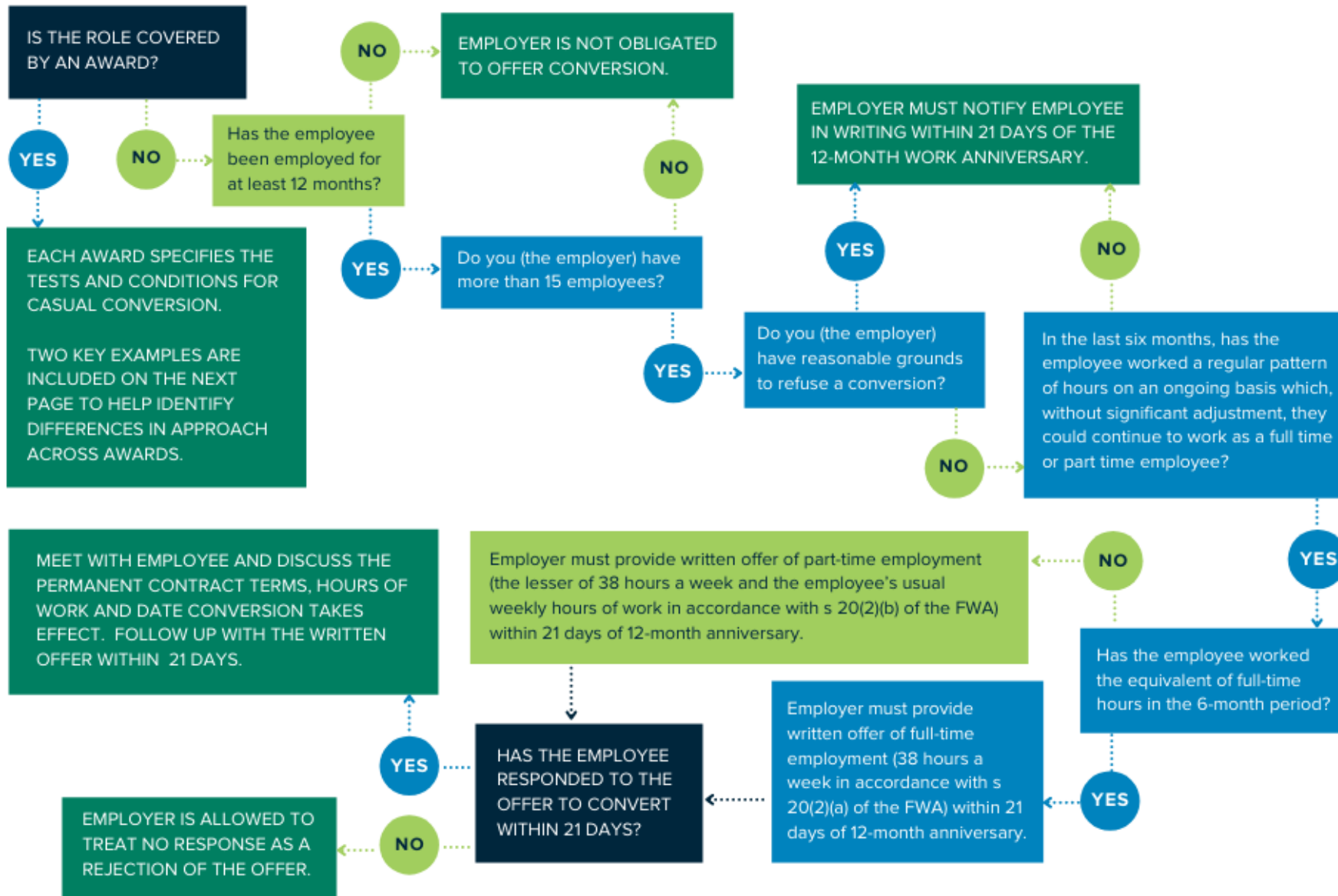


A GUIDE TO: CASUAL CONVERSION



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	NO AWARD	MODERN AWARD - EXAMPLES	
INSTRUMENT	<i>Fair Work Act 2009 (Cth) – NES Part 2-2</i>	<i>Hospitality Industry (General) Award 2020 – Clause 11.7</i>	<i>Vehicle Repair, Services and Retail Award 2020</i>
Test	<ul style="list-style-type: none"> Employee has been employed for at least 12 months Employee has worked a regular pattern of hours on an ongoing basis which, without significant adjustment, the employee could continue to work as a full time or part time employee. 	<ul style="list-style-type: none"> Has been employed for at least 12 months Must be a regular casual employee who is employed by an employer on a regular and systematic basis for several periods of employment or on a regular and systematic basis for an ongoing period. 	<ul style="list-style-type: none"> Has been employed for at least 6 months Any casual employee who is not an “irregular casual employee” An irregular casual employee is one who has been engaged to work on an “occasional, non-systematic, or irregular basis”
Assessment period	<ul style="list-style-type: none"> The period at least six months prior to the employee’s 12-month anniversary of commencement. 	<ul style="list-style-type: none"> The period of 12 months prior to request. 	<ul style="list-style-type: none"> The period of 6 months prior to the notification time.
Responsibility	<ul style="list-style-type: none"> Employer must offer and employee has residual right to request. 	<ul style="list-style-type: none"> Employee has right to elect to convert. 	<ul style="list-style-type: none"> Employer must notify employee of employee right to convert and employee has residual right to convert
Full-time or part-time?	<ul style="list-style-type: none"> Full-time – if worked the equivalent of full-time hours in the 6-month period. Part-time – if worked less than the equivalent of full-time hours during the period. 	<ul style="list-style-type: none"> Full-time – if worked at the rate of average of 38 hours a week in the 12-month period. Part-time – if worked at the rate of an average of less than 38 hours per week. 	<ul style="list-style-type: none"> Full-time – if worked the equivalent of full-time hours in the 6-month period. Part-time – if worked less than the equivalent of full-time hours during the period.
What hours must be offered on conversion?	<ul style="list-style-type: none"> If full-time, 38 hours a week in accordance with s 20(2)(a) of the FWA. If part-time, the lesser of 38 hours a week and the employee’s usual weekly hours of work in accordance with s 20(2)(b) of the FWA. 	<ul style="list-style-type: none"> If full-time, an average of 38 hours a week in accordance with the Award. If part-time, at least 8 hours and fewer than 38 hours in accordance with the Award. 	<ul style="list-style-type: none"> The same number of hours and times of work as previously worked as a casual employee, unless other arrangements are agreed on.
Process requirements	<ul style="list-style-type: none"> Employer must provide written offer within 21 days of 12-month anniversary otherwise employee can request any time after that. Employee has 21 days to respond to offer to convert. If they do not respond, employer allowed to treat as employee saying no. If agreed, both must meet and discuss with employee whether full time or part time, the hours of work after conversion, and date conversion takes effect, then provide same within 21 days after acceptance of offer in writing. 	<ul style="list-style-type: none"> Employee can elect to convert at any time after the 12 months. Employer not required to respond within specific timeframe, but employee can bring dispute to FWC if taking too long (see below). If agreed must discuss and agree with employee upon form of employment (full-time or part-time) and hours of work (if part-time). 	<ul style="list-style-type: none"> Employer must provide written notice of right to convert within 4 weeks of the employee having attained a period of 6 weeks employment. Employer can agree with individual employee, or group of employees, within 2 months before 6-month anniversary, to instead make offer after 12 months. Employee to respond within 4 weeks after receiving the written notice. If agreed employer must discuss and agree with employee upon form of employment (full-time or part-time) and the number and patters of hours of work (if part-time).

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INSTRUMENT	<i>Fair Work Act 2009 (Cth) – NES Part 2-2</i>	<i>Hospitality Industry (General) Award 2020 – Clause 11.7</i>	<i>Vehicle Repair, Services and Retail Award 2020</i>
When does it take effect?	The day agreed to between the employer and employee.	Commencement of next pay cycle following agreement unless otherwise agreed.	Following agreement being reached on conversion.
Can the employee refuse?	Yes, the employee is not obliged to accept the offer to convert.	Yes, the employee is not obliged to elect to convert.	Yes, the employee is not obliged to elect to convert.
Can the employer refuse?	<p>Yes, but only on reasonable grounds (which are known, or reasonably foreseeable at time of deciding) including:</p> <ul style="list-style-type: none"> If the employee’s position will cease to exist within next 12 months If the hours of work the employee is required to perform will be significantly reduced in next 12 months If the days and/or times the work is required to be performed will significantly change and cannot be accommodated within the times or days, the employee is available to work during that 12-month period If making the offer would not comply with a recruitment or selection process required under a State or Federal law. 	<p>Yes, but only on reasonable grounds (any of the following):</p> <ul style="list-style-type: none"> The size and needs of the workplace or enterprise The nature of the work the employee has been doing The qualifications, skills, and training of the employee The trading patterns of the workplace or enterprise (including cyclical and seasonal trading demand factors) The employee’s personal circumstances, including any family responsibilities Any other relevant matter. 	<ul style="list-style-type: none"> Yes, but must not unreasonably refuse. No reasonable grounds specified; but grounds must be “fully stated”.
Process if no offer to convert	<ul style="list-style-type: none"> If the employee does not pass the test of regular pattern of hours, or the employer has reasonable grounds, the employer must notify employee in writing within 21 days of 12-month anniversary. 	<ul style="list-style-type: none"> Employer must inform the employee if they have reasonable grounds not to convert, but no other specific requirements. 	<ul style="list-style-type: none"> Employer must “fully state” any grounds not to convert, discuss with the employee, and demonstrate a “genuine” attempt to reach agreement.
Protections	<ul style="list-style-type: none"> Employer must not reduce or vary an employee’s hours of work, or terminate their employment, to avoid obligation to offer conversion. Employer not required to increase the hours of an employee seeking conversion. 	<ul style="list-style-type: none"> Employee must not be engaged and/or re-engaged (including a refusal to re-engage) by employer to avoid any obligation. Employer not required to increase the hours of an employee seeking conversion. 	<ul style="list-style-type: none"> Employee must not be engaged and re-engaged to avoid any obligation.
Disputes	<ul style="list-style-type: none"> Employee can bring an application in the FWC disputing a decision or lack of decision to convert. 	<ul style="list-style-type: none"> Employee can bring an application in the FWC disputing a decision or lack of decision to convert. 	<ul style="list-style-type: none"> Employee can bring an application in the FWC disputing a decision or lack of decision to convert
Small businesses	<ul style="list-style-type: none"> Employers with fewer than 15 employees are not obligated to offer conversion. 	<ul style="list-style-type: none"> Small businesses are subject to the same rules. 	<ul style="list-style-type: none"> Small businesses are subject to the same rules.

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