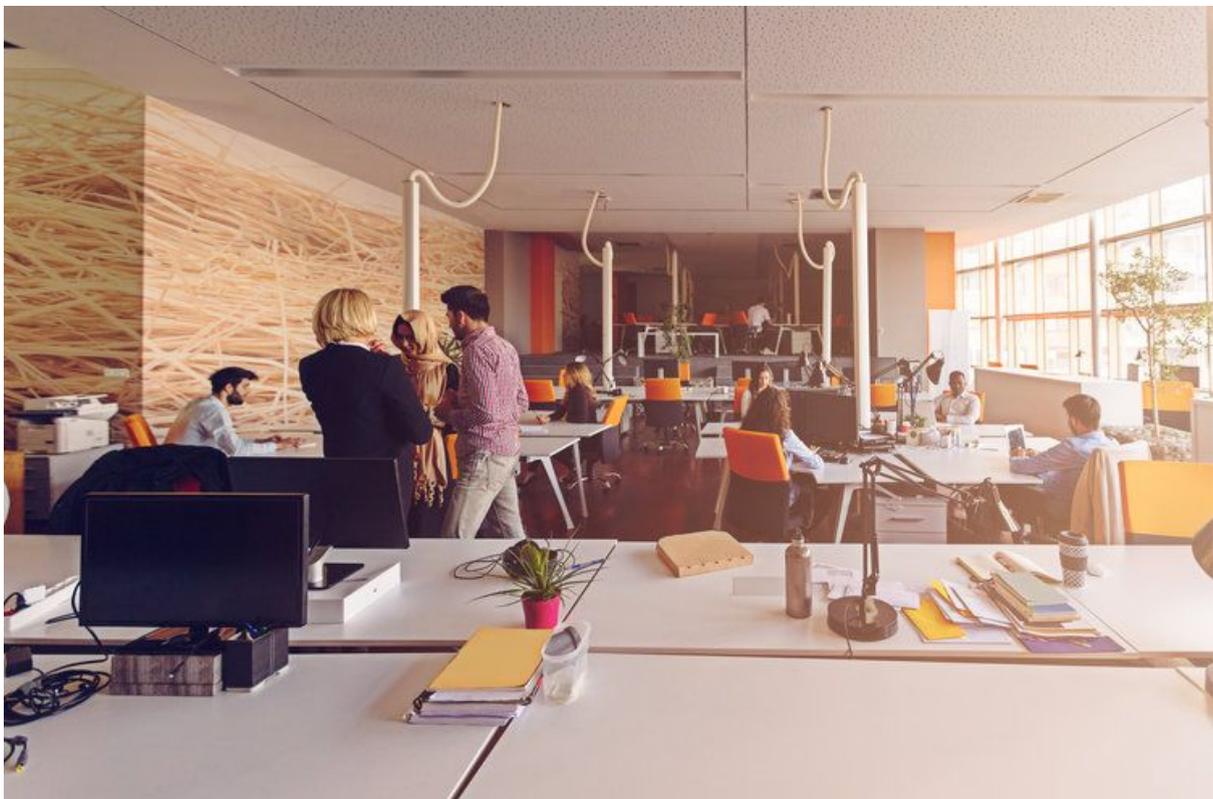


Various employment types and options are open to business owners and it is important to get the right combination of employment types that suits the unique requirements of your business. Very often, business owners feel that their hands are tied when it comes to negotiating employment or hiring terms in light of the operation of the Fair Work Act 2009. This is often due to a lack of understanding as to how to work within the parameters of our employment law landscape.

The Fair Work Act 2009 – Recent Decision

The phasing in of penalty rates reduction for industries covered by the Hospitality, Fast Food, Pharmacy and the Retail Award from 1 July has given affected employers more flexibility in terms of:

- Trading options on Sundays and Public holidays
- Reorganizing their workforce and hence labour costs in light of the cost variable



HOW TO CREATE A SUSTAINABLE BUSINESS WITH A HARMONIOUS AND VIBRANT WORKFORCE

Step 1: Ensure your labour structure is cost effective in light of the Fair Work Act 2009

First of all, note the minimum standards set out in the Act such as:

- Minimum rates

- Overtime rates
- Penalty rates
- Allowances
- Breaks
- Shiftwork rates

Practical Tips:

Consider taking advantage of the option to offer annualised salaries which are more certain for both the employer and the employee rather than relying on an hourly or weekly rate.

Be mindful of built in progression in some awards where employees can automatically progress from one paypoint to the next within a classification level (Social Community and Disability Services Award)

Take advantage of the award flexibility option in most awards to tailor particular roles to individual employees. It is possible to vary overtime, penalty rates, allowances, leave loading and the times for when work is to be performed for each role. A carefully drafted employment agreement can alleviate any concerns that either party may have deviating from the Act's standard requirements.

Step 2: Determine the combination of full time, part time and casual employment positions that best suit your business.

Before favouring casual employment over full time or part time positions, consider the following:

- The nature of the work required may not meet the minimum hours requirement
The additional 25% casual loading does not cover overtime or other penalty rates
- Casual workers working regular hours are eligible for unfair dismissal remedies after a qualifying period
- In some awards such as the Food Beverage and Tobacco Manufacturing Award and the Hospitality Award, casual employees have the right to elect to convert to permanent employment. Different conditions apply under different awards including whether there are grounds of refusal available to employers
- The security of permanent employment can foster a sense of belonging in the employees resulting in a more stable and reliable workforce for your business.

Heads Up:

The Fair work Commission has ruled in favour of incorporating a model casual conversion clause into 85 modern awards and a minimum engagement period into 34 awards. The aim of the conversion clause is alleviate concerns that casuals working effectively part time or full time hours are not afforded permanency of employment.

It is proposed that employers can only refuse a request for conversion on the following reasonable grounds:

- it would require a significant adjustment to the casual employee's hours of work to accommodate them in part-time or full-time employment under the applicable modern award
- it is known or reasonably foreseeable that the casual employee's position will cease to exist
- it is known or reasonably foreseeable that the employee's hours will significantly change or be reduced within 12-months, or
- on other reasonable grounds based on facts which are known or reasonably known.

View a [copy of the decision here](#) to ascertain if the model clauses apply to your business and if so, how they can impact your existing labour structure.

Practical Tips

Open communications with your employees are important and very often, conversations initiated by management will go far in identifying the employees' needs and matching those with that of the employers'. More often than not, a mutually beneficial agreement between the employer and its employees addressing both parties' concerns will create an environment conducive to positive culture and increased productivity.

Seek out other options such as:

- Award Flexibility agreements with individual employees
- Enterprise Bargaining Agreement with 2 or more employees (note where you have a unionised workforce, you will be negotiating with the union representative who will negotiate on behalf of the employees. These agreements, if approved by the Fair Work Commission, can have a duration of up to four years, giving you, as the employer, certainty in respect of labour costs and conditions independently of changes on the employment law scene

FWA has issued [an enterprise agreements benchbook](#) setting out what you need to know when considering an EBA for your business.

Step 3: Have in place an HR Manual and Policies

This document is not only just required so that you can discharge your legal obligations. It is the “go to” document for employees and management. This ensures there is clear understanding as to the rules, expectations and consequences across your organisation. There are [templates that can be downloaded](#) from Business Victoria website.

Step 4: Have a clear and up to date employment agreement with each employee at all times

Your employment contract should set out (in addition to the mandatory requirements under the Act):

- The job description of the role
- The Modern Award that applies to this role
- Wage rates or annualized salary (clearly stating whether superannuation is included in annualized salary)
- Ordinary hours of work
- Performance Targets/Expectations of the role
- KPIs
- Performance Reviews and management procedure
- Whether the NES will apply or if more generous provisions are offered
- Clear reporting lines

*Where required - An Award Flexibility Agreement varying Award provisions allowed under the Act can be useful too.

Finally:

A working and up to date knowledge of the Fair Work Act 2009 and all related legislation including the Occupational Health and Safety 2004 Act will assist you in your budgeting and provisioning for your labour requirements.

Note: The information contained in this article and on www.laulegal.consulting website is general information only and does not constitute legal or compliance advice.

NOT SURE HOW TO NAVIGATE EMPLOYMENT LAW IN AUSTRALIA?

CONTACT US FOR A CONSULTATION TODAY.