



## Moving Employment Status

An employer may approach an employee to change his or her type of employment for reasons of business downfall or change of business structure. Equally an employee may wish to change their employment status for reasons of family or illness. Regardless of which party instigates a request for a change, the employer should advise the employee the effect the changes (if any) will have on their conditions of employment and any accrued entitlements.

A number of modern awards include a clause regarding moving employment status, so we recommend that you check the employees' modern award to understand employment conditions when changing employment status

### Moving from Casual to Part-Time or Full-Time

A modern award may contain terms which require an employer to offer full-time or part-time employment to a casual employee who has been employed on a regular and systematic basis over a six month period. The casual employee can elect to become permanent if the employment is continuing. The employer cannot unreasonably refuse an employee's election. We recommend checking the employee's award when moving employment status.

Changing from part-time to full-time may have certain changes to the following employment conditions:

- **Notice Period** is not required as the employee is a casual before moving to Part-Time or Full-Time
- **Annual Leave** is not relevant as casual employees do not accrue annual leave
- **Personal Leave** is not relevant as casual employees do not accrue personal leave; however carer's leave is applicable but does not accrue
- **Long Service Leave (LSL)** does accrue for casual employees, therefore the continuity of service will continue. Paying long service leave on termination will be calculated on the hours worked as a casual and part-time or full-time employment. We recommend checking the states LSL Act for calculating long service leave
- **Redundancy** is not offered to casual employees, however continuity of service started at time of casual employment
- **New written employment agreement/contract/offer** is required.

## ATO Lodgement Dates

These dates are from the ATO website and do not take into account possible extensions.

You remain responsible for ensuring that the necessary information is with us in time.

### BAS/IAS Monthly Lodgements

Final dates for lodgements and payments:

September Activity Statement:  
21 October, 2017

October Activity Statement:  
21 November, 2017

### BAS Quarterly Lodgements

Final dates for lodgements and payments:

#### 1st Quarter of FY 2018:

**September Quarter 2017 (incl. PAYGI)**  
28 October, 2017

When a due date falls on a Saturday, Sunday or Public Holiday\*, you can lodge or pay on the next business day.

\*A day that is a public holiday for the whole of any state or territory in Australia.

Due date for super guarantee contributions:

#### 1st Quarter of FY 2018:

July to September 2017 – contributions must be **in the fund** by 28 October, 2017.

#### 2nd Quarter of FY 2018:

October to December 2017 – contributions must be **in the fund** by 28 January, 2018.

The super guarantee charge is not a tax deduction if not paid by these dates.

Refer to the ATO for details regarding any SGC charges applicable if not paid by due date.

## Moving from Part-Time to Full-Time

As there is very little change to the employment conditions for part-time and full-time except the increased hours which will result in increased accrued entitlements. Therefore, all the below conditions are not greatly affected on a move to full-time employment. However, a change of employment agreement is still required:

- Notice Period
- Annual Leave
- Personal Leave
- Long Service Leave
- Redundancy
- New written employment agreement/contract/offer is required.

It is important to review entitlements to ensure accrual is calculated by percentage of hours and not by flat hours/days.



## Moving Employment Status (cont.)

### Moving from Full-Time to Casual

Is this Legal? Yes, but this depends on the employee's agreement to change. If the employee's change to casual employment is intended to be permanent, the employer is best advised to terminate the existing employment agreement.

Changing from full-time to casual has many changes to the following employment conditions:

- A full-time employee must give **written agreement** to change status to casual from full-time employment, otherwise possible unfair dismissal claims. The employee will have claims under general protections laws. The Fair Work Act requires an employee be consulted regarding any major changes that will affect their employment – this is in every modern award
- **Notice Period** will be worked out as a full-time employee or paid to the employee
- **Annual Leave** must be paid out at the change as a casual employee does not receive entitlements
- **Personal/Carers Leave** there is no requirement to payout at the change unless the award or agreement outlines
- **Long Service Leave** cannot be paid out at time of change. However, if the employer wishes, a long service leave value can be calculated at the full-time status and can be held on file and in a liability account for release upon termination.
- **Redundancy** may also be required to be paid, as the permanent position will need to be made redundant and the employee offered casual employment. We recommend gaining legal advice

- **New written employment agreement/contract/offer** is required.

## Moving from Full-Time to Part-Time

When an employee changes from full-time to part-time employment it is recommended to review their conditions of employment to ensure no significant loss to their employment conditions besides reduced hours and therefore reduced leave entitlements.

A part-time employee is employed to work less than 38 hours per week. As such, the employer and employee must agree on a regular pattern of work before the employee starts as a part-time employee. The agreement must be in writing and include:

- The number of hours worked each week
- The days of the week the employee will work
- The start and finish times each day
- Rosters must be given to employees at least 14 days in advance

Changing from full-time to part-time may have certain changes to the following employment conditions:

- **Notice Period** of change of hours must be provided to the employee
- **Public Holidays** for a part-time employee will only be paid if the public holiday falls on their working day. If it falls on their non-working day they are not paid

For example: a part-time employee who works 19 hours per week, Tuesday to Friday, would not receive payment for a public holiday that falls on a Monday. However, a part-time employee who works (say) 3.8 hours per day (19 hours per week), Monday to Friday, would receive 3.8 hours pay for any public holiday that falls on Monday to Friday inclusive

- **Annual Leave** will be calculated on the number of hours worked in a week over the NES standard of 20 days per year
- **Personal Leave** will be calculated on the number of hours worked in a week over the NES standard of 10 days per year
- **Long Service Leave** cannot be paid out at time of change. However, if the employer wishes, a long service leave value can be calculated at the full-time status and can be held on file and in a liability account for release upon termination
- **Redundancy** can be an area of dispute when employment status has changed over the employment time of the employee. Determining the employee's week's pay for purposes of severance can affect the payout of redundancy. Industrial tribunals have usually determined that an employee is paid at their contracted ordinary weekly rate of pay at the time the redundancy occurs. This means that an employee with 10 years' service, for example, of which the first eight years were full-time and the last two years at part-time, severance pay would be calculated at their employee's part-time weekly rate of pay at the time of termination.

## Employees Do Not Agree to Change

Fair Work will not provide advice about employment contracts, including changes to an employee's hours. You will need to seek legal advice.

An employer can't change or end an employee's employment:

- for a discriminatory reason
- because the employee has exercised a workplace right
- for another reason protected by law.

When an employee refuses to change:

- An employer may be able to change an employee's full-time employment without employee's agreement.
- Important factors to consider are:
  - Does the employment contract, registered agreement or award let the employer change the employee's work hours without the employee agreeing?
  - Does the change make a new employment contract or change an existing contract?
  - What entitlements, such as annual leave or redundancy, need to be paid out?

- How much notice does the employer need to give the employee?
- We recommend seeking legal advice under these circumstances

## Employer Record Keeping

Regardless of any of the above types of employment change, the employer is required to record the following:

- Record the date of change of employment status
- Record the entitlements paid or owing at time of change
- Save a copy of old and new employment agreement

Disclaimer: All or any advice contained in this newsletter is of a general nature only and may not apply to your individual business circumstances. For specific advice relating to your specific situation, please contact your accountant or contact me for further discussion.

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