

## Stand Down

Where events such as bushfires, flooding or breakdown of machinery (due to circumstances beyond the control of an employer such as an electrical breakdown) occur some businesses may be unable to operate as normal or may be closed due to the event. Some employees also affected by these events may not be able to attend work.

### Common Stand Down situations

The most common situations which might affect employers are set out below:

1. An employee cannot attend work because the fires/floodwaters have made their travel to work impossible and the workplace is still open for business.
2. An **employee** can attend work but is unable to perform their duties because a fire in the region or floodwaters have damaged the workplace. Alternatively, the breakdown of machinery has rendered the workplace inoperable.
3. An employee cannot attend work due to an emergency although the business is open. For example, the local school has been closed due to a fire or flood and the employee has to stay home to care for their children.
4. The employee can attend work and the workplace is open for business, but the employee participates in a recognised emergency management body such as the State Emergency Services.

**A down turn in trade is not considered to be grounds for standing employees down.**

### When a business is open, but an employee cannot attend work

Where an employee cannot attend work because of a fire/flood and their workplace is open for business, the employer is not obliged to pay wages to the non-attending employee.

However, the employer could offer other alternatives to employees who cannot attend work due to a fire/flood on the condition that the employee agrees to the proposed alternatives.

These alternatives may include:

- offering access to accrued annual leave and long service leave
- allowing the employee to take time off in lieu of any overtime that has not yet been paid for by the employer, and
- allowing access to banked rostered days off if there has been an RDO system operating in the particular business.

### An employee can attend work, but the workplace is not open for business because of a fire/flood or breakdown of machinery

**Section 524** of the *Fair Work Act 2009* ('Act') prescribes the circumstances in which employees may be stood down without pay by the employer.

### **Scenario 1 – the employer has a single workplace**

To be able to rely on the Stand Down provisions under the Act an employer must be able to establish that employees cannot be usefully employed at a workplace because the employer could not reasonably be held responsible for the stoppage of work ( i.e. the reason for the stoppage is beyond the control of a business, such as a general electrical blackout in an area where the business is located or a fire or flood ).

### **Scenario 2 – the business has more than one workplace**

If the above circumstances exist and an employer's workplace has been closed due to a fire/flood or breakdown, but it has another workplace site then the employer cannot necessarily stand down an employee without pay. For an employer to be able to utilise the Stand Down provisions of the Act in this scenario, it might also need to be able to prove that it could not offer alternative duties in another nearby workplace site or branch that the affected employees could have attended.

### **Scenario 3 – the employer offers to allow employees to “make up” lost paid time due to a stand down**

The *Vehicle Manufacturing, Repair Services and Retail (VMRSR) Award 2010* allows employees to make up the unpaid time they have had off due to a closure of a business which resulted in a stand down of employees. Where the make-up time provision is an option to allow employees to make up time and it is mutually agreed in writing prior to the make-up work commencing, the make-up time may be paid at single time.

The hours must however be worked within seven days of the end of the Stand Down period.

**For more information on Make Up Time and Stand Down, please contact the VACC Industrial Department on the below number.**

### **Employee cannot attend work due to an emergency**

Where a pressing family or domestic issue prevents an employee from attending work although the business may be open, an employee can in certain cases be paid carer's leave. Courts have ruled that use of “**carer's leave in emergencies**” can cover emergencies 'other than medical emergencies. This includes a situation where a parent has to remain at home because a local school has been closed due a fire or flood and the parent must remain at home to care for the children.

### **Employees attending recognised emergency management body**

Under the **VMRSR Award** and under **Division 8 – Community Service Leave** of the National Employment Standards ('NES'), an employee is entitled to be absent from work on unpaid Community Service Leave if they are involved in community activities (including carrying out emergency services work).

In view of the above, if an employee of a business takes Community Service Leave to be involved in the work of a recognised emergency management body, the employer does not have to pay the employee, however the employer cannot reasonably prevent the employee from taking Community Service Leave. The employer also must not victimise the employee for taking the Community Service Leave.

The time that an employee may be absent from work to participate in an eligible community service activity includes, not only the time where the employee engages in the activity, but also reasonable travelling time associated with the activity and a reasonable rest time immediately following the activity.

The term 'recognised emergency management body' under the NES covers:

- a body that has a role or function under a plan that is for coping with emergencies/ natural disasters (prepared by the Commonwealth or a state or territory)
- a fire-fighting, civil defence or rescue body
- any other body which is mainly involved in responding to an emergency or natural disaster.

This includes bodies such as:

- the State Emergency Service (SES)
- Country Fire Authority (CFA)
- the RSPCA (in respect of animal rescue during emergencies or natural disasters).

## Notice Requirements

The issue of stand down can be very complex. Before considering standing your employees down for any period of time, members are urged to contact the VACC Industrial Relations Department on (03) 9829 1123.

There are no formal notice requirements defined under the legislation.

However, members who have made their decision to stand down their staff, it is best practice for employers to write to the staff members affected, informing them of the duration of the stand down and that other entitlements will continue to accrue during this period and that the time spent on stand down will count as service.

## Other Stand Down provisions - breakdown of machinery and stoppage of work

The Act also allows employers to consider stand down provisions in relation to breakdown of machinery and stoppages of work. Importantly, the Act relies on the definition '*for which the employer cannot be reasonably held responsible for*'.

In circumstances where there is a breakdown of machinery, if the breakdown was due to poorly maintained machinery and equipment, this would not be grounds for standing employees down without pay.

In contrast, if a computer virus rendered a dealership computer system inoperable, this may be a situation in which stand down provisions are triggered.

One of the most common triggers of stand down is due to power failure. Ordinarily this will be grounds for the employer to consider stand down, again provided that the failure was not due to disconnection of power supply due to the employer not paying bills.

Stand down is very different to suspension of staff whilst a matter is being investigated and the terms are often confused for each other.

Stand down is a case by case scenario, depending on the circumstances. Members should call **the VACC Industrial Department on (03) 9829 1123 for further advice or assistance.**

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