

> Types of Employment

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When an employer engages an employee there can be a number of ways in which the position can be offered e.g. full-time, part-time or casual. It is important to identify which type of employment is appropriate and to inform the employee when they are recruited as this will affect their entitlements and rate of pay.

The Consequences

Classifying the type of employment incorrectly can have serious consequences which can be costly. This may not only require rectifying the situation for the employee, but also the possibility of penalties per occurrence being imposed on the organisation. In some circumstances where the employment has been incorrectly classified Fair Work Australia may order the employer to back pay any loadings or to retrospectively accrue any annual leave, long service leave and sick leave and other award entitlements to employees. In other cases workers may be entitled to other provisions in the Fair Work Act such as access to unfair dismissal protections.

For example, if an employer has been paying a “casual” employee an hourly rate (including loading) for hours worked, and has not been accruing annual leave, long service leave or sick leave for them, and it can be established that the “casual” employee had standard and regular hours of work, the employer may be ordered to accrue all leave entitlements to that employee from the time that the arrangement began, as well as pay the employee at the currently hourly rate.

In the case of *Ponce v DJT Staff Management Services Pty Ltd T/A Daly’s Traffic* [2010] FWA 207 a worker was employed as a “casual” traffic controller for 21 months before his employment was terminated. Fair Work Australia found that in operation this worker was employed on a regular and

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systematic basis and had a reasonable expectation of continuing employment. I.e. he worked with a road crew and he knew that he would be required to attend for work due to the fact he was part of a crew that was required to complete a particular job for a client. In addition, the worker's employment by the employer satisfied the minimum employment period requirements of the Fair Work Act, which entitled the worker to lodge an unfair dismissal claim.

Types of Employment

The most common employment arrangements are as follows:

- Full-time
- Part-time
- Casual

There are distinct differences between each of these employment types. Where the employment is under a Modern Award these employment types are defined in Part 3 of the relevant award. Employers in Western Australian not covered by the Federal system should check any applicable state award provisions in relation to the information contained in this newsletter.

In general the three employment types have the following characteristics:

Full Time Employee

A full time employee is an employee who is engaged to work on a regular ongoing basis, and the National Employment Standards set the maximum weekly hours of work at 38 hours per week for a full-time employee. This does not preclude an employer from stating that the full time ordinary hours for their particular organisation are less than 38 hours per week but they cannot stipulate the full time hours are more than 38 hours per week. Full-time employees are entitled to a range of entitlements such as annual leave, personal leave, paid public holidays and other entitlements as provided by the National Employment Standards.

Part Time Employee

A part time employee is an employee who is engaged to work on a regular ongoing basis who works fixed hours that are less than the hours of a full-time employee. Part time employees enjoy the same benefits as full-timers but on a pro-rata basis based on the number of hours worked. (Note: some Modern Awards place restrictions on the number of hours that part-time employees can work; e.g. The

Clerks – Private Sector Award states that a part-time employee must be engaged for a minimum of three consecutive hours).

Casual Employee

A casual employee is an employee who is engaged to work on an irregular and intermittent basis. Casual employees are not eligible for personal, annual leave or public holidays (casual rates incorporate a loading in lieu of leave to compensate). Further, by definition, casuals are under no obligation to hold themselves available for or to accept an offer of work. At the end of each engagement there is no expectation of future work being offered.

It is appropriate to offer casual employment when the employer requires work to be done on an intermittent or unpredictable basis. If the work or position is subject to an award or industrial agreement, the award or agreement may specify circumstances in which an employee is classified as "casual".

Long term casuals

Some casual workers are referred to as 'long term casuals' and can be engaged still on an irregular and intermittent basis but over a period longer than twelve months. For example the parish cook who comes in from time to time to help the main cook with large functions or the receptionist who comes in to relieve for sick leave and holidays and has been doing so for more than twelve months. These employees must be engaged for several periods of employment over twelve months to qualify as "long term casuals". Long term casuals may also have access to unpaid maternity leave and unpaid carer's leave.

How to determine the type of Employment

Here are a few simple steps to assist you to determine the type of employment.

Answer the following questions for each individual employee:

- What are the number of hours worked each week? In general, if 38 hours are worked each week then the employee is a full time employee. In some cases a full-time employee may work less than 38 hours a week i.e. some organisations have a standard working week which is less than 38 hours. For example, their standard working week could be 36 hours.

- Is there a regular pattern of employment (e.g. Same days and hours each week)? If the hours of work are less than the standard working week and there is a regular pattern of work then the employee is a part-time employee
- Is there a roster system which is published in advance? Having a roster implies a regular and systematic pattern of employment.
- Do the employer and employee both expect the employment to continue for the foreseeable future? If “yes” then the employee is either a full-time or a part-time employee.
- Is the employee required to give notice prior to taking leave or being absent?
- Does the employee have a consistent start and finish time?
- Is the employee entitled to take paid annual leave and sick leave? If the answer is “yes” then the employee is either a full-time or a part time employee.
- The rate at which the employee is paid. If the employee is paid a loading but is not entitled to take annual leave or sick leave then the employee is a casual.

Documentation

When you have determined the type of employment, document this in the letter of offer to the employee.

If you are offering full time employment state the number of hours that the employee is required to work each week. For example:

“Your normal hours of work are 37.5 each week to be worked between 9.00am and 5.00pm from Monday to Friday. Please be aware that a variation to your hours of work and/or additional hours of work may be required from time to time to perform your duties.”

If you are engaging the employee on a part-time basis you are required to state the total hours of work, the times and the days during which these hours are required to be worked. This is so that you can stipulate the normal days worked so that the entitlement to public holidays without loss of pay can be clearly defined. Part time employees are not required to ‘swap’ a day to make up for the public holiday.

For example:

“Your normal hours of work are [number of hours] each week to be worked between [time] and [time] from [day] to [day]. Please be aware that a variation to your hours of work and/or additional hours of work may be required from time to time to perform your duties.”

For casual employees state the period of engagement for the position on the particular occasion or state their inclusion in your pool of casuals. For example:

“We are pleased to confirm our offer to add your details to our pool of casual employees with the <name of Parish> (Parish) as [name of position]. This letter does not constitute an offer of employment but you may be offered work from time to time if it becomes available under the terms contained in this letter”.

The Office for Employment Relations can provide you with sample documents and assistance on this and other employment related matters. Please visit our website: www.employmentrelations.org.au or contact Jane Bashiruddin at the Office for Employment Relations on 03 9934 3355

This document is written as a general guide only. It is not intended to contain definitive legal advice which should be sought as appropriate in relation to a particular matter.