

A-Z Guide

Casual employees



Contents

Overview	2
Introduction	2
Casual employment	3
Employment agreements	4
Best practice	4
Holiday pay	4
Sick, bereavement and family violence leave	5
Conclusion	5



Overview

1. A casual employment relationship is short, casual in essence, and there is neither regularity nor continuity of employment. Work may be rejected just as easily as it is accepted.
2. A casual employment relationship should be carefully managed so that the obligations of the parties are not altered by the passage of time.
3. Casual employment agreements must be in writing; the casual nature of the relationship should be clearly articulated from the start.
4. There are simple steps employers can take to assist them in the day to day management of casual employment relationships.

Introduction

Employment relationships can be full-time, part-time, fixed term (also described as “temporary”) or casual. There are important distinctions between each. Employment relationships that begin as casual often end up being something else, so managing intentions and expectations as well as the pattern of work is important.

Casual employment is a popular way of facilitating flexibility in a workforce but it is a double edged sword. The Courts have maintained a strong disdain for employers who have seemingly used the label “casual” incorrectly and as a means of avoiding their obligations under the law.

When left unattended, a casual employment relationship can become permanent and the employer is faced with meeting obligations that are different from what was intended when the relationship was entered into. Where you fail meet those obligations, you could find that your decisions affecting a casual employee’s employment result in a personal grievance claim against you.



Casual employment

Casual employment is work:

- “as and when required”; and
- where there are no fixed days or hours of work; and
- offered when the employer has no obligation to offer it; and
- accepted when the employee has no obligation to accept it; and
- where there is no continuity of employment; and
- where the engagement is short and casual in essence.

The following are summaries and extracts from the significant decisions about what is a “casual” employee. Coincidentally, all of these cases were concerned with bar workers who each had been suddenly dropped off their rosters; in each case they were found to have been unjustifiably dismissed because they were not in fact “casual” employees.

1. Mrs Jellyman was employed as a bartender from 1979 to 1981 and at the time of her dismissal worked Monday to Friday evenings, a total of 17.5 hours per week. After an incident with her employer she was told that she was finished; *Canterbury Hotel etc IUOW v Fell (t/a Leeston Hotel)* [1982] ACJ 285.

To the claim of unjustified dismissal the employer contended that as a casual worker she was merely rostered off and no question of dismissal could arise. Mrs Jellyman was in our view really a part-time worker but on a regular basis...The history of this matter shows Mrs Jellyman as a regular member of staff working, week by week, the hours set out above. There was continuity. Both parties were entitled to regard that arrangement as continuous. Mrs Jellyman was not just a casual employee occasionally and irregularly called in for some limited or purely casual purpose. Because of the longstanding continuity she was a regular employee and therefore in our view had to be dismissed and could not merely be rostered off.

2. Ms Aldridge was dismissed when she was told she would not be needed for the next two weeks after she went to the restaurant to request that evening off because she was ill. She had worked at least two days a week for four hours each day for nearly six months in the restaurant up to that point; *Avenues Restaurant (t/a Avenues Restaurant & Wine Bar) v Northern Hotel etc IUOW*[1991] 1 ERNZ 420.

On the evidence, Ms Aldridge worked no particular pattern of days, but for the whole period of her employment (except a three week holiday) she worked for the employer every week and at least two days each week...she had continuity of employment and was a regular employee. Her engagement was not casual in its essence. Nor was it seasonal.

3. When Mrs Barnes had commenced employment in February 1994 she would work “as and when required” and the bar manager would ring her when work was available. Six months later she was rostered each week for regular days and hours, was obliged to notify the employer in advance if she was unavailable for work or wanted to apply for time off, and she was in sole charge of the bar on two nights. When new management took over the bar she received a phone call saying her services were no longer required; *Barnes (Formerly Kissell) v Whangarei Returned Services Association (inc)* [1997] ERNZ 626

...the appellant (employee) was in sole charge of the upstairs bar on two nights of the week and was required to open the bar and to account for the operations of the till. Such duties were incompatible with a situation where the appellant had the freedom to come and go as she wished, regardless of what the roster said. If the appellant had freedom of movement, or in other words the right to accept or reject the offer contained in the roster, the respondent would have been left in a total state of uncertainty as to whether the bar was going to be opened on the nights the appellant was in sole charge.

Employment agreements

The Employment Relations Act 2000 requires that the terms and conditions of every employment agreement be in writing. This applies to casual employees.

An employment agreement for a casual employee should clearly set out the terms and intentions of the employer to reflect the casual nature of the employment.

Our team encourages employers to seek advice before commencing any casual employment relationships. Our Advice can assist you with understanding the limitations of a casual employment relationship and drafting an employment agreement to meet your needs.

Best practice

When engaging employees on a casual basis it is extremely important that the relationship is managed. Some helpful management tools can assist:

- Differently coded or colour coded time sheets can help you separate permanent and casual staff from the shop floor through to pay roll, for different treatment
- Attaching the employment agreement to the casual employee's timesheet can serve as a reminder of the terms of that relationship
- Loading alerts and add-ons into your payroll software that assist you to review your casual employment relationships on a regular basis
- Provide an information sheet and tick box for line-managers who may be responsible for engaging and managing casual employees
- Make the correct management of casual (among others) employees a key accountability of the managers you employ who are responsible for managing staff

Holiday pay

Holiday pay for true casual employees may be paid at the end of each engagement or alternatively if the employee agrees holiday pay may be paid with the employee's regular pay.

Payment of holiday pay with employee's pay

The Holidays Act 2003 permits "pay as you go holiday pay" but only in specified (and narrow) circumstances.

The Act permits an employer to pay annual holiday pay regularly with an employee's pay if:

The employee is employed on a fixed-term agreement within the meaning of section 66 of the Employment Relations Act 2000 for less than 12 months; or

The employee works for the employer on a basis that is so intermittent or irregular that it is impracticable for the employer to provide the employee with 4 weeks' annual holidays.



If either of these 2 circumstances applies, then an employer may pay annual holiday to an employee regularly with the employee's pay, but only if:

-
- The employee agrees in his or her employment agreement; and
- The annual holiday pay is paid as an identifiable component of the employee's pay; and
- The annual holiday pay is paid at a rate not less than 8% of the employee's gross earnings.

If an employer incorrectly pays an employee "pay as you go holiday pay" in circumstances not permitted by the Act, and the employee's employment continues for 12 months or longer, then despite those payments the employee becomes entitled to annual holidays and annual holiday pay without reduction.

Our Advice strongly advises employers to contact us for further advice before implementing "pay as you go holiday pay". Refer to the **A-Z Guide** on the **Holidays Act 2003** for more information.

Sick, bereavement and family violence leave

When employing casual employees, employers need to be aware of the requirements of the Holidays Act 2003 in relation to sick, bereavement and family violence leave.

The Holidays Act 2003 states that an employee is entitled to sick, bereavement and family violence leave when they meet either of the following criteria.

After the employee has completed 6 months' current continuous employment with the employer; or

If the employee has, over a period for 6 months, worked for the employer for –

- at least an average of 10 hours a week during that period; and
- no less than 1 hour in every week during that period or no less than 40 hours in every month during that period

Casual employees who are employed on a regular basis may therefore become entitled to sick and bereavement leave. Refer to the **A-Z Guides** on the **Holidays Act 2003** and **Family Violence** for more information.

Conclusion

Employment under casual agreements needs to be properly managed so that workplace practices do not of themselves create a different legal relationship than that which was intended.

Mismanaging casual employees can have implications for employers in regard to their minimum statutory entitlements, contractual entitlements, and their rights under the Employment Relations Act 2000 to fair treatment.

By putting into place some elementary management techniques and ensuring that you and your management staff understand the true nature of casual employment, the pitfalls of employing this flexible workforce can be minimised.

Remember

- Always call AdviceLine to check you have the latest guide
- Never hesitate to ask AdviceLine for help in interpreting and applying this guide to your fact situation.
- Use our AdviceLine employment advisors as a sounding board to test your views.
- Get one of our consultants to draft an agreement template that's tailor-made for your business.

This guide is not comprehensive and should not be used as a substitute for professional advice.

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