

Casual Conversion Guidelines: Horse & Greyhound Training Award

1.1 New definition of Casual Employment

As of 26 August 2024, a new definition of 'Casual Employment' is being introduced under s15A of the *Fair Work Act 2009*. In accordance with this definition, a person is a casual employee if, when they commence their employment:

- The employment relationship has no firm advance commitment to ongoing work, taking into account a number of factors, and
- The employee is entitled to casual loading or specific casual pay rate under an award, registered agreement or employment contract.

1.2 Hiring Casuals under the Award

There are certain restrictions as to when you can employ a casual in a racing stable in accordance with section 10.1 of the Horse & Greyhound Training Award ('the Award').

Under this provision, casual employees may only be engaged in the following circumstances:

- (a) To meet short term work needs; or
- (b) To carry out work in emergency circumstances; or
- (c) To perform work unable to be practicably rostered to a permanent employee.

1.3 What is Casual Conversion?

Additionally, section 10.6 of the Award states that casual employees working for a trainer are afforded extra rights. These casual employees have the right to request to be engaged as a permanent employee after they have worked a regular pattern of hours for 12 consecutive weeks.

1.4 What is a Regular Pattern of Hours?

A regular pattern of hours or work refers to whether the employee was engaged on a regular and systemic basis to do work in the racing stable.

If the pattern is of such a nature that it could continue without significant adjustment if the employee were converted to permanent employment, this relationship would likely constitute a regular pattern of hours.

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A 'regular pattern of hours' may include some fluctuations or variations over time, such as reasonable absences for illness, injury, recreation and does not need to be absolutely uniform.

A key case example is *Angele v Bed Bath 'N' Table Pty Ltd*, in which the Fair Work Commission found that an employee who worked at least three days a week under a monthly roster system, and with varying days and shift durations was engaged on a regular and systemic basis.

1.5 Obligations as an employer

Casual Conversion Requests

Notably, and the Pathway & Award, employers are **no not required** to make a formal offer to their casual employees to convert to permanent employment.

Rather, no action is required from an employer unless an employee issues a notice regarding their intention to convert as per their right under the Award or the Employee Choice Pathway.

Casual Conversion Refusal

If the employee after 12 weeks invokes their right to convert under the Award, an employer can only refuse an employee's conversion to part time or full time employment if the employee will not continue to work the previous ongoing pattern of hours.

Casual Loading

In accordance with section 10.4 of the Award, casual employees are entitled to casual loading. Casual loading is payable instead of entitlements that permanent employees have access to under the NES.

The casual loading requirements are as follows:

- (a) For each ordinary hour worked, a casual employee must be paid:
 - (i) The appropriate minimum hourly rate; and
 - (ii) A loading of 25% of the appropriate minimum hourly rate.

Engagement Requirements

Under section 10.2 of the Award, a casual must be engaged:

- (b) For a minimum daily period of three (3) hours; and
- (c) Not more than once on each day (meaning the casual can be engaged for the morning shift or afternoon shift, but not both).