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Proposed casual employment changes – how bad would they be for employers?

There has been a lot of debate in the media about the proposed casual employment changes in the Government's Closing Loopholes Bill. Given the complexity of the changes, it is little surprise that many employers are confused about what they would mean in practice. Amongst other changes, the Bill would amend the definition of a "casual employee" and expand the rights of employees to convert to permanent employment.

Definition of a casual employee

The Bill would, in effect, create two classes of "casual employee".

The first class would apply to those casual employees employed on or after 1 July 2024. For this class, the definition of a "casual employee" would be found in an amended section 15A of the Fair Work Act. It would become far more difficult for an employer to determine whether a casual employee meets the definition at any particular point in time. No longer would the issue revolve around the terms of the employment contract, as agreed at the time of engagement. One of many considerations would be "whether there is a regular pattern of work".

The second class of casual employee would be those employed prior to 1 July 2024. Under transitional provisions in the Bill, these "continuing casual employees" would be deemed to meet the requirements of the new definition in section 15A even if their employment arrangements are inconsistent with the new definition.

The changes to the definition of a "casual employee" are a recipe for confusion, uncertainty and litigation.

Conversion rights

In addition to their current conversion rights, casual employees would have a new pathway to convert to permanent employment. Under this new pathway, they would have the right to notify their employer if they believe they are no longer a 'casual employee' under the new definition in section 15A (e.g. because they have worked a regular pattern of hours). Subject to some very limited exceptions, if an employer receives a notification from a casual employee, who has served the minimum employment period and has worked a regular pattern of hours, the employer would be required to convert the employment to permanent.

The new conversion pathway appears to be little more than a thinly disguised way of abolishing, in effect, an employer's right to reasonably refuse a casual employee's conversion request. A casual employee would have a statutory right to convert to permanent employment in a very wide variety of circumstances.

So how bad would the changes be for employers?

The changes are likely to be very bad for employers. The changes are also likely to be very bad for employees because they will deter employment growth and investment, thereby reducing job security and job prospects for many thousands of employees.

The minor tinkering around the edges that the Government is talking about, reportedly in response to representations by the Australian Hotels Association (AHA), are nowhere near sufficient to address the major problems that would be created by the proposed new casual employment provisions.

The Closing Loopholes Bill is currently the subject of a Senate Committee inquiry. The Bill is likely to be voted upon in Parliament in February 2024.

Further assistance

For further information or assistance in relation to the Closing Loopholes Bill or casual employment matters, please contact Stephen Smith, Principal of Actus Workplace Lawyers, on 0418 461 183 or Email: stephen.smith@actuslawyers.com.au.