

RISKY BUSINESS

PART 3: "They're Casual. It Says So in Their Contract"

The everyday people practices that seem harmless... until they aren't.

"They're casual. It says so in their contract."

They signed a casual employment agreement. They receive casual loading. They're listed as casual in payroll. So, case closed?

Not quite.

A contract is important. But when it comes to casual employment, the label at the top of the document isn't the only thing that matters. And with Australia's casual employment laws having changed significantly, this is one area where businesses shouldn't rely on what they've always understood "casual" to mean.

So, what actually makes someone casual?

Under the current Fair Work Act, a person is a casual employee if, when they start employment:

- there is no firm advance commitment to ongoing work, taking into account a range of factors; and
- they are entitled to a casual loading or specific casual rate under an Award, enterprise agreement or employment contract.

Sounds straightforward. But the important words are: *"No firm advance commitment to ongoing work."*

Working out whether that exists involves looking beyond a single clause in an employment contract. The real substance, practical reality and true nature of the employment relationship are relevant.

In plain English? What did you actually agree to, and how does the arrangement really operate?

"But they work the same shifts every week."

This is where we need to bust another myth. Regular hours do not automatically make a casual employee permanent. A casual employee can have a regular pattern of work and still genuinely be casual.

The question is broader. For example:

- Can the business choose whether to offer the employee work?
- Can the employee genuinely accept or reject shifts?
- Is there an expectation that the same work will continue into the future?
- Are permanent employees performing the same type of work?
- Does the employee have a regular pattern of work?
- And what was understood between the employer and employee when the employment commenced?

No single factor necessarily decides the answer. That means neither of these statements is particularly useful on its own:

"They work regular hours, so they must be permanent."

or

"Their contract says casual, so they must be casual."

You need to look at the employment relationship properly.

Here's where things get interesting

Imagine you own a growing business. You employ someone casually because you genuinely don't know how much work you'll have available. Initially, you offer shifts as needed. They can accept or decline them. Perfectly reasonable.

Over time, the business grows. The employee becomes an important part of the team. They now work Monday, Wednesday and Friday most weeks. So, are they automatically part-time?

No.

Under the current legislation, an employee who starts as a casual remains casual until their employment status changes through one of the recognised mechanisms. But that doesn't mean the business should ignore how the relationship has evolved. Because the employee may now have another option.

The employee can raise their hand

Australia now has an employee choice pathway for eligible casual employees who believe they no longer meet the requirements of casual employment.

Generally, an eligible casual can notify their employer in writing that they want to change to permanent employment if they:

- have worked for the employer for at least six months; or
- 12 months if the employer is a small business; and
- believe they no longer meet the casual employee definition.

For small businesses, these employee choice provisions have applied since 26 August 2025.

And this isn't something an employer should simply dismiss with *"No, your contract says you're casual."*

There are rules around how the employer must respond and the circumstances in which a notification can be refused.

"But casual works better for both of us."

It might.

There is nothing inherently wrong with casual employment. Casuals provide businesses with flexibility, and some employees genuinely prefer the arrangement.

They generally receive a casual loading or specific casual rate to compensate for certain entitlements permanent employees receive, such as paid annual leave and paid personal/carer's leave.

The problem isn't having casual employees.

The problem is using casual employment as a default without understanding what it actually means.

For example, if your "casual" employee:

- works an established pattern;
- is effectively expected to be available for those shifts;
- has little practical ability to reject work;
- performs work that will clearly continue;
- and is managed exactly like your permanent workforce...

it is worth looking more closely at the arrangement rather than assuming the word *casual* in their contract answers every question.

There's another piece of paperwork businesses forget

The employment contract isn't the only document a casual employee should receive.

Employers must give new casual employees both the Fair Work Information Statement and the Casual Employment Information Statement when they commence employment.

And the Casual Employment Information Statement isn't necessarily a once-only document. Small business employers must provide it again after 12 months of employment.

For other employers, it must be provided again after six months, 12 months and every subsequent 12 months of employment.

It's a relatively simple compliance obligation. But ask yourself *Are we actually doing it?*

Put your casual workforce through the Risky Business test

Pull up a list of every casual employee in your business. Then don't just look at their contracts. Look at the actual arrangements. Ask:

- Why is this position casual?
- What was agreed when the employee commenced?
- Can we choose whether to offer them work?
- Can they genuinely accept or reject shifts?
- What does their actual working pattern look like?
- Has the relationship changed significantly since they commenced?
- Could they now be eligible to use the employee choice pathway?
- Are we providing the Casual Employment Information Statement when required?
- And perhaps most importantly, If the employee asked us tomorrow why they are still casual, could we confidently explain the answer?

If the only answer is *"Because that's what your contract says."* It might be time to look a little deeper.

Casual isn't just a box you tick

Employment contracts matter. But good employment practices don't stop once the contract is signed.

- Businesses change.
- Workforces change.
- Working arrangements change.
- And employment law changes.
- Your HR practices need to keep up.

Because the real question isn't *"What did we call them when we hired them?"* It's *"Do we understand the employment arrangement we actually have?"*

That's a much safer question to be able to answer.

RISKY BUSINESS by HR Navigator

The everyday people practices that seem harmless...until they aren't.

At HR Navigator, we help small and medium businesses understand what's actually happening beneath their employment contracts, rosters and workforce arrangements and identify risk before it becomes a problem.

No generic HR. No HR jargon. Just practical advice and clear direction.