

STAND-DOWN

Stand Down under the *Fair Work Act 2009* (Cth) s. 524

The *Fair Work Act 2009* (Cth) ("FW Act") allows an employer, in limited situations, to stand down employees without pay.

When may an employer stand down an employee?



See FW Act s. 524

Employer may stand down employees in certain circumstances:

1. An employer may, under this subsection, stand down an employee during a period in which the employee cannot usefully be employed because of one of the following circumstances:
 - a. industrial action (other than industrial action organised or engaged in by the employer);
 - b. a breakdown of machinery or equipment, if the employer cannot reasonably be held responsible for the breakdown;
 - c. a stoppage of work for any cause for which the employer cannot reasonably be held responsible.
2. However, an employer may not stand down an employee under subsection (1) during a period in which the employee cannot usefully be employed because of a circumstance referred to in that subsection if:
 - a. an enterprise agreement, or a contract of employment, applies to the employer and the employee; and
 - b. the agreement or contract provides for the employer to stand down the employee during that period if the employee cannot usefully be employed during that period because of that circumstance.

Note 1: If an employer cannot stand down an employee under subsection (1), the employer may be able to stand down the employee in accordance with the enterprise agreement or the contract of employment.

Note 2: An enterprise agreement or a contract of employment may also include terms that impose additional requirements that an employer must meet before standing down an employee (for example requirements relating to consultation or notice).

3. If an employer stands down an employee during a period under subsection (1), the employer is not required to make payments to the employee for that period.

What are some common examples?

The most common reason employers stand down their employees is when there is a **power failure** (if the failure was beyond the employer's control). Another common example is the breakdown of important machinery (this may include, for example, a computer network).

Are there any alternatives to standing down an employee?

Before considering standing down employees without pay, we recommend employers ask if employees would like to take any annual or long service leave (if eligible). This ensures that employees do not go without pay.

If an employee is stood down without pay, do they accrue annual and sick leave?



See FW Act s. 524

Yes. Where an employee is stood down without pay his or her annual and personal leave will continue to accrue. This is because the FW Act recognises a period of stand down as 'service'.

Can an employee be stood down whilst they are on paid leave?



See FW Act s 525

No. The FW Act prohibits an employer from standing down an employee when they are already on paid authorised leave (such as annual or personal/carer's leave). An employer could stand the employee down after the period of paid leave has concluded.

Do modern awards provide any additional requirements when standing down employees?

No, modern awards do not contain stand down provisions. However, an enterprise agreement or contract of employment may impose additional requirements on an employer when standing down an employee (for example, additional notice or consultation requirements).

Contacting the Victorian Chamber of Commerce and Industry

The Victorian Chamber's team of experienced Workplace Relations Advisors can assist members with a range of employment, human resources and industrial relations issues.

Our experienced Workplace Relations Consultants can also assist members and non-members with a range of more complex matters on a fee-for-service basis. Our Workplace Relations Consultants can, among other things, provide training to employees, conduct investigations, assist with workplace disputes and provide representation at the Fair Work Commission. For assistance or more information, please contact the Workplace Relations Advice Line on **(03) 8662 5222**.

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