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Morrison Government bill a backdoor to casualisation

A bill by the Morrison Government would make it easier for employers to casualise jobs and reduces the rights of working people, the peak body for working people has warned.

The bill, which purports to allow people to request to convert from casual employment to permanent after 12 months service – a right already won by unions for most workers in the Fair Work Commission last year – contains a fatal flaw that could erode workers’ rights by altering the definition of casual employment.

Courts have repeatedly ruled that the test of whether a person’s employment is casual or permanent depends on objective characteristics of their work. Work that is short-term, intermittent and irregular is casual, while work that is ongoing, predictable and continuous is permanent.

The language in the bill referring to people ‘designated as casual’ would allow employers to call any job casual without regard to the type of work being performed.

The ACTU has repeatedly called for an objective definition of casual to be included in legislation to avoid confusion for employers and employees.

The bill would also allow employers to sue people who went to the Fair Work Commission to plead their case for conversion without first attempting to resolve it at a workplace level.

Quotes attributable to ACTU President Michele O’Neil:

“We oppose this bill which is inadequate and counter-productive. It has the capacity to do far more harm than good.

“It hands the power to employers to arbitrarily determine who is or is not a casual, rather than applying an objective test of casual work, which is what courts currently rely on, and what working people need for their own job security.

“It relies on an employer’s designation of someone as a casual rather than the characteristics of their work itself, which is a serious error. A job should be either permanent or casual based on the characteristics of the work itself – an objective test – as courts have repeatedly found. People should not be able to classified as casual on the whim of employers if their work is ongoing, predictable and permanent.

“It allows employers to sue people who go to the Fair Work Commission to enforce their rights without first attempting to negotiate with their employer directly for conversion. Given that people in casual employment are already less secure than permanent employees there is a very real prospect that someone wanting to exercise the right this bill is supposed to protect could find themselves without work, or sued by their employer for taking their case to the Commission in the first instance.

“It further allows employers significant practical latitude to refuse requests for conversion and avoid granting conversion to people who have served as casuals for 12 months.”

Media contact: Lachlan Williams 0447 682 027 or ACTU Media: 03 9664 7315

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