

Standing Down Employees

Frequently Asked Questions



What is a stand down?

Employees who are stood down do not perform work for their employer and are not paid whilst being stood down. However, the employees remain employed. Double check, as contracts of employment and industrial instruments, such as enterprise agreements, might contain stand down provision. If this is not the case, employers may refer to the Fair Work Act, specifically section 524.

Why would employees be stood down?

For employers, standing down employees may be preferable to the harsher alternative of termination of employment by way of redundancy. However, the financial impacts to the employee is likely to be significant as they are unpaid.

What is redundancy and how does this impact the employer?

Making an employee redundant will result in the employer paying outright the correct entitlements as per the National Employment Standards, Modern Award and/or Enterprise Agreement, which may include notice, redundancy pay and payment of any accrued leave entitlements. Normal processes need to be followed when making a position redundant.

Is standing down an employee an employer's only option?

No, employers have the choice to explore all options before standing down employees. Employers should first consider if there are opportunities to:

- Work from home
- Reducing working hours and days
- Changing in patterns of work i.e. rostering
- Take accrued of leave, such as annual leave, other paid leave, long service leave
- Redeploy the employee elsewhere in the business, or adjust the type of work they do

Can I stand down my employees?

If an employer is considering standing down employees, the starting point is to review the contracts of employment and any applicable industrial instrument to determine whether they contain a stand down clause. If there is a stand down provision, the employer is required to follow it. Otherwise, employers must rely on Fair Work Act to stand down employees.

Can employers stand down employees during COVID-19 outbreak?

Yes, employers can only stand down employees when:

- Equipment breakdown, if the employer isn't responsible for it,
- Industrial action, when not organised by the employer,
- Stoppage of work for which the employer cannot be held responsible,
- During a period in which the employee cannot be usefully employed,
- A large proportion of the workforce is in self-quarantine meaning the remaining employees cannot be usefully employed,

What are some reasons the employee cannot stand down?

It is not sufficient for employers to stand down employees due to a general reduction of work and lower revenue.

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What is a stoppage of work?

A stoppage of work doesn't require the entire business to stop. A stoppage of work is when the employer cannot be reasonably held responsible. For example, the government-mandated closure of non-essential services may be considered a cause of a stoppage of work as the employer cannot be held responsible.

Employers must understand the needs and responsibilities of Aboriginal workforce and Community. How can employers support their Aboriginal workforce?

Employers must understand the relationship between Aboriginal employees and the Communities they work for. Your Aboriginal workforce may have responsibilities outside of the workplace that directly impact the overall wellbeing and health of their Community. For example, an Aboriginal employee could be the main earner in their immediate and extended family during this time. Employers need to consider all aspects of an individual's situation and discuss all options openly and respectfully.

Can employees access paid leave entitlement while stood down?

Employees may access accrued leave and long service leave during a stand down. Stand Down periods count as periods of service under the Fair Work Act, meaning employees are entitled to accrue service-based leave when stood down.

Can a stand down be challenged?

A stand down can be challenged by application to the Fair Work Commission. A stand down can be challenged by an employee, a union or a Fair Work Inspector.

What are the consequences to unlawfully standing down employees?

Consequences may involve an order to back pay employees for loss of wage during the stand down, an order to back pay any annual leave taken, or the employee may have right to return to useful work. If these orders are breached, the employer may be liable to pay financial penalties as stated above.

Can casual employees be stood down?

Casual employees cannot be stood down.

For employers, we strongly suggest considering all options before making the decision to stand down an employee, and seek legal advice to make sure your reason for stand down valid and compliant with Fair Work Act s524.

Consideration should be given on a case-by-case basis as to whether the stoppage of work genuinely renders employees incapable of being usefully employed.

For more information head to the Fair Work Commission website to access case studies and other resources to support employers and employees understanding their rights and obligations in relations to stand downs. Please go to the Fair Work Ombudsman's website [here](#).

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