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Casual conversion rights earn support in IR talks

Employee conditions

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Key points

'Regular' casuals can currently claim entitlements on top of their loading.

The proposal is to convert to permanent after nine months and lose the loading.

The Morrison government is favouring giving casuals a right to permanent employment after nine months to address a controversial ruling that grants them annual leave on top of their loading if they work regular and predictable hours.

The proposal, pitched with draft legislation at one of the final meetings of the industrial relations working groups on Friday, is under serious consideration by unions and employer groups and has the tentative support of Industrial Relations Minister Christian Porter.

Sources familiar with the meeting said that if a casual's employment was regular and systematic, after nine months they could choose to convert to permanent with leave and other entitlements but lose their 25 per cent casual loading.

If they refused, however, it is understood they would effectively choose to be a casual and could not retrospectively claim permanent entitlements.

The group is working to resolve a recent Federal Court decision, before the High Court, that allows "regular" casuals to claim annual leave, redundancy and other entitlements on top of their loading.

Employers argue the decision exposes business to billions of dollars in back pay and allows casuals to "double dip" on their entitlements.

However, the parties are holding off on dealing with the retrospectivity of the court decision pending a High Court appeal and are instead looking to define casual in the Fair Work Act, which employers argue should be defined as simply when an employer deems a worker a casual and unions say should be based on their rostering patterns.

The conversion mechanism, with its nine-month period in between calls for six- or 12-month triggers, could be a way to resolve the different positions and partially address the Federal Court decision.

The government's IR reform groups formally ended on Friday after three months with little significant consensus, but smaller satellite groups will still meet informally in the weeks ahead.

This week the Australian Industry Group, the Australian Chamber of Commerce and Industry, the Master Builders Association and the Australian Mines and Metals Association fought back against a Business Council-ACTU proposal to fast-track approval of union agreements.

Buoyed by strong support from their members, the four employer groups wrote to Mr Porter late on Thursday expressing their hard line against the proposal and arguing that preferencing union agreements over non-union deals undermined legislative protections around freedoms of association, including in the Fair Work Act and the building code.

The employer groups are understood to have also told the minister the proposal would encourage greater union militancy and that it would do nothing to help the million employees unemployed.

The BCA proposed fast-tracking union deals as part of a trade-off for softening requirements around the better off overall test, which requires every current and prospective employee under an agreement to be better off than the award minimum.

The changes are understood to have involved giving the workplace tribunal more discretion to deal with BOOT issues, including by prioritising the views of the parties and the agreement's overall benefits over hypothetical scenarios of a worker who may be worse off.