employer is taken to be continuous service for the purposes of that subsection.

*Casual employees*

- (2) A casual employee, is not entitled to leave (other than unpaid pre-adoption leave or unpaid no safe job leave) under this Division unless:
- (a) the employee is, or will be, immediately before the date that applies under subsection (3), a regular casual employee of the employer who has been employed on that basis for a sequence of periods of employment during a period of at least 12 months; and
  - (b) but for:
    - (i) the birth or expected birth of the child; or
    - (ii) the placement or the expected placement of the child; or
    - (iii) if the employee is taking a period of unpaid parental leave that starts under subsection 71(6) or paragraph 72(3)(b) or 72(4)(b)—the taking of the leave;the employee would have a reasonable expectation of continuing employment by the employer on a regular and systematic basis.

*Date at which employee must have completed 12 months of service*

- (3) For the purpose of subsections (1) and (2), the date that applies is:
- (a) unless paragraph (b) or (c) applies:
    - (i) if the leave is birth-related leave—the date of birth, or the expected date of birth, of the child; or
    - (ii) if the leave is adoption-related leave—the day of placement, or the expected day of placement, of the child; or
  - (b) for an employee taking a period of unpaid parental leave that is to start within 12 months after the birth or placement of the child under subsection 71(6)—the date on which the employee's period of leave is to start; or
  - (c) for a member of an employee couple taking a period of unpaid parental leave that is to start under paragraph 72(3)(b) or 72(4)(b) after the period of unpaid parental leave of the other member of the employee couple—the date on which the employee's period of leave is to start.

*Meaning of birth-related leave*

- (4) **Birth-related leave** means leave of either of the following kinds:
- (a) unpaid parental leave taken in association with the birth of a child (see section 70);
  - (b) unpaid special maternity leave (see section 80).

*Meaning of adoption-related leave*

- (5) **Adoption-related leave** means leave of either of the following kinds:
- (a) unpaid parental leave taken in association with the placement of a child for adoption (see section 70);
  - (b) unpaid pre-adoption leave (see section 85).

*Meaning of day of placement*

- (6) The **day of placement**, in relation to the adoption of a child by an employee, means the earlier of the following days:
- (a) the day on which the employee first takes custody of the child for the adoption;
  - (b) the day on which the employee starts any travel that is reasonably necessary to take custody of the child for the adoption.

(Fair Work Act 2009)

**69 Transfer of employment situations in which employee is entitled to continue on leave etc.**

- (1) If:
- (a) there is a transfer of employment in relation to an employee; and
  - (b) the employee has already started a period of leave under this Division when his or her employment with the first employer ends;
- the employee is entitled to continue on that leave for the rest of that period.
- (2) If:
- (a) there is a transfer of employment in relation to an employee; and
  - (b) the employee has, in relation to the first employer, already taken a step that is required or permitted by a provision of this Division in relation to taking a period of leave;
- the employee is taken to have taken the step in relation to the second employer.

Note: Steps covered by this subsection include (for example) complying with a notice or evidence requirement of section 74 in relation to the first employer.