**Big business - Small business**

Business size does matter!

A Small Business Employer is defined under the Fair Work Act 2009 (FWA) as being an employer with fewer than 15 employees.

Being a Small Business Employer provides a number of concessions under the FWA such as an exemption from redundancy pay; a 12 months’ protection window from unfair dismissal claims; and an additional defence to an unfair dismissal claim by demonstrating compliance with the Small Business Fair Dismissal Code.

But do your casuals count as part of your 15 employees? One of the key factors is whether your casuals have been employed on a “regular and systematic” basis.

**EMPLOYMENT CRITERIA**

In the case of *Harry Grives v Aura Sports Pty Ltd* (2012) FWA 5552a number of criteria were established to identify whether a casual was to be included as an employee.

* The employee need only have been employed on a “regular and systematic” basis at some stage during their employment with the employer;
* The employee does not need to have a reasonable expectation of ongoing employment with the employer;
* Employment on a “regular and systematic” basis does not require the employee to be able to foresee or predict when their services may be required by the employer; and
* The pattern of employment must demonstrate the employer’s ongoing reliance on the employee’s services in the conduct of the employer’s business.

Significant gaps in periods of employment and lack of any consistent pattern in the hours worked shows that a company does not rely on the casuals’ services in the conduct of its business. In such a circumstance, for the purposes of the FWA, the casual would not be counted as an employee.

**LESSONS FOR EMPLOYERS**

When determining whether an employer employs fewer than 15 employees at the date of a dismissal to attain “Small Business Employer” protection, the following classes of employee are counted:

1. All permanent part-time and full-time employees of the business;
2. All permanent part-time and full-time employees of the business of an associated entity (e.g. companies with common directors or ownership,
3. Casual employees of the business, or the business of an associated entity offered regular employment over a protracted period of service, regardless of:
(a) any variation in the hours they may work; or
(b) whether they have a reasonable expectation of ongoing employment with the business.

For the Small Business Fair Dismissal Code & Checklist see: [Small-Business-Fair-Dismissal-Code](https://www.fairwork.gov.au/ArticleDocuments/715/Small-Business-Fair-Dismissal-Code-2011.pdf.aspx?Embed=Y" \o "Small Business Fair Dismissal Code)

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