

Casual Employee Checklist



Use this checklist to determine if a casual employee employed by your organisation may be considered a permanent employee.

As a result of the outcomes of the recent WorkPac Pty Ltd vs Rossato case [2020] FCAFC 84, a court may determine an employee engaged by the organisation as a casual employee is, in fact a permanent employee. This determination could have a significant impact for an employer in terms of being ordered to pay backdated entitlements to the employee (i.e. annual leave, paid personal/carer's leave etc.). An employer may also incur financial penalties as a result of this employee misclassification. This checklist is designed to help you identify whether a casual employee should legally be classified and treated as a casual employee or a permanent employee.

		YES	NO
1.	Is the 'casual' employee expected to work for an indefinite period on an ongoing basis?		
2.	Are the days / hours / location (the employee works) consistent?		
3.	Has the organisation committed to providing work (to employee) for the foreseeable future?		
4.	Is there an expectation that the employee is required to come to work for the foreseeable future (as opposed to being free to accept / decline work as they choose)?		
5.	Does the employee have to apply for time off in advance?		
6.	Does the employee get paid when they take time off?		
7.	Does the employee work every week?		
8.	Is the employee paid under a salary arrangement?		
9.	Has the employee been engaged as a casual for a significant period of time?		
10.	Do you provide the employee's work hours well in advance? That is, greater than 2-4 weeks.		
11.	Is the employment type noted in the employee's contract of employment / letter of offer full-time, part-time, or permanent?		
12.	The employee's contract does not have an offset clause (regarding a higher rate of pay being utilised to offset various entitlements - annual leave, personal leave etc.) in the employee's contract.		
13.	The employee is not paid a separate or identifiable casual loading?		

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If you answered **YES** to most questions it would appear that the organisation may be at risk that the employee could be deemed a permanent employee by law. You may need to seek further advice regarding the employment arrangement.

If you answered **NO** to most questions it appears that the organisation's systems and processes support the fact that the employee is most likely a true casual employee.

DISCLAIMER:

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