

Stand Down FAQs



WHAT IS A STAND DOWN?

A statutory right to stand down an employee without pay is provided by the Fair Work Act. No modern award provides for a stand down, although an enterprise agreement or contract of employment may include terms that require an employer meet additional requirements before standing down an employee, e.g. requirements relating to consultation or notice.

If an employer cannot stand down an employee under the Fair Work Act, they may be able to stand down the employee in accordance with the enterprise agreement or the contract of employment.

WHAT ARE MY OBLIGATIONS IN THE CASE OF STAND DOWN?

The Fair Work Act 2009 provides that employers have a right to stand down employees in certain circumstances.

Modern awards, enterprise agreements or employment contracts may also contain Stand Down provisions and generally such periods are unpaid.

WHAT ARE MY OBLIGATIONS AS AN EMPLOYER IN A CASE WHERE I MUST STAND DOWN MY EMPLOYEES?

Under the Fair Work Act, an employer may stand down an employee during a period in which the employee cannot be usefully employed because of one of the following circumstances:

- a stoppage of work for any cause for which the employer cannot reasonably be held responsible (COVID- 19 Pandemic, floods, fire, power failure etc)
- industrial action (other than industrial action organised or engaged in by the employer, e.g. a lockout by the employer)
- a breakdown of machinery or equipment, if the employer cannot reasonably be held responsible for the breakdown

IS THERE A STAND DOWN CLAUSE IN MY CONTRACTS?

If you use our Happy HR contract, there is a clause that states:

"We reserve the right to stand you down in the event that you cannot be usefully employed because of any strike, failure of services, breakdown of machinery or for any cause for which the Company cannot reasonably be held responsible. In the event of a stand down for such reasons, we will not be required to pay you and the time for which you are stood down shall be considered as leave without pay. The stand down period does not breach the continuity of your employment for the purpose of any entitlements"

The above allows an employer to stand down.

DOES STAND DOWN AFFECT AN EMPLOYEE'S ENTITLEMENTS?

The Fair Work Act recognises a period of stand down as 'service'. This means an employee will continue to accrue entitlements to annual leave and personal/carer's leave under the National Employment Standards (NES), as well as an entitlement to a public holiday that falls on a day the employee has ordinary hours of work. Please ensure you maintain this as part of your budgets.

WHAT IF MY OPERATIONAL NEEDS CHANGE AT SHORT NOTICE?

The Fair Work Act stand down provisions are likely to apply, subject to any provisions in your employment arrangements, meaning that some employees may not be paid.

It is vital to consider if you intend to or not pay your employees during any stand down. A plan to communicate this message to employees should be done before an event not during or post but before you do this you should obtain advice if uncertain of your obligations!

AM I OBLIGATED TO PAY MY EMPLOYEES?

No as provisioned, entitlements will still accrue, but for a genuine stand down payments can stop.

HOW LONG SHOULD THE NOTICE BE FOR A STAND DOWN?

There is no fixed notice period for the Stand Down communication. However, we do encourage you to proactively communicate with employees in regards to the process of a Stand Down, likely scenarios and next steps for the business and its employees. Communication is critical.

ARE THERE OTHER RESOURCES I CAN USE?

You can refer to the Fair Work [website](#). Please also refer to our latest [blog](#) in regards to more facts re employer obligations.

Source: www.happyhr.com

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