

August 2021

ROSSATO DECISION OVERTURNED – A WRITTEN EMPLOYMENT CONTRACT IS KEY IN ESTABLISHING CASUAL EMPLOYMENT

INTRODUCTION

On 4 August 2021, the High Court in *Workpac Pty Ltd v Rossato* [2021] HCA 23 allowed an appeal of the decision of the Full Court of the Federal Court, *Workpac Pty Ltd v Rossato* (2020) 278 FCR 179 and has clarified the definition of a casual employee – a welcome decision for employers.

KEY TAKEAWAYS FROM THE HIGH COURT:

- A casual employee is an employee who has no firm advance commitment as to duration of the employee's employment where parties commit to employment terms within the employment contract.
- Decision aligns with new definition of a casual employee in the *Fair Work Act 2009* (Cth) (FWA).
- 'Real substance', 'practical reality' and 'true nature' of employment relationship not determinative of the relationship.
- A mere expectation of continuing employment on a regular and systematic basis is not sufficient for the purposes of the FWA.
- Working in accordance with a roster does not establish a commitment to an ongoing employment relationship beyond each shift or assignment.
- Label of "casual employee" not decisive but a factor which influences interpretation of rights and obligations.

TAKE ACTION

- Contracts must be reviewed and carefully drafted to ensure there is no firm advance commitment to continuing and indefinite work.
- Employment contracts for casuals must expressly provide the payment of casual loading in lieu of various entitlements (and state that).
- Employer to have regard to the new casual conversion obligations in the FWA.
- Include the new 'casual employment information statement' with your contracts

<https://www.fairwork.gov.au/employee-entitlements/national-employment-standards/casual-employment-information-statement>

We are happy to assist you with reviewing or drafting employment contracts to ensure they align with the new principles of casual employment as well as ensuring compliance with modern awards (a complex issue and one to get absolutely right).

CONTACT DETAILS



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