

- the number of hours worked each week;
- whether a roster system is published in advance;
- whether the employment pattern is regular;
- whether there is a mutual expectation of continuity of employment;
- whether the employer requires notice before an employee is absent or on leave;
- whether the employee has a reasonable expectation that work will be available; and
- whether the employee works consistent start and finish times.

These factors are not exhaustive and each case will depend on its own circumstances.

It is inappropriate to use casual employees where there is a regular pattern of employment. This is because an employee who presents for work on a regular basis as predetermined is unlikely to truly be a casual employee. However, as noted, there is now the perceived long term casual, which somewhat clouds this issue.

What are the consequences of getting it wrong?

When preparing a contract of employment, it is important to appropriately classify the type of work arrangement because this will determine the employee's entitlements during their employment and in the event of termination.

Whether employees are part-time or casual does not depend on what they are called or what they are paid, but on the intention of the parties in each instance. If the employer intends regular predetermined attendance by the employee, this is most likely

part-time employment. If however the employer intends infrequent occasional work to be performed by the employee, this is most likely casual employment.

Employers that engage workers as casual employees should ensure that such employees:

- do not work a regular pattern of hours (employment should not recur at fixed times on a regular basis);
- have regular breaks to the continuity of employment (or are otherwise hired only on a short-term basis); and
- have their casual status clearly explained to them before commencing employment and confirmed at regular intervals thereafter.

There are significant implications for the employment contract if it is found that an employee engaged as a casual was a part-time employee. Perhaps the most serious is that the employer may be required to pay back-pay for certain entitlements that the employee has not been provided with, including annual leave, personal leave, long service leave and the like. It will also mean the employee is entitled to notice of termination and severance benefits and is not excluded from unfair dismissal laws.

Conclusion

The true legal relationship between an employer and employee is determined by the facts and not what is necessarily set out in an instrument of employment. It is important that employers understand that different categories of employees are entitled to different benefits, and understand the consequences for incorrectly categorising an employee as a casual.



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For further details contact:
Animal Behaviour Systems Australia Pty Ltd
 Ph: 03 9360 9382 | Email: info@absaustralia.com | www.absaustralia.com

