

# **Employers Guide to Performance Management, Termination and Redundancy**

October 2021

Version 1.3

## Disclaimer

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# Introduction

## Purpose of the guide

This guide has been developed as a 'how to' guide to managing employee performance, termination, and redundancy. In Australia today the business market is extremely competitive and with labour costs among some of the highest in the world, it is important to make the most of your best workplace asset – your human resources. The effective performance of your team of staff will mean the difference between business failure and maintaining that competitive edge, to thrive and profit. Many managers have been stung by hiring employees who do not perform, cause damage to the business, take up valuable time and effort and in some cases expensive legal costs in the event of an unfair dismissal case or adverse action claim.

So how you minimise this risk? Most owners are so busy with the day to day running of their business that they have little time to upskill in the techniques of employee management. While larger organisations may have a human resource specialist, the employee advice and processes that should be followed can be applied by any business owner with the right tools and information. It is important to understand that if you employ staff in your business, it is obligatory to understand your requirements under employment law.

## Guide overview

This guide provides comprehensive step by step information about managing employee performance including termination or redundancy. Each section is outlined with detailed information and supporting templates to utilise in your workplace.

To use this guide most effectively it is important to refer to and follow all steps provided. This will not only assist in preventing employee issues from arising but will provide a valuable defence if any disciplinary action, including termination, is challenged.

If unsure about the process, seek professional advice.

# Performance Management

## Why manage your employee's performance?

Put simply, because it means better business. Over the last 20 years the emergence of human resources has changed the way organisations manage their people. Gone are the days of the autocratic management style, where what the boss says goes. Many recent studies suggest the way to get the best out of your business and achieve competitive advantage is to develop your people. Leadership styles are now encouraging, developing, and allowing for employees to make a personal commitment to the business and its outcomes.

The industrial and employee relations legislation in Australia supports this style of management and there is an onus on businesses to operate within the frameworks of merit and equity for employees. This makes the management of your staff a crucial element to running your business.

Prevention is always the best cure, and this is particularly effective when it comes to employee performance management – it should start at the very beginning of the employment cycle.

## Think performance in recruitment

Hiring a new employee and the interview and recruitment process can mean make or break in your business. The time taken to review the role, advertise, interview, and induct a new employee makes recruitment a labour intensive and costly exercise. It is therefore important to be as accurate as possible in selecting the right person for your role.

Interviewing and selection is not a fail-safe process, however there are steps you can take to minimise the risk. Tailoring your interview questions specifically to the outcomes required in the role will assist, as well as employing pre-interview testing. Behavioural and personality indicator testing can be useful in helping you select the right candidate, particularly to ensure harmony within the team and culture of the business. These tests are conducted by a specialist organisation who will analyse the results and usually provide you with a detailed report containing information on preferred working style and behaviours. This information is useful when selecting your new employee and determining the best way to manage their performance in the future.

Another way to minimise the risk of hiring an unsuitable employee is to ensure you conduct thorough reference checking including previous direct supervisors. Ensure the referees are not colleagues or personal references and don't be afraid to ask detailed questions about the role they previously performed, their responsibilities and would their previous employer re-hire them in the future?

See the Interview Checklist and Reference Check Form for more information.

## Induction and planning for success

The induction process at your business will determine your new employee's ability to be productive in the most efficient timeframe, yet it is often overlooked and undervalued.

More than a one-day 'throw in the deep end' approach, induction is now more often described as on-boarding, which encompasses the entire process and time taken for the employee to begin working at optimum productivity in their role. The onboarding process should be carefully planned to include all aspects of the role including IT set up and use, customers, staff, organisational expectations, policies, and procedures.

The aim of a successful onboarding program is to give your employee the best possible opportunity to perform well in the position and to meet your obligations as an employer. Employees should be given workplace policies and procedures to read and sign that they understand and will adhere to them. It is important to ensure all information is well communicated at the beginning of the employment contract.

A supporting induction checklist template is included in this guide.

## Policies to support employee management

There are a wide range of employee policies which can be implemented in your business however keep in mind that for these policies to provide the highest level of coverage both in the workplace and when challenged, you must:

- Distribute them to all staff
- Provide training and/or ensure the information is understood
- Regularly review them and provide updates if necessary
- Communicate the consequences of breaching the policy and
- Ensure you maintain consistency with actioning these policies across all staff

The essential policies to implement in your workplace are listed below:

- Code of Conduct: Outlines expectations around behaviour, dress, and appropriate office conduct
- Health and Safety: Vitally important policy outlining expectations under the health and safety act. This policy could mean the difference between a near miss (a reportable offense) and a workplace fatality. Bullying claims can also be brought forward under the health and safety act and lodged in the Fair Work Commission.
- Grievance and Dispute Resolution: This policy outlines a step-by-step process to be followed in the event of a grievance/dispute.



- EEO and Anti-Discrimination: Another important policy ensuring equity in the workplace and preventing prosecution
- Bullying and Harassment: Claims around bullying are becoming more prevalent and with increased accessibility to the Fair Work Commission, having a clear policy is a must in the workplace
- Parental Leave: Outlines mandatory entitlements to employees including adoption leave
- Disciplinary Policy and Procedures: The most important policy when it comes to managing employee performance. Outlines the process undertaken and covers each step to ensure an equitable process and protection under the Fair Work Act provisions
- Flexible Work Options: A policy outlining the Fair Work Act requirements. This policy provides information on the flexible work entitlements available to employees

Other policies which may be useful in your business include:

- Use of computer, email, internet and social media
- Use of company vehicles and equipment
- Information management (such as privacy and trade secrets)
- Education and training

If you require any of these policy templates, bO2 Corporate Essentials can provide these on request.

## Qualifying periods and documentation

Once you have selected a new employee and they begin their employment, a probationary period can apply under the Fair Work Act. For businesses with less than 15 employees the maximum qualifying period is 12 months and for a business with more than 15 employees the maximum qualifying period is 6 months. These figures are based on the minimum service requirements to access protection under the Unfair Dismissal laws.

These minimum service requirements do not apply to claims under Section 334 General Protections of the Fair Work Act 2009 and may apply to potential employees who are unsuccessful in their application of employment and claim that the employer took adverse action against them which prevented them being successful with their application.

Subject to unsatisfactory performance, a probation period may be extended, however documentation surrounding probationary periods must be detailed and concise. A performance review template is included in this guide and generally should contain the following:

- Clearly outlined expectations and timeframes

- Objectives for learning
- Criteria which is easily measurable
- An opportunity to provide feedback
- If necessary, outline the steps to be taken if performance does not improve

Unlawful termination claims may still apply under the probation period and employees must be given every opportunity to learn and become productive in their new role before the employment contract is terminated.

## Ongoing performance management and reviews

Managing the performance of your staff does not mean a once yearly discussion; it is open and honest conversations which can be held weekly, monthly and annually utilising both formal and informal methods.

It is good practice for all supervisors to conduct a weekly 'check-in' discussion with staff individually to ensure work is progressing, focus is maintained, and they have the opportunity to discuss the work with you. More formally, a documented performance plan containing key performance indicators or outcomes should be reviewed and amended with the employee every 6 to 12 months.

Most importantly, if your employee begins to show signs of performance deterioration you must address your concerns with them as soon as possible. Don't wait until the 6 or 12-month formal review to raise your concerns where the employee could have been given the opportunity to improve. This especially applies to employees during their probation period.

In the event that performance begins to deteriorate, refer to disciplinary and warning process and the templates provided in this guide.

## Difficult conversations

One of the most uncomfortable responsibilities as a manager is to have a tough conversation with one of your staff. This is particularly evident where the working relationship develops into friendship, or where the staff involved are more sensitive to constructive criticism.

This being the case, the ability to have these conversations in a manner that is not only fair but leads to a positive outcome is a skill. Below are some pointers to assist you in feeling confident when these situations occur:

- Prepare. Write dot points of the issues you would like to address but don't script. Consider that it may be the role that has changed, not just the employee. Are your requests reasonable?
- Let the employee know that this is a discussion only and not part of the formal warning process

- Approach with concern. If the behaviour or work issue is out of the ordinary for that person remember that we all go through difficult periods in our life – there may be something outside of work that you are not aware of
- It is a conversation - allow for two-way communication and use open questions
- The conversation needs to be about the behaviour or work not about the employee themselves and not about you. Stick to the facts and avoid any inflammatory words such as 'you always' or 'never' etc.
- Give the employee time to respond and reasonably consider the response. You can come back to them with an answer to questions if you need further time
- Clearly outline your requirements, timeframes and document them. Provide a copy to the employee - even if this is an informal email
- Allow for reasonable requests for training, support and other methods to give them the opportunity to succeed in the position
- End on a positive with clear objectives – create solutions together
- Be flexible with staff needs but remember to maintain consistency in outcomes, expectations, training and support across all of your employees
- If you do not feel that you have the skills, or you have a close personal relationship with the employee that may affect the process, seek internal assistance or HR/IR professional advice

## Disciplinary and warning process

In the event that the employee's performance continues to fall short of the expectations of the business, a disciplinary procedure should be followed. The disciplinary process and procedures should be followed in the event that a staff member:

- Breaches any of the responsibilities/requirements outlined in company policies or procedures
- Underperforms in their role on a consistent basis
- Fails to follow reasonable requests from their supervisor
- Fails to follow safe work practices

Key steps to remember throughout this process:

- Ensure the employee is aware of their requirements (have they read the policies and procedures since their commencement?)
- Clearly document each meeting including expectations and outcomes and give a copy of this document to the employee

- Allow the employee time to prepare for each meeting (e.g. reasonable notice) and give them the opportunity to bring a support person such as a close friend family member or union representative

If the support person of the employee is not available on the date/time scheduled for the meeting you may wish to postpone, however you are not required to agree to a reschedule if the request is unreasonable.

The steps in this process are outlined as guide and are subject to the severity of the behaviour / underperformance.

In more complicated circumstances you are encouraged to seek advice from an HR professional.

## Support Person Role

Quite often there is confusion over the role of a support person and the following points can be used to assist in determining the best way to assess this role and how to proceed:

Under the provisions of Section 387 of the Fair Work Act the Commission will take into account when determining if an employee's dismissal is unfair and whether the employer unreasonably refused for the employee to have a support person present to assist with the process and meeting/s.

The unreasonable refusal to allow an employee to have a support person present may therefore adversely affect the employer's case if an unfair dismissal claim proceeds to the Fair Work Commission.

For businesses with less than 15 employees covered by the Small Business Dismissal Code, a support person prohibits a Lawyer from acting in a professional capacity at a meeting where a dismissal may occur.

These last two points are generally where the confusion begins with employers often making decisions that can adversely affect the outcomes of disciplinary processes.

The following steps are general advice to assist employers with this issue and to provide some guidance so that the best possible outcome can be achieved for all parties:

1. When you require a meeting with an employee to discuss a disciplinary matter it is good general practice to advise them that they may bring a support person to this meeting event though you are not required to provide this advice.
2. Unless there is a reasonable and defensible reason for refusing the support person chosen by the employee, it is good practice to not refuse the presence of a support person.
3. The support person should not be a witness or otherwise involved in an investigation or have any personal interest in the proceedings or process.

4. A reasonable reason under these circumstances may be where a conflict of interest or a health and safety issue exists, or where an ex-employee is proposed as the support person.
5. If you do refuse to accept the support person initially proposed by the employee, reschedule the meeting and give the employee the opportunity to arrange for another more suitable support person to be present.
6. Before the meeting commences, remind the employee and their support person that the role of the support person is to provide the employee with emotional and practical support during the meeting.
7. The support person is not to act as the employee's representative, they may take notes and ask questions but not advocate on behalf of the employee.
8. Seek acknowledgement from the parties that they understand the role of the support person before commencing the meeting.
9. If the support person becomes disruptive remind them of their role and advise that if they continue to disrupt the meeting the meeting will be cancelled and rescheduled with the employee advised to bring a more suitable support person.

Following these steps will assist disciplinary meetings and improve an employer's defence if a claim of unfair dismissal or adverse action is made by the employee.

### **Step 1 – Informal Warning**

The informal warning stage is the first step in the disciplinary process, where you arrange a meeting with the employee to discuss the performance or behaviours which do not meet the expectations of this business.

In this meeting you will give the employee an opportunity to respond and agree on a plan to improve their performance (if applicable). At this stage you would give the employee an informal verbal warning and the outcomes of the conversation/actions must be recorded. A formal letter of warning is not issued during this stage and on most occasions, employees are able to rectify their work performance/behaviour before a formal warning is required.

Performance improvement strategies may include the following:

- Training and development
- Process mapping
- Workload reviews
- KPIs and performance objectives clearly documented
- Revision of related policies and procedures and sign off on understanding of the identified documents

## **Step 2 – First written warning**

If following an initial verbal warning, if the employee's behaviour or performance does not improve, a written warning can be issued. Contact the employee to arrange a meeting, give them the opportunity to bring a support person and clearly outline:

- The reason for the written warning and standard of behaviour/performance which requires improvement
- A plan to improve the performance or behaviour and timeframes that these goals will be met (usually within three months)
- The steps which will be taken if performance does not improve by the set timeframes (this may include a further warning or dismissal)

This information should be documented, and a copy provided to the employee outlining the outcomes of the meeting.

## **Step 3 – Final written warning**

In the event that the employee's performance/behaviour does not improve within the set timeframes, a final written warning can be given. Another meeting is called with the employee and their support person and they are informed that failure to improve their performance/behaviour will lead to dismissal. At this stage a final performance/behaviour improvement plan must be put in place. As with step 2, employees should receive a formal letter outlining the details of the warning and the steps required for improvement.

## **Step 4 – Dismissal**

After all steps in this process have taken place and the employee's performance is still not to an acceptable standard as an employer you have the ability to terminate the employment contract. In this instance you would provide the employee with a Letter of Termination and the employment contact would cease.

It is important to provide the employee with the reasons for dismissal and an opportunity to properly respond to the allegations. Once the response has been considered, the reasons for dismissal must be given to the employee in writing.

The employee should be advised what the meeting is for and be given the opportunity of having a support person present, and where applicable, the Small Business Dismissal Code should be applied.

The employee should be paid their final leave entitlements within two working days of your letter of termination. More information can be found under the Termination heading.

Templates for written warnings are included in this guide.

## Conducting investigations and record keeping

When a situation or incident occurs at the workplace which involves a disputed depiction or version of events, it is necessary to establish and record the facts so that appropriate action may be taken, and policies and procedures are followed. This is critically important in the case of workplace bullying or workplace discrimination, terminations and even workplace health and safety matters.

Some of the more common matters that might give rise to a complaint that requires a workplace investigation are:

- Assault
- Absenteeism
- Dishonesty
- Corrupt behaviour
- Harassment
- Abuse
- Diminished performance
- Breaches of policy
- Breaches of confidentiality
- Fraud or theft

In the case of a workplace dispute or grievance such as bullying or discrimination, once a complaint or allegation has been received it must be investigated, dealt with and recorded in accordance with any policies or procedures that may be in place in your business.

The key purpose of conducting an investigation is to eliminate issues of:

- Emotion
- Perception
- Malice
- Discrimination
- Pranks

The findings of investigations carry different burdens of proof with criminal proceedings requiring 'beyond reasonable doubt' and employment related proceedings being determined on the 'balance of probabilities'. These distinctions on the respective burdens of proof can be essential if the matter progresses to a court or industrial tribunal.

Some definitions to assist you in the process include:

A fact: something that has really happened or is the case (the reality), an actual or alleged physical or mental event or existence as distinct from a legal effect or consequence.

Evidence: that which is

- Written
- Said
- Not said
- There, or
- Not there

What is not considered evidence:

- Thoughts
- Rumours
- Innuendo
- Hearsay
- Opinion
- Assertions that it must have happened in this way

When conducting an investigation, it is important that the facts are considered, and these are differentiated from what is not considered evidence. Through this process you must also be aware of your own biases to ensure the investigation is fair and has legal standing.

Depending upon the circumstance, it may be practical to stand down the parties until the investigation is completed. Generally, this is paid time and the terms of the stand down will depend upon the parties' employment status.

If it is not possible to stand down the parties involved in an investigation, all steps should be taken to minimise their contact by physically separating them while at work. This must be done giving due consideration to confidentiality and the impact it may have on involved parties and other members of the workplace.

In the first instance, the main points to consider when commencing a workplace investigation are:

- What are the issues, claims or allegations
- What are the applicable organisational policies or legislative requirements that apply
- Who are the parties to be interviewed and in what order
- What are the crucial questions that you intend to put to the complainant and the respondent
- If the case involves fraud or theft, are third parties or agencies such as the Taxation Department, ASIC or the Police to be informed/involved



In the case of serious criminal activity, it may be necessary to involve the police in the first instance rather than before investigating internally. If this occurs, it is best to seek advice from an HR/IR or legal professional or the police before proceeding.

The parties should be advised in writing of the nature of the complaint, who has made the allegations, what the allegations are in detail, who will be investigating the matter, what the general timeframes for the investigation will be, and copies of any relevant workplace policies and procedures.

The parties should also be advised that the process is confidential, and they should not discuss the matter with other members of the workforce and particularly with other parties who may be interviewed or requested to provide a witness statement.

It is crucial that in any interview, staff are given the opportunity to have a support person present. A support person may be a workmate, family member or friend (in the case of a disputed dismissal it may not be a lawyer at the first interview). The role of the support person is to be there for support only and to witness the events and the discussion; they are not there to be the employee's advocate or representative and therefore should not speak on behalf of the employee. It may be necessary to clarify understanding of these roles at the start of the interview or before it commences (see Support Person Role in Disciplinary and Warning Process above).

All investigations should be carried out fairly and impartially without any bias or prejudgement. The onus of the investigation will be on 'procedural fairness' to those involved. Failure to apply due process and to apply the principles of natural justice through the process of an investigation may inhibit the ability to uphold the outcome of an investigation if it is challenged.

Depending on the nature of the business and the complaint, an external investigator may be engaged to run this process. This may be particularly useful in complicated complaints, or where a higher level of impartiality is required. Before you commence an investigative process, be aware of any bias or conflict of interest you may have and if you feel you cannot be impartial, it would be wise to seek external services to assist in the process.

It is not good practice for the investigator to be a person to whom the respondent reports, as this can portray a conflict of interest. The investigator should have some form of training and/or experience in conducting investigations and should have no conflict of interest with any parties involved.

If the issues involved are complex, major or highly sensitive it can be beneficial to attain advice from legal or other related professionals such as IT or accounting.

Lawyers can be useful to advise on police involvement, the level and extent of possible criminal offence (particularly in bullying/harassment cases) and general legal practice.

The role of investigator is to:

- Gather the facts and any documentation or evidence available

- Review the facts and let them present their own theory
- Avoid preconceived theories
- Utilise facts to test the veracity of the theory
- Not jump to premature conclusions
- Keep an open mind until all facts are presented, all interviews are conducted and all evidence is supplied

Once the parties have been identified and notified and the interview commences you should:

- Introduce yourself and any other party that may be present such as a HR representative, management representative or advisor
- Explain to the parties your role and the terms of reference that the investigation will follow including the proposed timeframes
- Explain the confidentiality process and advise of your role - you will interview the parties and establish the facts as far as practicable
- Declare that you have no conflict of interest, you have the authority to investigate the matter and ask if they have any objections to you being the investigator
- Ask the respondent if they are aware of the details of the allegation or complaint (if they say that they do - request that they tell you in their own words so that you can evaluate their understanding, if they say no - summarise the complaint or allegation for them and confirm understanding)
- Ask if they would like to have a support person present during the investigation interview (if this has not been established)
- Before proceeding, ask if they are in agreement with the process that you have outlined, your role as investigator and whether they are prepared to proceed with the interview
- Explain in detail the process you intend to follow including statements and note taking, what happens to the statements or notes after the interview and what will happen next including the timeframe to complete the investigation
- Ask if the respondent has any questions before you commence the interview

Once the interview has been completed you should:

- Ask if the respondent has any concerns with your handling of the interview and the process used and if they do raise any concerns, respond to them to resolve any future conflict
- Once again reinforce the need for confidentiality and what consequences may occur if this confidentiality is breached including the rights of all parties and the risk of victimisation

## Obtaining documents relevant to an investigation

Potential documents that may be useful when conducting an investigation include:

- Business records
- Personnel records
- Roster or shift records
- Payroll or pay office records
- Accounts
- Private files kept by Management
- Diaries and diary notes
- Electronic diary entries
- Emails
- Security records
- Time records, Bundy clocks, timesheets etc.
- Financial records such as mobile phone, company credit card, expense reports and bank statements

Where there is any suspicion that email or internet misuse has occurred it is important to examine the hard drive of relevant computers. It is relatively easy for the entire contents of a computer hard drive to be recovered, although this usually requires specialist software and the assistance of an external agent to recover the material. Depending on the size of the organisation, the IT team may be able to restore the email system back to a certain date or time to recover any emails which have been deleted.

Other factual evidence to be considered:

- Corroborative evidence from other parties
- Evidence of other parties which tends to disprove the complaint
- Events/items which go to the credibility of persons giving statements
- Events/items going to the credibility of the allegation which is being made

All statements should be signed and dated, and interviews recorded with a recording device (with the parties' permission) or at least by handwritten notes.

Once the interview/s have been completed it may be necessary to review the process to establish whether:

- Any questions should be repeated
- Any issues identified which need clarification

- Any further information that should be put to the witness
- Whether there are any further inquiries to be made or additional witnesses to be questioned

It should also be recognised when conducting a workplace investigation that all of the material collected is discoverable if the matter progresses to a trial and you may need to provide evidence to justify the investigation and its process. Essentially - you may be cross examined on your investigations.

The most effective method to retain your position through cross examination is to conduct the investigation thoroughly and follow the above processes.

Once the investigation has concluded it may be useful to have an appropriately qualified third party review the findings and make the final decision on the outcome and course of action. By engaging a third party decision maker in the process you will not only strengthen procedural fairness but also ensure any biases which could develop through the interview process do not affect the outcome of the decision.

Sometimes your investigation may rely on external investigations which have already been conducted by:

- Police
- Criminal Justice Commission
- Centrelink
- Workplace Health and Safety
- Private Investigators
- Taxation officials
- Other external bodies

#### Some basic tips to summarise the process

- Always investigate a complaint
- Carefully document the investigation
- Plan the investigation and ensure that the selection of the investigator and /or the team does not create any charges of bias or unfairness
- Do not raise the expectations of the complainant or delay the investigation process
- If the respondent to the complaint is a senior person in the organisation be careful to allay any assertions that the investigation went easy on that person because of their position in the company
- Enforce the confidentiality of the process at all times to all parties

- Ensure that the respondent is fully aware of the case against them and that they are given the right to respond to the complaint
- All statements should be factual and not contain unnecessary or irrelevant comments
- Make sure that a decision is made following the investigation and that this decision is communicated to the relevant parties

## Unions in the workplace

The presence of union membership in the workplace can be a hotly contested topic although there are positives and negatives for each side. Some studies show that the presence of a union leads to greater productivity with the opportunity for union members and management to discuss and resolve issues within the workplace. Other studies show that the presence of a union divides workers and management and fosters an 'us and them' approach to the work culture.

Regardless of opinion, unions are a part of the Australian industrial relations landscape and have rights of accessibility to workers and businesses.

Union officials may enter a workplace with a valid right of entry permit issued from the Fair Work Commission or where they suspect a contravention of the Fair Work Act. The Right of Entry Provisions are found under Section 478 of the Fair Work Act.

Unions may enter a workplace to:

- Consult with employees who are entitled to be represented by the union
- Investigate a suspected breach of an award, agreement or the national workplace relations laws
- Look into any suspected breaches of workplace health and safety laws

However, they may only enter the workplace if:

- The breach under investigation relates to at least 1 member of that union
- The union member works on the premises
- The employees want to talk to the union official

When entering a workplace, union officials are required to only visit during working hours and follow any reasonable directions from the employer while on the premises.

With right of entry to the workplace, unions have certain access to information relating to the suspected breach. They may talk to anyone during unpaid time such as lunch breaks and view and take copies of records such as processes, time sheets, leave records etc.

It is important to note that union officials can only take copies of personal employee records of members of that union.

All employees have the right to join a union and must not be treated unfairly because of their membership. Employees also have the right to refuse to join a union, leave a union and must not be coerced into joining a union.

If you are operating within a footwear, textile or clothing industry, special conditions apply to union entry. See the Fair Work website for more information.

Overall, it is in the best interest of the business and employees to maintain a positive and respectful working relationship with known union officials and to foster a harmonious workplace.

## Casual to full time/part time conversion

All Modern Awards effective from 1 July 2021, have had an additional clause inserted into them.

The additional clause will affect the rights and obligations of employers who employ people who work on a regular and systematic basis, as casual employees.

The clause introduces the concept of a “regular casual employee”, being an employee who works “a pattern of hours on an ongoing basis which, without significant adjustment, the employee could continue to perform as a full-time employee or part-time employee”.

In the Federal Circuit Court, they have identified casualness as “the absence of a firm advance commitment as to the duration of the employee’s employment or the days (or hours) the employee will work. A casual employee also does not commit to all work an employer might offer.”

These definitions are clear and will be relied upon where the classification of casualness is disputed and the use of long-term casuals, or casuals employed on shifts / rosters, or on a continual basis will need to be carefully reviewed and managed.

The other modern awards affected contain a variant of paragraph (j), which essentially relates to record keeping when conversion to permanent employment is agreed.

### **IMPORTANT ISSUES**

1. The new clause does require you to offer permanent employment to a “regular casual employee”.
2. The new clause does require you to provide a copy of the casual information statement as issued by the FWO
3. The new clause does require you to provide a copy of the casual information statement clause to all your casual employees employed,& new employees upon commencing employment
4. The new clause does require the casual employee to put their request for conversion in writing.

5. The new clause does require you to respond to such request in writing, and within 21 days of receiving the request.
6. The new clause does not require you to agree to such request provided you have reasonable grounds for doing so, but you must advise the employee in writing.

**The following points are required to establish that reasonable grounds were considered in the process:**

1. the conversion would require a significant adjustment to the employee's hours of work in order for the employee to be engaged as a full-time or part-time employee in compliance with the modern award;
2. it is known, or reasonably foreseeable, that:
  - i. the employee's position will cease to exist within the next 12 months;
  - ii. the hours of work which the employee is required to perform will be significantly reduced in the next 12 months; or
  - iii. there will be a significant change in the days and/or times at which the employee's hours of work are required to be performed in the next 12 months which cannot be accommodated within the days and/or hours during which the employee is available to work.

If a modern award which regulates your employees already contains a casual conversion clause, then these changes will not affect that clause.

Your Modern Award contains a new casual conversion clause, each of your casual employees covered by the award should have been provided with a copy of the award

- Use the templates provided in this guide to notify your employee in writing
- Provide fair notice and arrange a time to meet with the employee to give them the letter and discuss their working requirements
- Ask the employee to respond to the letter in writing and record the outcomes and discussions from the meeting
- If the employee elects to convert to full or part time, you must negotiate on the specified days and hours of employment

If your employee elects to remain a casual, they may request full time or part time employment in the future by providing at least four weeks' notice in writing.

If the conversion to part or full time would cause undue hardship on your business, you may refuse the request from your casual employee. In this instance you must be fully open and honest in your reasoning behind the refusal, provide this information to the employee in writing and if possible,

reach an alternative agreement (such as part time hours). This reasoning must be defensible if challenged.

It is important to note that not all modern awards have a casual conversion clause and where they do apply, they may differ in their application and requirements for notice. Ensure you check your award clause (where applicable) and make the required amendments to your process and the notification template.

## Contractors and employees

There is a fine line for businesses in what constitutes an employee and a contractor. Although contractors usually have responsibility for their own superannuation, leave and taxation management, contractors have many rights equal to that of an employee.

One of the most prevalent causes for concern in the small business sector is the use and abuse of casual and contract employees. The definition between what constitutes an employee and a contractor are complex and often disputed, however generally if a contractor is engaged purely to carry out a contract for service and is doing work which could be done by an employee then their status as an independent contractor may be challenged.

Some of the basic definitions of a contractor are:

- Have their own business and the opportunity to make a profit or loss on the job
- Is paid to achieve a specific result
- Provides skilled services
- Generally controls how the services are provided
- Is free to subcontract work to others
- May supply tools, material or special knowledge
- Is responsible for risk and repairs
- Is able to advertise their services to the broader community
- Has no right to employee benefits
- Generally has an Australian Business Number
- Carries out the work under a business name, partnership or company

If an employer uses a contract or contractor to disguise an employment relationship to avoid paying employee entitlements such as superannuation, employee leave entitlements, and payroll and other taxes the arrangement may be found to be a sham contract.



It is crucial that any contractual arrangement is documented with a well drafted contract that clearly sets out the nature of the working relationship and all of the terms of remuneration and tasks required to be performed.

Contractors are also afforded the same protections under the Health and Safety Act including the right to a safe workplace, work practices, a health and safety representative and access to bullying and harassment claims which can also come under the Fair Work Act.

Essentially, it is important when using the services of any contractors that they are properly inducted to the organisation including applicable policies and procedures, and that the nature of the contracting relationship is clearly defined. Be mindful of only using contractors within the definitions and if in doubt, reconsider the nature of the work, or hire an employee to perform those functions.

Division 8, Section 357, 358 and 359 of the Fair Work Act defines Sham Arrangements involving misrepresentation of employment as independent contracts which may attract a civil penalty if breached.

Sham contracting provision breaches carry significant financial penalties up to a maximum of \$51,000 per breach at the time of writing.

## **Working with your team**

If you think about the best and worst managers you have had in your career, you will remember the impact these relationships had on your development, emotional wellbeing and output to the business.

Leading people is a skill and can have a serious impact on the business. Many organisations make the mistake of promoting workers who have a high skill level and many years of experience into leadership roles. Although technically they may excel above the others, often they do not have the skills or expertise to manage people successfully.

To be the best leader you can be and make the most from your team and business, focus on these key areas of leadership.

### **Trust and Respect**

If you don't trust your staff to perform their duties, they will not trust you to lead them. Trust and respect should be reciprocal and will unite you as a team. Most people have experienced micro-managers in their career which stifle creativity and responsibility. Allow your staff to have ownership over the work they do and you may be surprised with the pride, work ethic and ingenuity that emerge.

## **Training**

If you have staff supervising others, they need to have the opportunity to understand and develop leadership skills. This not only creates a productive team, but ensures they have a basic understanding of their responsibilities under the work health and safety act including what behaviour constitutes bullying. Also allowing your staff to attend regular training ensures they are abreast of any new trends, builds skill and capability levels and builds trust by showing investment in your employees.

## **Sharing a Common Goal**

To get the most out of your employees you need a common goal to work towards and aspire to. This is equally as important when running a business and remaining competitive and profitable. By linking the two together and involving your employees you will be amazed at how your business and enjoyment at work will grow. Giving your team goals to work towards gives them a sense of achievement, develops mutual respect and understanding and encourages dedication to your business. Reinforcing these goals on a regular basis will ensure your business remains on track.

## **Make it Fun**

There is nothing worse than going to work every day and hating the job you do. You spend at least 8 hours of every day at your workplace so why not make it an enjoyable place to be for yourself and your team. Much research has shown that happy employees are productive employees and as the leader of your team you can influence the culture in your workplace. Whatever the job, there are always ways to make it more enjoyable. This can be something simple like a Friday lunch bbq, throwing around a beach ball to celebrate achievements or a daily joke for the team.

## **Care**

The best leaders are always those who care about their staff and the organisation. By showing passion for your business, your staff and their welfare you are leading by example and promoting a place where people (especially the best people) will want to work and stay.

## **Termination**

Even the best recruitment process cannot guarantee that your new employee will perform at the level expected of them. In some cases, this is evident fairly soon after commencement (see probationary periods and documentation), in others it is a progressive decline and, in some instances, major life events will negatively impact on an employee's performance. Whatever the case may be, termination is a necessary part of managing a business and ensuring the health of

that business into the future. Poor performance of an employee impacts not only on business profits but on the morale and productivity of other staff and on your time.

Where an employee's performance does not improve and you have followed the steps outlined in the warning process, you may choose to terminate the employment contract.

The minimum requirements for termination notice periods are outlined below. If you are operating under an Award or Agreement, ensure you check the termination requirements as the minimum notice periods may be increased.

Period of Employment	Minimum Notice
Less than 1 year	1 week
*More than 1 year but less than 3 years	2 weeks
*More than 3 years but less than 5 years	3 weeks
*More than 5 years	4 weeks

\*Note that if the employee is over 45 years of age with at least two years of continuous service they are entitled to an additional one week's notice period.

If you are a small business with less than 15 staff, the Small Business Fair Dismissal Code may apply to you. In this case any employee who has worked for you for less than 12 months is not eligible to make an unfair dismissal claim. For more information, visit the Fair Work website [www.fairwork.gov.au](http://www.fairwork.gov.au).

Throughout the disciplinary and termination process you must ensure you have a valid reason for dismissing the employee and take steps to ensure procedural fairness. This will minimise the risk of the employee bringing a successful unfair dismissal or adverse action claim against your business.

An unfair dismissal claim can be made by any employee who believes they have been harshly, unjustly or unfairly dismissed from employment and they can apply directly to the Fair Work Commission to have the matter investigated within 21 days of the dismissal providing they have met the minimum service standards of six months' service for employers with more than 15 employees or 12 months for employers with less than 15 employees.

Where there are less than 15 employees at the time of dismissal, the Small Business Code applies (available on <https://www.fwc.gov.au>) and if followed properly by the employer, there may be no

access to the protection of the Unfair Dismissal provisions of the Fair Work Act 2009 (section 385 FWA).

Another possible claim that may arise is an Adverse Action (section 340 Workplace Rights) General Protections application involving dismissal where an employee has been the recipient of an alleged adverse action by the employer.

These claims can be quite complex and may require professional assistance and representation.

### **Instant dismissal – Serious Misconduct**

In some cases, an employee's performance or behaviour will be of such a serious nature that it will warrant immediate dismissal. This can include:

- Causing an imminent risk to health and safety of others including verbal abuse
- Disobedience to a reasonable and lawful request given by your supervisor or manager
- Theft from the business
- Vandalism or damage to business property
- Damaging the reputation and/or profitability of the business
- Being under the effects of drugs or alcohol in the workplace

In the event that an employee requires immediate dismissal you must provide them with a formal letter of termination of employment outlining the reasons for the termination. The employee must be paid all entitlements including a notice period reflecting the length of employment within two business days. You have the right to request the employee does not return to their duties prior to their termination date and in this case a payment in lieu of notice period will apply.

### **The Aftermath of Termination**

It is important to note that when conducting a termination process, the effects can linger long after the staff member or members have actually left.

This is particularly relevant where redundancies have occurred, and a number of employees have been terminated due to economic circumstances.

Terminations may have significant impacts on other members of your staff. Don't be surprised to see a post termination slump in existing staff morale and productivity. This could be for any number of reasons including:

- Fear of losing their own jobs
- Feelings of loss for that person (particularly if friendships were developed)
- Anger towards management for terminating that person

- Feeling unsettled due to the change
- Uncertainty of the future or new employee

While these feelings are common in workplaces, there are ways to influence the post-termination slump to ensure your team are back to business within the shortest possible timeframes. Some strategies include:

- Do not pretend it did not happen. Check in with your team and be as honest (maintaining confidentiality) as possible with them
- Paint the picture for the next chapter – explain what will happen with the position, the team, business etc. going forward
- Create stability – although there may be extra support required while a new person is hired, try to keep the status quo as much as possible
- If you see the same negative trends developing in other team members, remind the team of the relevant policies, KPI's, behaviours expected etc.
- Lift the morale by organising a team event such as a lunch, game or an early knock off time
- Remind them that they are a valuable part of the team and provide encouragement and compliments for good work

By using these strategies, you can ensure the effect of termination on the business is minimised and employees are back to their pre-termination productivity as soon as possible.

## Redundancy

Similar to termination, managing redundancies is a stressful time for any business owner. While choosing to make employees redundant has significant impacts on them, it ensures the health and viability of the business for the future and ensures employment for your other staff.

Redundancies may be given where the job that employee performs is no longer needed, or where the business becomes bankrupt or insolvent. In the event that you are able to provide suitable alternative employment to the employee, redundancy is not required.

Under the provisions of the Fair Work Act 2009 and the National Employment Standards (NES), there has been a widening and consolidation of the application of redundancy pay and provisions for Australian workers. The NES provides for up to 4 weeks' notice of termination (5 weeks if the employee is over 45 and has been in the job for at least 2 years) and up to 16 weeks' redundancy pay. However, most employers with less than 15 employees do not have to provide redundancy pay (notice periods do still apply) but they must follow the Small Business Dismissal Code when making an employee redundant. There are exceptions under some modern awards and pre-modern awards. Copies of the Small Business Dismissal Code and exceptions for redundancy pay can be found on the FWC website - [www.fwc.gov.au](http://www.fwc.gov.au).

In order to avoid an unfair dismissal or adverse action claim when carrying out an employee redundancy, the following steps are advised:

- The employer should ensure that the employee's position is no longer required and the job they were performing is no longer needed or to be done by any other employee or worker or where through no fault of the employee the duties of the role have changed to the point that the original role no longer exists
- Once this has been established, employees can be selected for retrenchment by seniority, job performance potential or voluntary redundancy

The consultation process requires the employer to:

- Notify the affected employee/s of the decision to introduce major change in the workplace which will have significant effects on their employment and provide in writing the details of the proposed change.
- Discuss with the affected employee/s (and their union if applicable) the likely effects of the change and any measures to mitigate these effects
- Give prompt consideration to any suggestions raised by the employee/s or their union, such as redeployment and retraining options

The employer has a responsibility to the employee and also to avoid unfair dismissal or adverse action claims, to consult with the affected employee as the Fair Work Act will only recognise a 'genuine redundancy' which is exempt from unfair dismissal protection where the consultation process has been followed.

If there are more than 15 employees to be made redundant, the Fair Work Act requires that the employer notifies Centrelink in writing of the proposed redundancies and requires that notice be provided to the appropriate union and the consultation process to be followed under these circumstances. Some awards also have provisions for employees to receive paid time to attend job seeking activities. Ensure you check your applicable award for redundancy provisions.

The redundancy pay provisions are as follows:

**Redundancy pay period:**

Period of Employment	Pay provision
At least 1 year but less than 2 years	4 weeks
At least 2 years but less than 3 years	6 weeks
At least 3 years but less than 4 years	7 weeks
At least 4 years but less than 5 years	8 weeks

At least 5 years but less than 6 years	10 weeks
At least 6 years but less than 7 years	11 weeks
At least 7 years but less than 8 years	13 weeks
At least 8 years but less than 9 years	14 weeks
At least 9 years but less than 10 years	16 weeks
10 years and over	12 weeks

Employees 10 years and over must also be paid their long service leave entitlements, and this is why the entitlement reduces in the table above once 10 years' service has been reached.

These provisions do not apply where an employee has had less than 12 months' continuous service on termination.

Where the employer has fewer than 15 total employees at the earlier time that the employee was given notice or dismissed (this includes part-time and casuals who are regular casuals and any other business entities) are not entitled to the redundancy payments but the consultation process contained in the Small Business Dismissal Code should be adhered to.

## Termination notice periods

Refer to the termination section for notice period requirements, then increase the period by 1 week if the employee is over 45 years old and has completed at least 2 years of continuous service with the employer at the end of the day the notice is given. An employer can choose to pay out the employee in lieu of notice if they do not want the employee to work through their notice period.

If the new employer and the old employers are associated entities, the new employer must recognise the employee's service with the old employer. If the transfer of business is between two non-associated entities, redundancy payments do not apply, and any accrued entitlements are usually paid out as part of the business sale.

Dismissal of an employee for disciplinary or inefficiency matters or where the employee is replaced by another employee carrying out the same duties is *not* considered a genuine redundancy.

In addition to redundancy provisions, an employee's final pay should include any annual or long service leave accruals and wages owing including overtime and allowances.

In the event that your business is bankrupt, and you are not able to pay your employees, they can apply to Fair Work for the Fair Entitlements Guarantee which may compensate them for suitable leave amounts.

Similar to termination, redundancies can wreak havoc on staff morale and productivity. See the termination section for tips on managing the aftermath of redundancies in your workplace.

## Conclusion

Managing employees in your business takes much more than just hiring and processing pay. It is essential that you manage all aspects of the employee lifecycle both to aid in the productivity and longevity of your employees, and also to comply with applicable employment law.

This guide has been developed to assist you with these complex employee related matters and the general compliance of the business.

However, if you do need further advice or assistance, please contact bO<sub>2</sub> Corporate Essentials.

## Forms and Templates

This section of the guide provides you with some of the most common forms and templates for use in your workplace. When using these forms, please ensure you keep the integrity of the content, as removal may have employment law implications. If you are unsure about editing or require a template not provided in this guide, please contact bO<sub>2</sub> Corporate Essentials. There are a range of templates available on their website to suit your needs.



## Interview Checklist - Prospective Employee

### *First Interview*

- Make sure that you have read the application and that you have familiarised yourself with the role and the applicant's details.
- Meet and greet the interviewee and make them feel at ease.
- Introduce yourself and any other attendees at the interview.
- Offer pre-arranged water to the interviewee.
- Briefly explain your role and the process to be followed, including the allotted time for the interview and the timeframe for the position to be filled.
- Confirm and clarify any details that you are not clear about with the interviewee.
- Commence the interview process with basic questions and prior history and experience so that you can ease into more detailed questioning.
- Probe into the employment history of the interviewee.
- Ask specific questions that relate to the role or their previous experience and how they have handled difficult issues in the past.
- Ask them to relate a recent difficult issue and how they dealt with it and what they learnt from the experience.
- Ask the interviewee how much they know about the company and the role (it is generally a good sign if a candidate has researched the company and has some knowledge of the business and role).
- Have at least one or two questions where you gauge their reaction, such as *'what is your view of working long hours when required to finish a project?'* or *'how do you feel about being moved to other locations, departments in the business if required?'* and assess and note their reactions.
- Try to get the interviewee to do most of the talking where appropriate and to sell themselves to you.
- If they appear reluctant to talk during the interview, try to start things moving with some discussion on general matters or contemporary issues.
- Once you have finished your part of the interview and you are satisfied that you have all of the information that you require, ask the interviewee if they have anything else to add or if they require any additional information about the organisation or the role.

- Finally, ask the prospective employee how much notice they are required to give (if currently employed) and when they would be available to commence the role if successful.

### *Process after the first interview*

- Seek the interviewees permission to contact their referees and then follow up the references given by the interviewee.
- Keep a record of the conversations and attach it to their file
- When contacting the referees be discreet and assure the person whom you are calling that you have the interviewee's permission to contact them and seek the required information.
- Ask questions such as:
  - ✓ How well did you know the applicant and for how long?
  - ✓ Was the referee a direct supervisor of the employee?
  - ✓ Probe into the duties and tasks handled by the interviewee and how they performed the tasks.
  - ✓ Inquire as to why they left the previous role.
  - ✓ Ask if they would employ them again if the circumstances arose.
  - ✓ What were their job duties and responsibilities?
  - ✓ How long were they employed for?
  - ✓ How was their overall performance?
- Clarify the information regarding the education accomplishments of the interviewee where applicable, especially where formal qualifications are concerned.
- Seek copies of any degrees or equivalent qualifications.
- Depending upon the organisation and the role you may wish to check the criminal record of a future employee before hiring them.
- Once you have gathered all the information you require, you may wish to discuss the application and the potential employee with the relevant people in your organisation and with the person/persons who will make the final approval.
- All of the information accumulated through this process is private and confidential and abuse of this information or contacting referees without permission may result in legal action being taken by the interviewee.
- When making your decision, base it on the facts and whether the applicant fits the job and is suitably qualified to fulfil the set duties and responsibilities.

- If you feel that you require a second, or even third, interview, arrange for the interviewee to come back.
- You may want the advice or attendance of another staff member at the next interview to assist you in making the final decision.

## Reference Check Form

<Insert Company Details>

Candidate name:

Position applied for:

Date of reference check:

Name and organisation of referee:

Relationship to candidate:

Introduce yourself and reason for calling and inform them that they have been provided as a referee for the candidate. Inform the referee that their comments may assist in determining an offer of employment with your company. Ask them if they agree to providing a true and accurate reflection of the employee's work history.

(Circle)                      Yes                      No                      – seek another referee and be wary

Please provide dates of employment:

Could you tell me about the role <insert name> was performing at your organisation and what were their duties and responsibilities?

How would you describe their performance while in this position? How would you describe their performance in comparison to other team members?

What role did they play in a team environment?

Why did <insert name> leave this position?

How would you describe their interaction with customers and clients? Managers and supervisors? Colleagues?

Clarify any outstanding information from the interview process or areas of concern.

How would you describe *<insert name>*'s attendance and punctuality?

Describe the position the candidate has applied for. How well do you believe *<insert name>* would suit this role?

What were their key strengths and areas needing further improvement?

Would you re-hire *<insert candidates name>* if the opportunity arose?

Thank the referee for their time.

Signed *<insert name of reference checker>*

## Induction Checklist – New Employee

### Employee Details:

Employee Name:

Employment Date:

Position / Job:

Manager / Supervisor:

Department:

Section:

### Stage One: General induction on first day

**Introduction:** (explain)

- ☐ Nature and structure of the business, history
- ☐ Roles of key people in the organisation
- ☐ Vision and Mission Statements
- ☐ Current objectives, major projects, initiatives

**Employment Conditions:** (explain)

- ☐ Job description and responsibilities
- ☐ Work times and meal breaks
- ☐ Time recording procedures
- ☐ Leave entitlements
- ☐ Notification of sick leave or absences
- ☐ Out of hours enquiries and emergency procedures
- ☐ Policy and Procedures manual

## Stage One: General induction on first day

### Work Environment: (show)

- ☐ Dining facilities
- ☐ Wash and toilet facilities
- ☐ Locker and change rooms
- ☐ Telephone call and collecting messages
- ☐ Out of hours enquiries and emergency procedures
- ☐ Car parking
- ☐ Stationery / photocopying, etc.
- ☐ Administration procedures
- ☐ Workstation / Chair
- ☐ Employee amenities / social club

### Payroll: (explain)

- ☐ Rates of pay and allowances
- ☐ Pay arrangements
- ☐ Taxation (including completion of the required forms)
- ☐ Superannuation and any other deductions
- ☐ Union (membership) and award conditions

### Health & Safety: (explain)

- ☐ WH&S policy and procedures (provide manual and forms where applicable)
- ☐ Roles and responsibilities for health and safety
- ☐ Health and safety consultative and communication processes
- ☐ Incident reporting procedures
- ☐ Workers compensation claims process and rehabilitation

## Stage One: General induction on first day

### General: (if applicable)

- ☐ Dress code
- ☐ Uniform sizing and ordering (if applicable)
- ☐ Employee Personal Information form completed and returned
- ☐ Tax File Declaration completed and returned
- ☐ Superannuation Fund enrolment form completed and returned
- ☐ Payroll Deduction Authority form completed and returned
- ☐ Drivers Licence photocopy taken and number recorded
- ☐ Business cards
- ☐ Mobile Phone (organise, or handover and demonstration)

Conducted by: ...../...../20....  
(name) (Signature) (Date)

Employee's signature: ..... Date: ...../...../20....



## Stage Two: First day on the job (to be conducted by Supervisor)

### Orientation: (visit & show)

- ☐ Work area/s - tools, machinery and equipment used for the job
- ☐ Wash and toilet facilities
- ☐ Dining facilities
- ☐ Location of first aid facilities such as the first aid box/room
- ☐ Location of emergency exits and fire extinguishers
- ☐ Workstation / Chair
- ☐ Computer / IT systems
- ☐ Phone – operation, personnel list of numbers
- ☐ Car / motor vehicle – handover and instruction

### Meet key people: (introduce)

- ☐ Health and Safety Representative
- ☐ Union delegate
- ☐ First aider and fire warden
- ☐ Payroll officers/human resources staff
- ☐ Co-workers
- ☐ Appoint a Mentor

### Health & Safety: (explain & show)

- ☐ Roles and responsibilities for health and safety
- ☐ Information on hazards present in the workplace and controls
- ☐ Role of the Health & Safety Representative/health & safety committee
- ☐ Health and safety consultation and communication process
- ☐ Incident reporting procedures, including the location of forms that need to be completed
- ☐ Emergency procedures, including emergency exits and equipment
- ☐ First Aid including location and First Aid Officer/s
- ☐ Safe storage and use of personal protective equipment
- ☐ Safe use and storage of hazardous substances, including material safety data sheets
- ☐ Workers compensation and rehabilitation procedures and forms
- ☐ Adjust Workstation / Chair ergonomics

## Stage Two: First day on the job (to be conducted by Supervisor)

### Security:

- ☐ Building/s
- ☐ Personal and security of personal belongings
- ☐ Cash
- ☐ Visitor's process

### Training

- ☐ On-the-job training in safe work procedures
- ☐ First aid, fire safety and emergency procedures training
- ☐ Hazard specific training e.g. manual handling, hazardous substances and plant
- ☐ Training specific to the job, such as if a license or permit is required e.g. forklift driving

### Review: (start follow-up after one week)

- ☐ Review work practices and procedures with the worker
- ☐ Answer and ask questions
- ☐ Repeat any training required to provide additional training if needed

Conducted by: ...../...../20....  
(name) (Signature) (Date)

Employee's signature: ..... Date: ...../...../20....

## Qualifying Period Completion

*<Insert Company Details>*

*<insert date>*

*<insert employees name & address>*

*Dear <insert employee name>*

### **RE: Completion of Six-Month Qualifying Period / Employment**

I am pleased to inform you that you have successfully completed the probationary period of your employment with *<insert employer name>*. As such, we wish to confirm your position of *<insert role / position>* in our *<insert location>*.

*<Insert employer name>* would like to take this opportunity to offer you congratulations on achieving this milestone and wish you a continuing and rewarding association with us.

I take this opportunity to welcome you to *<Insert employer name>* on a permanent basis.

Should you have any queries, please feel free to contact me.

Yours sincerely

*<insert name and title of signature, e.g. Director>*

## Qualifying Period Termination

*<Insert Company Details>*

*<insert date>*

*<insert employees name & address>*

*Dear <insert employee name>*

### **RE: Qualifying Period**

In accordance with the terms and conditions of your contract of employment we have conducted an assessment of your performance in the role of *<insert role>* that you have been engaged in since *<insert date>*.

As a result of this review of your contribution to the business objectives which have been set for you, and the status of the projects assigned to you over the probation period, in our view you have not met the standards and outcomes required by the organisation.

Unfortunately, we do not believe that you have the skills or experience to remain in the role of *<insert role>*.

I therefore wish to advise you that as a result of this decision your probation period has been unsuccessful, and your employment will be terminated. *<in accordance with clause ... of your contract of employment> (if contract exists)*

Your termination is effective from close of business *<insert date>* and you will be paid all outstanding statutory entitlements including any accrued leave entitlements on termination.

On behalf of *<insert company name>* I wish to thank you for your contribution to date and wish you well in the future.

Yours sincerely

*<insert name and title of signature, e.g. Director>*

## Performance Review Template

*Note: This template can also be used for probationary periods*

Employee Name:

Position Held:

Date of Performance Discussion:

Name of Supervisor:

Time frame: (monthly, yearly etc.)

### Review of Previous Performance

Task/Responsibility/ Outcome <i>(Name them)</i>	Requirements <i>(What is needed in the role)</i>	Performance within timeframe <i>(How they performed against requirements)</i>	Comments <i>(By both employee and supervisor)</i>

### Actions for next timeframe

Task/Responsibility/Outcome <i>(Name them)</i>	Requirements <i>(What is needed in the role)</i>	Timeframes <i>(When it will be completed)</i>

### Development Requirements

Task/Training/Requirement	Implementation Strategy	Timeframes

Any other comments:

Pay or incentive recommendations/actions:

Signed *<insert employee name>*

Signed *<insert supervisor name>*

## Performance Meeting Notification Letter

*<Insert Company Details>*

*<insert date>*

*<insert employees name & address>*

Dear *<insert employee name>*

Further to our conversation you are requested to attend a meeting to discuss your performance relating to *<insert performance issue>* and decide on the appropriate course of action going forward.

The details of this meeting are below:

*<insert date>*

*<insert time>*

*<insert location>*

Myself and *<insert name (if applicable)>* will be in attendance.

You are welcome to bring a support person to this meeting such as a friend or family member and any documentation or supporting evidence.

Please note that upon the conclusion of this meeting, you may be issued with a formal warning letter.

If you have any queries about this process, please contact me.

*<insert name and title of signature, e.g. Manager>*

## Performance Management Script

Thank you for attending this meeting this afternoon *<introduce parties if required>*.

The purpose of this meeting is to discuss concerns regarding your recent performance and agree on a process to assist you in meeting the requirements of the role. I will be taking notes through this meeting.

I refer to the following instances where your performance was below an acceptable standard:

*<list concerns relating to employee's performance>*.

Would you like to respond to this?

Is there anything you need from me or *<insert business name>* to assist you in improving your performance? *Consider the requests brought forward from the employee seriously. If you are unable to grant those requests immediately you may take time to consider them.*

OK, so you would like to *<repeat back requests from employee and confirm accuracy>*.

The request for *<insert request type>* can be provided immediately, *<insert request type>* can be arranged and *<insert request type>* will require further consideration/approval.

I will get back to you about these requests in *<insert timeframe – usually one week or less>*.

As part of the improvement process I would also like you to *<insert action>*.

So we are both clear on the actions going forward I will populate the performance review template with these agreed actions for us both to sign. *<complete performance review document and provide a copy to the employee – can be done after the meeting>*

We can meet again to discuss progress in *<insert reasonable timeframe for improvement e.g. two or four weeks>* time.



I also need to let you know that if your performance does not improve within these timeframes, I may choose to commence a formal disciplinary process where you would be issued with a written warning.

Is there anything else you would like to add before we finalise this meeting?

Thank you for cooperation and I look forward to discussing your improvement performance in a few weeks' time. I trust that the content of this meeting will be held confidential.

## Investigations Script

Thank you for attending this meeting today, *<introduce yourself and parties present if applicable>*.

My role is to conduct an investigation into the alleged incident of *<insert incident>* and make a determination based on my findings as far as is practicable within the circumstances. I will be interviewing staff involved and any person I believe may assist me in making an accurate determination.

I can confirm I do not have a conflict of interest in this matter and I have been given the authority to investigate. Do you have any objections to me being the investigator in this matter? *If yes, adjourn to consider their concerns. Is another investigator more appropriate/easier to continue the process? Consider the effect of refusing this request or the image presented if you continue with the investigation.*

During the investigation including this interview, I will be taking detailed notes and may require formal statements. These notes and any statements will be kept in a secure location which cannot be accessed by anyone other than myself. Following the outcome of this investigation these documents will be placed in a secure and confidential location for filing purposes including personnel files if appropriate.

I am hoping that the investigations will be concluded by *<insert timeframe>* and following this I will take *<insert timeframe>* to consider all the facts, make any additional enquires and make a decision. Depending on the findings from this investigation, I may require additional time to make a decision. In this case I will inform you of the revised timeframes.

Are you aware of the details of the allegation or complaint resulting in this meeting? *<if they say that they are - request they tell you in their own words so that you can evaluate their understanding, if they say no - summarise the complaint or allegation for them and confirm understanding>*.

Would like to have a support person present during the investigation interview? *<if this has not been established>*.

Before we start, I would like to remind you that your honesty and cooperation will enable me to make a fair and equitable decision in this process.

Do you have any questions before we start the interview?

Could you tell me about your involvement/knowledge of this incident? *<ask any questions you deem to be relevant to ascertaining the truth to the allegation. Remember to only note the facts, not hearsay, opinion etc. Refer to the Investigations section for more information. >*

I think the information you have given me is all I need at this stage. Would you be willing to make a formal statement? *<if applicable>*

Would you be willing to provide more information if I require it? *<if applicable>*

Do you have any concerns with the handling of this interview and the process I have used?

I would like to remind you that the details of our discussion and the investigation are considered completely confidential and you are requested not to discuss these details with another person *<support person excluded>*.

If confidentiality is breached you will contravene the rights of parties in this process, risk victimisation and your actions may result in undertaking a formal disciplinary process.

Following our meeting today I will be interviewing other parties and *<insert other actions to take place and re-confirm timeframes>*.

Thank you for your assistance in enabling me to make a fair and equitable decision in this process.

## Warning Letter – Incident

*<Insert Company Details>*

*<insert date>*

*<insert employees name & address>*

*Dear <insert employee name>*

### Final Warning Letter – Incident Related

The purpose of today's meeting is to advise you that your performance is not at the standard required by the organisation specifically following an incident which occurred in *<insert the location and date of the occurrence>*.

Describe in detail the incident

Describe any actions taken at the time

Describe any investigation outcomes (where applicable)

The incident and your behaviour on this occasion has been reviewed by the members of the management team.

The incident outlined above was a serious incident that *<insert details e.g. placed equipment and personnel at risk>*.

It is essential that staff operate in the most professional and efficient manner at all times

Your inability to follow the required processes and procedures and its subsequent outcomes is increasing the risk profile of the organisation.

The failure to perform your allocated duties in the required manner has an overall negative effect on all staff and the professionalism of the business in general.

As a result of this meeting you are formally advised that you are to: (examples below)

- *Refrain from any inappropriate displays of anger and/or frustration including swearing, shouting and the mishandling of tools and equipment.*
- *Work as directed*

As a result of this meeting you are formally advised that your performance will be monitored for a period of three months to *<insert date>* to measure your compliance with the items listed in this communication arising from the matters discussed in the meeting held today.

Your cooperation in achieving the required performance standard would be appreciated.

This letter is a final written warning and failure to comply with these directions and /or any future similar breaches of these requirements will result in your dismissal from *<insert company name>*.

Yours sincerely

*<insert name and title, e.g. Managing Director>*

## Warning Letter – Performance

*<Insert Company Details>*

*<insert date>*

*<insert employees name & address>*

*Dear <insert employee name>*

### **Final Warning Letter – Performance Related**

The purpose of today's meeting is to advise you that your performance is not at the standard required by the organisation specifically in relation to the performance issues raised with you as part of your performance management plan and meetings held on *<insert meeting dates>*.

List all previous meetings and the dates warnings about performance improvement were discussed and issues and attach copies of the warning letters.

Describe any actions taken to date including the stipulation of and monitoring of performance targets.

Describe any investigation outcomes (where applicable)

Since the first formal warning was issued to you on *<insert date>* your performance has been monitored and reviewed by the members of the management team.

It is essential that staff operate in the most professional and efficient manner at all times. The failure to perform your allocated duties in the required manner has an overall negative effect on all staff and the professionalism of the business in general.

As a result of this meeting you are formally advised that you are to: (examples below)

- *Complete your weekly sales reports and submit them to your manager on time by 3pm each Friday.*
- *Work as directed.*

As a result of this meeting you are formally advised that your performance will be monitored for a period of three months to *<insert date>* to measure your compliance with the items listed in this communication arising from the matters discussed in the meeting held today.

Your cooperation in achieving the required performance standard would be appreciated.

This letter is a final written warning and failure to comply with these directions and /or any future similar breaches of these requirements will result in your dismissal from *<insert company name>*.

Yours sincerely

*<insert name and title, e.g. Managing Director>*

## Warning Letter – General

*<Insert Company Details>*

*<insert date>*

*<insert employees name & address>*

*Dear <insert employee name>*

### **Warning Letter – *<insert performance or incident related>***

The purpose of today's meeting is to advise you that your performance is not at the standard required by the organisation specifically in the areas outlined below:

*<add specific incident>*

*<add specific incident>*

It is essential that all staff function and behave in the most professional and efficient manner at all times.

The incidents outlined above have been occurring since *<insert date>* where your behaviour and work performance has not been at an acceptable standard.

Your attitude and performance are adversely affecting the other staff and the smooth operation of the business.

The failure to perform your allocated duties in the required manner has an overall negative effect on all staff and the professionalism of the business in general.

As a result of this meeting you are formally advised that you are to:

*<add any specific items that you need improved>*

*<add any specific items that you need improved>*

As a result of this meeting you are formally advised that your performance will be monitored over the next three months to measure your compliance with the items listed in this communication arising from the matters discussed in the meeting held today.

Your cooperation in achieving the required performance standard would be appreciated.



Failure to comply with these directions and /or any future similar breaches of these requirements will be recorded and may lead to disciplinary action or formal warnings up to and including dismissal depending upon the number and severity of the breaches.

Yours sincerely

*<insert name and title, e.g. Managing Director>*

## Small Business Fair Dismissal Code

**Note:** This document is provided by Fair Work Australia and can be sourced from their website [www.fairwork.gov.au](http://www.fairwork.gov.au).

# Small Business Fair Dismissal Code

### *Commencement*

The Small Business Fair Dismissal Code came into operation on 1 July 2009. This was updated as at January 2011.

### *Application*

The Fair Dismissal Code applies to small business employers with fewer than 15 employees (calculated on a simple headcount of all employees including casual employees who are employed on a regular and systematic basis). Small business employees cannot make a claim for unfair dismissal in the first 12 months following their engagement. If an employee is dismissed after this period and the employer has followed the Code, then the dismissal will be deemed to be fair.

Employees who have been dismissed because of a business downturn or their position is no longer needed cannot bring a claim for unfair dismissal. However, the redundancy needs to be genuine. Re-filling the position with a new employee is not a genuine redundancy. The requirements for determining whether a dismissal was a genuine redundancy are contained in section 389 of the Fair Work Act. The Small Business Fair Dismissal Code Checklist attached to this document can assist in determining whether a redundancy is a genuine redundancy.

Further information on the application of the Code, genuine redundancy and unfair dismissal is available at [www.fairwork.gov.au](http://www.fairwork.gov.au) or by contacting the Fair Work Infoline on 13 13 94.

### *The Code*

#### *Summary Dismissal*

It is fair for an employer to dismiss an employee without notice or warning when the employer believes on reasonable grounds that the employee's conduct is sufficiently serious to justify immediate dismissal. Serious misconduct includes theft, fraud, violence and serious breaches of occupational health and safety procedures. For a dismissal to be deemed fair it is sufficient, though not essential, that an allegation of theft, fraud or violence be reported to the police. Of course, the employer must have reasonable grounds for making the report.

## Other Dismissal

In other cases, the small business employer must give the employee a reason why he or she is at risk of being dismissed. The reason must be a valid reason based on the employee's conduct or capacity to do the job.

The employee must be warned verbally or preferably in writing, that he or she risks being dismissed if there is no improvement.

The small business employer must provide the employee with an opportunity to respond to the warning and give the employee a reasonable chance to rectify the problem, having regard to the employee's response. Rectifying the problem might involve the employer providing additional training and ensuring the employee knows the employer's job expectations.

## Procedural Matters

In discussions with an employee in circumstances where dismissal is possible, the employee can have another person present to assist. However, the other person cannot be a lawyer acting in a professional capacity.

A small business employer will be required to provide evidence of compliance with the Code if the employee makes a claim for unfair dismissal to Fair Work Australia, including evidence that a warning has been given (except in cases of summary dismissal). Evidence may include a completed checklist, copies of written warning(s), a statement of termination or signed witness statements.

## Small Business Fair Dismissal Code Checklist

*The Checklist is a tool to help small business employers comply with the Small Business Fair Dismissal Code. Completing the Checklist does not mean that the Code has been complied with, nor is it a requirement of the Code that the Checklist be completed. However, completing the Checklist will help small business employers assess and record their reasons for dismissing an employee. It is in the interests of the employer to complete this checklist at the time of dismissal and to keep it in case of a future unfair dismissal claim.*

*Employers should read the Code before completing the Checklist, ensuring they understand their procedural obligations under the Code. Meeting these obligations is an important factor in complying with the Code.*

1. How many employees are employed in the business? (Include the dismissed employee and any other employee dismissed at the same time).  
☐ Under 15 employees

- ☐ 15 employees or more

[If under 15 employees, the Fair Dismissal Code applies.]

2. Has the employee been employed in this business as a full-time, part-time or regular casual employee for 12 months or more?

☐ Yes

☐ No

[If No, the employee cannot make an unfair dismissal claim.]

3. Did you dismiss the employee because you didn't require the person's job to be done by anyone because of changes in the operational requirements of the business?

☐ Yes

☐ No

**If Yes**

**YES**

**NO**

- a. Did you comply with any requirements to consult about the redundancy in the modern award, enterprise agreement or other industrial instrument that applied to the employment?

☐☐

- b. Did you consider if the employee could have been redeployed in your business or the business of an associated entity?

☐☐

4. Do any of the following statements apply?

I dismissed the employee because I believed on reasonable grounds that:

- a. Did you comply with any requirements to consult about the redundancy in the modern award, enterprise agreement or other industrial instrument that applied to the employment?

☐☐

- |    |  |                          |                          |
|----|--|--------------------------|--------------------------|
| b. | Did you consider if the employee could have been redeployed in your business or the business of an associated entity?        | <input type="checkbox"/> | <input type="checkbox"/> |
|    |  | <b>YES</b>               | <b>NO</b>                |
| c. | The employee threatened me or other employees, or clients, with violence, or actually carried out violence in the workplace. | <input type="checkbox"/> | <input type="checkbox"/> |
| d. | The employee committed a serious breach of workplace health and safety procedures.   | <input type="checkbox"/> | <input type="checkbox"/> |

5. Did you dismiss the employee for some other form of serious misconduct?

- ☐ Yes
- ☐ No

If Yes, what was the reason?

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**If you answered Yes to any question in parts 3, 4 or 5, you are not required to answer the following questions.**

6. In any discussion with the employee where dismissal was possible, did the employee request to have a support person present, who was not a lawyer acting in a professional capacity?

- ☐ Yes
- ☐ No

7. If Yes, did you agree to that request?

- ☐ Yes

☐ No

8. Did you dismiss the employee because of the employee's unsatisfactory conduct, performance or capacity to do the job?

☐ Yes

☐ No

**If Yes**

**YES**

**NO**

a. Did you clearly warn the employee (either verbally or in Writing) that the employee was not doing the job properly And would have to improve her or her conduct or performance, or otherwise be dismissed?

☐

☐

b. Did you provide the employee with a reasonable amount of time to improve her or her performance of conduct? If yes, how much time was given? .....

☐

☐

**YES**

**NO**

c. Did you offer to provide the employee with any training or opportunity to develop his or her skills?

☐

☐

d. Did the employee subsequently improve his or her Performance or conduct?

☐

☐

e. Before you dismissed the employee, did you tell the employee the reason for the dismissal and give him or her an opportunity to respond?

☐

☐

f. Did you keep any records of warning(s) made to the employee or of discussions on how his or her conduct or performance

☐

☐

could be improved? Please attach any supporting documentation.

9. Did you dismiss the employee for some other reason?

☐ Yes

☐ No

If Yes, what was the reason?

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10. Did the employee voluntarily resign or abandon his or her employment?

☐ Yes

☐ No

If Yes, please provide details

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## DECLARATION

I, *<insert name>*, declare that I believe every statement or response in this checklist to be true.

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Signature

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Date

## Termination of Employment Letter

<Insert Company Details>

<insert date>

<insert employees name & address>

Dear <insert employee name>

### **RE: Termination of the employment arrangement**

I am writing to you in regard to the termination of your employment with <insert business name>. I refer to our meeting held on <insert date, preferably on same day or in the same meeting> which was attended by you, <insert name and title of persons in attendance including support person>. During this meeting we discussed <detailed reasons for termination e.g. list the breaches of a policy or procedure, serious misconduct, inappropriate behaviour, failing to improve performance etc.>.

We consider these actions to constitute <insert description such as misconduct, failure to improve performance to the standard required in this position, bullying and harassment, a breach of a policy> warranting (summary) dismissal.

In these circumstances we consider (choose applicable)

- a) your continued employment during a notice period would be unreasonable. You will be paid any accrued entitlements and outstanding remuneration including superannuation up to and including the date of this letter.
- b) continuation to your employment during a notice period would be unreasonable and you will be paid in lieu of a notice period. You will be paid any accrued entitlements and outstanding remuneration including superannuation on the final day of the notice period.
- c) your employment will be finalised on <insert date with no. of weeks' notice period>. You will be paid any accrued entitlements and outstanding remuneration including superannuation on the final day of your employment.

You may seek information about minimum terms and conditions of employment from the Fair Work Ombudsman – [www.fairwork.gov.au](http://www.fairwork.gov.au).

We wish you the best in your future employment.



Yours sincerely

*<insert name and title of signature, e.g. Director>*

## Notice of Change Letter

*<Insert Company Details>*

*<insert date>*

*<insert employees name & address>*

Dear *<insert employee name>*

### **RE: Notice of Change to Structure**

I have recently conducted a review of the staff positions and resources within the Company with a view to improving the efficiency and financial outcomes of the business.

Due to the recent economic downturn and changes in our marketplace, the company is facing contractual challenges resulting in a reduction in business and revenue.

Based on the existing and projected operational and financial status of *<insert company name>*, I am currently considering and evaluating changes to the company structure which may result in your current position becoming redundant.

Today's meeting and notice is to advise you of the changes being considered to your current role and to provide you with the opportunity to discuss any possible options which may be available including redeployment within the company.

A further meeting will be held on *<insert date>* where a final decision on your continued employment with *<insert company name>* will be made.

Yours sincerely

*<insert name and title of signature, e.g. Director>*

## Notification of Change Meeting Script

Thank you for attending this meeting this afternoon (introduce parties if required).

The purpose of the meeting is to advise you that we are currently reviewing the structure of the organisation and this review includes the current staffing structure and costs.

The review is necessary to ensure the financial viability of the organisation and to ensure that we can continue to provide our services into the future.

As part of this review we have identified your position as a role that we are considering making redundant and distributing the duties that you currently perform across other positions within the organisation.

While we accept that this is a difficult decision for you, we believe that restructuring the business and reviewing and revising the staff positions is a key part of improving our overall efficiency and productivity.

We are facing some significant challenges in the future and must take some decisive action.

The process we are following is that today's meeting is formal notice of our intention to make a major workplace change that is likely to have a significant effect on the continuity of your role within the organisation.

There will be consideration of further changes to staffing structures and roles and responsibilities and these will be implemented over time and we are not able to disclose the full extent of these changes or who may be affected at this stage.

You will be provided with a letter at the end of today's meeting which formalises this notice.

We ask that you consider any issues which may have an effect on our decision and any options that you may wish to raise in relation to the proposed restructure over the next 24-hour period.

We will meet again at *<insert time>* tomorrow once you have had a chance to consider these matters and we will listen to your response and then make our final decision on the status of your current position.

If your position is made redundant you would be entitled to *<insert notice period in weeks>* notice, all statutory entitlements and *<insert any retrenchment payment>*.

Are there any questions that you have about the process we have instigated and your involvement (if there are questions raised stick to the position that the restructure is vital and will proceed, do not get involved with personal comments about performance or status. Advise that while the opportunity is there for the 24-hour consideration period there will be no discussion on the merits of the restructure or how it may affect any other employee or part of the organisation.)

Request that he/she keeps the content of the meeting confidential.

Remind the employee that he/she is entitled to bring a support person to the next meeting also and confirm the meeting time and date.

Avoid small talk or any further discussion and formally close the meeting by thanking him/her for his/her attendance and advise that if there are any issues he/she wishes to discuss prior to the meeting to contact you.

## Second Redundancy Meeting Script

Good afternoon and thank you for your attendance at this afternoon's meeting (conduct introductions if required).

As discussed at the meeting we held with you yesterday we advised that we were considering a major workplace change that would affect your current role within the organisation and we gave you formal notice of our intentions and advised that a likely outcome is that your current position would be made redundant.

We asked you over the last 24 hours to consider any matters that you may wish to raise before we make our final decision and this meeting is your opportunity to raise any of these matters.

Listen to what the employee has to say and note down any suggestions that he/she raises as they may include: retraining, redeployment and/or redeployment into another role, reduced hours and/or reduced remuneration.

Take some time to consider his requests if any, this can be done with an adjournment for 10-15 minutes when you can ask the other parties to leave the room.

If there are no acceptable ideas or options raised advise that the final decision is that the employee's role is to be made redundant effective from *<insert date>*.

Hand the employee the Redundancy Letter which formalises the decision and thank him/her for his/her contribution to the business.

Advise that all statutory entitlements will be paid and ask if there are any preferences in relation to his/her superannuation payment (rollovers etc.).

Advise what processes are required to return company property e.g. car, phone, computer and by what date.

End the meeting formally as quickly as possible and avoid any discussion particularly on personal, performance or future restructuring matters.

## Notice of Termination Letter

*<Insert Company Details>*

*<insert date>*

*<insert employees name & address>*

*Dear <insert employee name>*

The organisation has recently conducted a review of the staff positions and resources within the Company.

Based on the existing and projected operational and financial status of ....., we have determined that due to operational reasons associated with the recent economic downturn and the associated reduction in business and revenue your current position is no longer required.

I therefore wish to advise you that as a result of this redistribution of resources and duties the position you are currently engaged in as an (describe role) has been made redundant.

Your termination is effective from close of business ..... and you will be paid all outstanding statutory entitlements including any accrued leave entitlements on termination. You will also be provided with ..... weeks' pay in lieu of notice (where applicable).

On behalf of ..... I wish to thank you for your contribution to date and wish you well in the future.

Signed

*<insert name and title of signature, e.g. Director>*

## Casual Conversion Offer Letter

<Insert date>

### Private and confidential

<Insert employee's full name>  
<and residential address>

Dear <insert name>

### RE: Offer to Convert from Casual

This letter is to inform you that as of <insert date> you have been employed on a casual basis by <insert company name> on a regular and systematic basis for at least 6 months.

In accordance with clause **<insert clause No.>** of the **<insert name of relevant award>** Award 2020, you have the right to elect to convert your employment status to **<insert full-time or part-time>**.

Please find a copy of the relevant clause below following this letter.

When you've received this letter, please reply in writing with your decision whether to convert your employment to **<insert either full-time or part-time>** in accordance with the process in clause **<insert clause No.>** of the **<insert name of relevant award>** Award 2020. If you elect to convert your employment status, it will be approved unless it is unreasonable for the business to do so.

If you don't respond within 4 weeks of receiving this letter, you'll be deemed to have elected not to convert your employment status. We will still require you to provide a written notice of your decision not to convert your employment status.

**If you decide to convert your status of employment, please provide a dated letter with your decision by <insert date>.**

To find out more about your entitlements at work, visit [www.fairwork.gov.au](http://www.fairwork.gov.au) or call the Fair Work Infoline on 13 13 94.

Should you have any questions, please contact me on <insert phone number>.

Yours sincerely

<insert name>

<Insert title of signer>

Encl.

PLEASE KEEP A COPY OF THIS LETTER FOR YOUR RECORDS

**<Insert whole of the relevant clause from the applicable award pertaining to the conversion of a casual to permanent employment, e.g. clause 12.5 Right to request casual conversion of the Clerks-Private Sector Award 2010>**



## Casual Conversion Election – Employee Acceptance Letter

<insert name and address of employee>

.....<Employee insert date>

<Insert employer name and address>

Dear <insert name of employer recipient>

### **RE: Casual Conversion Election – Employee Acceptance**

I, <insert employee name>, have been offered by my employer <insert company name>, the option of converting my casual employment to a permanent <employer insert full-time or part-time> employment relationship in accordance with clause <insert no.> of the <insert name of award> Award 2020.

After consideration of this offer, I formally advise that I accept this opportunity to convert from a casual employee to a permanent <insert full-time or part-time> employment relationship.

In making this decision I acknowledge that, if my application for conversion is accepted, I will cease my employment with <insert company name> as a casual employee, and acknowledge that the terms of my continuing casual employment, including the 25% casual loading which is paid in lieu of sick and annual leave, will cease, and I will commence a new employment contract based on the applicable award rate and all of the benefits of a permanent <insert full-time or part-time> employee.

In making this decision I accept that the final decision on conversion rests with the employer, who will notify me of the outcome of my application for election to convert from a casual employee to a permanent <insert full-time or part time> employment employee.

Yours sincerely

<insert name of employee>

## Casual Conversion Election – Employee Refusal Letter

<Insert employee name and address>

Dear <insert name of employer recipient>

### **RE: Casual Conversion Election – Employee Refusal**

I, <insert employee name>, have been offered by my employer <insert name of employer>, the option of converting my casual employment to a permanent full-time or part- time employment relationship in accordance with clause <insert clause no.> of the <insert name of award> Award 2020.

After consideration of this offer, I formally advise that I decline this opportunity to convert from a casual employee to a permanent full-time or part- time employment relationship.

In making this decision I acknowledge that I will continue my employment with <insert name of employer> as a casual employee, and acknowledge that the terms of my continuing casual employment are that:

1. I will be paid the 25% casual loading which is paid in lieu of sick and annual leave
2. I have no guaranteed hours of work
3. My hours are usually irregular
4. My casual employment can be terminated without notice unless notice is required by a registered agreement, award or employment contract
5. I have no entitlement to paid leave or notice of termination

As a casual employee I am entitled to :

- 2 days unpaid carer's leave and 2 days unpaid compassionate leave per occasion
- 5 days unpaid family and domestic violence leave (in a 12-month period)
- unpaid community service leave

If my casual employment continues regularly in excess of 12 months with a likelihood that the employment relationship will continue, I can:

1. Request flexible working arrangements
2. Take parental leave
3. Long Service Leave where applicable

Yours sincerely

<insert name of employee>

Date: .....

## Casual Conversion Election – Employer Refusal Letter

<Date>

<Insert employee name and address>

Dear <insert name of employee>

### RE: Casual Conversion Election – Employer Refusal

In response to your election to convert from your current casual role to a permanent <insert full-time or part-time> employee position in accordance with Clause <insert no.> of the <insert name of award> Award 2010, I wish to advise you that we have considered this request and we are not able to support this proposed election after consideration of the following clause or clauses and the state of our business at this stage:

1. the conversion would require a significant adjustment to your hours of work in order for you to be engaged as a full-time or part-time employee in compliance with the modern award;  
and / or
2. it is known, or reasonably foreseeable, that: **<choose one or more of these conditions>**
  - iv. your position will cease to exist within the next 12 months
  - v. the hours of work which you are required to perform will be significantly reduced in the next 12 months, or
  - vi. there will be a significant change in the days and/or times at which your hours of work are required to be performed in the next 12 months which cannot be accommodated within the days and/or hours during which you are available to work.

On this basis your request for conversion is rejected at this stage.

Yours sincerely

<insert name & title of signer>

## Table of Amendments

[illegible]