Bulletin
Tasmanian Automotive Chamber of Commerce

Reference No. Closing Loopholes/dh-8-24 **Date:** 26/08/2024

Reminder: Important 'Closing Loopholes' changes take effect today

Casual Employment

New definition of Casual Employment

Further to our last Workplace Update, members are reminded that the new definition of casual employment under section 15A of the *Fair Work Act 2009* (FW Act) will take effect from **26 August 2024**. Under the new definition, a casual employment relationship exists if there is no firm advance commitment to continuing and indefinite work, as determined by both the terms of the written (casual) contract of employment and a consideration of the practical reality of the employment relationship.

Under the changes, an employee who is engaged as a casual remains a casual employee until the occurrence of a '**specified event**'. In practice, this means even if a casual employee ceases to meet the new definition of casual employment due to changes in the nature of the relationship occurring over time, they remain a casual employee unless the employer accepts an 'employee choice' casual conversion notification from an eligible casual employee (or the Fair Work Commission orders conversion in the resolution of a formal casual conversion dispute); or the employee accepts a full-time or part-time employment offer from the employer.

Casual Conversion Changes

Amendments to the current NES casual conversion provisions also commence from **26 August 2024**, with the replacement of previous requirements with the '**employee choice**' casual conversion pathway, with transitional arrangements applying to casuals who were employed prior to this date. Under the new system, once a casual employee has completed **6 months** employment with the employer (**12 months** for small business employers), they are **eligible** to notify their employer that they wish to **convert from casual to full-time/part-time** employment if they believe that they **no longer meet the definition** of a casual.

An employer may only refuse a casual conversion notification from an eligible casual employee if the employee **still meets the definition** of casual employee, or, if the employer has **fair and reasonable operational grounds** for doing so. Consistent with the current casual conversion arrangements, an employer must respond to a formal written employee casual conversion notification in writing within 21 days. The notification must contain a statement that the employer accepts or does not accept the employee's notification. If a dispute over casual conversion cannot be resolved between the employer and employee at the workplace level, the Fair Work Commission is now empowered to resolve the dispute on application by one of the parties.

New Casual Employment Information Statement (CEIS) Requirements

The Fair Work Ombudsman (FWO) has now published the updated CEIS, which members can access here. Members should also note that employer obligations in relation to providing the CEIS to casual employees will also change from **26 August 2024**.

Members seeking further advice and assistance on casual employment – including casual employment contracts reflecting the changes, casual conversion eligibility under the NES, and casual conversion template letters – are encouraged to contact the Workplace Relations team at **ir@vacc.com.au** or 03 9829 1123. Members can also access VACC's Fact Sheet on the changes here.

Right to Disconnect

Members will recall from our last **Workplace Update**, a new 'right to disconnect' (RTD) for employees commences from **26 August 2024** for businesses with 15 or more employees and from **26 August 2025** for small businesses (less than 15 employees). The effect of the new RTD is to firstly, make it easier for employees to (reasonably) refuse out-of-hours contact from employers, co-workers and clients; and secondly, empower the Fair Work Commission (FWC) to issue orders and determine disputes in relation to such refusals by employees.

Members should therefore note that whilst it is important that employers seek to minimise the need for out of hours contact with their employees, **the changes do not prevent an employer from contacting (or attempting to contact) an employee outside of their working hours** – or from requiring an employee to monitor, read or respond to contact in certain circumstances, where necessary for the performance of their role. For example, in an emergency or where an employee is required to hold themselves in readiness for a call back to work overtime in accordance with the Vehicle Award.

The changes do however mean that an employee can otherwise refuse to monitor, read or respond to contact outside of their working hours, unless it is found to be unreasonable in the circumstances – and protects them from **adverse action** from the employer (e.g. disciplinary action) for reasonably exercising their RTD. Where any dispute arises in relation to RTD (e.g. whether an employee's refusal of out of hours contact is reasonable or unreasonable), the parties must try to resolve the dispute at the workplace level. Where the dispute remains unresolved, the Fair Work Commission is now empowered to resolve the dispute on application by one of the parties.

Members are also encouraged to consider whether their employment contracts (or offers of employment) state the spread of hours employees will be expected to be worked, and whether any of their employees may reasonably be required to monitor, read or respond to contact outside of their working hours. Where such out of hours contact is likely for an employee, members are encouraged to ensure that this requirement is appropriately reflected in their position description and/or employment contract.

Members seeking further advice and assistance on RTD – including in relation to employment contracts, position descriptions, or the **updated VACC Employee Handbook** incorporating both the RTD and casual employment changes – are encouraged to contact the Workplace Relations team at **ir@vacc.com.au** or 03 9829 1123.

Daniel Hodges
Executive Manager – Workplace Relations
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