



Employment entitlements during natural disasters or emergencies

Australians can experience a range of natural disasters, such as floods, bushfires, tropical cyclones, severe storms and even earthquakes. These events can cause devastation to communities and financial hardship for individuals and businesses.

What if an employee cannot attend work due to a natural disaster or emergency?

An employee may have entitlements under their award or agreement that are relevant when an employee is unable to attend work due to an emergency or natural disaster. If no such entitlement exists, this Guide will assist in determining the options available to employers and employees depending on their circumstances.

There may also be state-based advice and assistance available to affected employers and employees. In addition, State occupational health and safety laws provide for a general duty of care toward employees that should be considered.

What if an employer has to temporarily close?

If an employer has to temporarily close as a result of a natural disaster or emergency, employers will have to determine employee entitlements during the closure. This may include offering the choice of taking accrued paid leave, or in some cases, standing down employees.

The *Fair Work Act 2009* includes provisions which enable employers to stand down employees, without pay, where they cannot usefully be employed during a period because of any stoppage of work for which the employer cannot reasonably be held responsible, such as a natural disaster. However, it is not mandatory for stand downs to be unpaid. An employer may choose to pay employees at their discretion.

The provisions of the Act only operate where the employee's industrial instrument or contract of employment does not contain a stand down provision

that deals with the same circumstances. You should check your award or agreement or contract of employment to see if it contains any stand down provisions.

An award or agreement under the *Fair Work Act 2009* may include terms requiring an employee, or allowing an employee to be required to take paid annual leave in particular circumstances, but only if the requirement is reasonable. Employees who are award or agreement free can be required to take paid annual leave if the requirement is reasonable.

If an employer does stand down employees, it would represent good business practice to notify those employees in writing (where possible), including the date which the stand down commences, whether the employees will or will not be paid and the effect on other employment entitlements. An employer should also endeavour to update employees regarding when they believe the stand down will end. For more information about how stand downs affect entitlements, please contact the Fair Work Infoline on **13 13 94**.

Employees who have been stood down without pay should also contact Centrelink on **13 28 50** to discuss the options available based on the employees individual circumstances, including income support payment options and other assistance.

However, employers may wish to consider alternatives to standing down employees.

Case Study: Stand Downs

Anthony runs a café in the Hunter Valley which has been affected by a flood, leaving his business unable to operate.

Anthony is unsure what to do about his employees' entitlements. He contacts the Fair Work Infoline and is advised that the award that applies to his business does not contain any provisions that deal with business closures due to natural disasters.

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Anthony is told that in the absence of any provisions under a relevant award, the *Fair Work Act 2009* provides that where an employee cannot be usefully employed as result of a stoppage of work for which an employer cannot be held responsible (such as a natural disaster), the employer is able to stand down his or her employees without pay until they are able to return to their job.

If possible, Anthony would prefer not to have to stand down his employees, so he first checks to see whether they have any unused leave entitlements which he can make available to them until they can return to work. He finds that of his three employees:

- two are part-time and have accrued annual leave
- one is full-time and has accrued both annual leave and long service leave

On this basis, Anthony contacts each of his employees to advise them that as a result of the flooding, the business is unable to remain open and he cannot provide them with useful employment at this stage. He also tells them that in accordance with the *Fair Work Act 2009*, he will be standing them down without pay until the business is able to reopen. For those employees who have accrued entitlements, he offers them the option of accessing those entitlements as an alternative to being stood down, at least until these have been exhausted. Anthony makes it clear that it is entirely optional and there is no obligation to take this leave. Some employees choose to take paid leave, while one employee decides to hold on to their leave accrual for a holiday they have planned. He then writes to each of his employees by email to confirm the arrangements discussed and provides them with his contact details during the stand down period. He advises the employees that he will remain in regular contact with them throughout the period of the closure and notify them when the business is up and running again.

What are the alternatives to standing down employees?

Before an employer stands down employees without pay there are other options that they may wish to consider. These may include:

- Invite employees to take a period of accrued paid leave (for example, annual leave). Some industrial instruments also permit annual leave to be taken at half pay.

- If there are terms in the award or agreement that allow the employer to require the taking of annual leave; or if the employee is award or agreement free, consider whether it is possible/appropriate to require the taking of such leave.
- Where there is more than one worksite and not all sites are affected by the event, consider options for sharing work and hours among sites on a voluntary basis. For example, some workers at non-affected sites may offer to take accrued leave while their position is temporarily filled by a worker from an affected site.
- Where appropriate, consider flexible arrangements, like working from home.

Any arrangements to alter an employee's working patterns would need to be implemented in accordance with the *Fair Work Act 2009* and any relevant award or agreement.

Are employees able to take leave to take care of themselves or their family?

Natural disasters often result in employees requiring time off to care for themselves or their family. Employers should keep in mind the health and wellbeing of their staff when granting access to leave entitlements.

Personal/carer's leave

Employees (other than casual employees) affected by a natural disaster or emergency may have an entitlement to take paid personal/carer's leave or compassionate leave. For example, if an employee sustained an injury during a flood or bushfire they may be entitled to personal leave. An employee would also be eligible for personal/carer's leave if their child's school is closed due to a natural disaster or emergency.

Personal/carer's leave and compassionate leave forms part of the National Employment Standards (NES). As of 1 January 2010, the NES apply to all employees covered by the national workplace relations system, regardless of the applicable fair work instrument or contract of employment.

In addition to the NES, an employee's terms and conditions of employment generally come from an award or agreement. You should also check your award or agreement for any specific entitlements to personal/ carer's leave and compassionate leave in addition to the NES.

Entitlement to personal/carer's leave

Employees who have an entitlement to paid personal/ carer's leave under the NES in the *Fair Work Act 2009* are entitled to take personal/carer's leave:

- if they are unfit for work because of their own personal illness or injury or
- to provide care or support to a member of their immediate family or household, because of an illness, injury or an unexpected emergency. An unexpected emergency would include a natural disaster.

Employees who have exhausted their paid personal/carer's leave entitlement, and casual employees, are eligible for up to 2 days unpaid carer's leave per occasion to provide care and support to a family or household member due to illness, injury or in the event of an unexpected emergency.

Compassionate leave

An employee (including a casual employee) is also entitled to two days of compassionate leave to spend time with a member of their immediate family or household who has sustained a life-threatening illness or injury. Compassionate leave may also be taken after the death of a member of the employee's immediate family or household. Employees (other than casual employees) are entitled to be paid for periods of compassionate leave.

Notice and evidence requirements

The NES requires an employee to give notice to the employer of the taking of any personal/carer's leave or compassionate leave. An employer, after being notified of the taking of personal/carer's leave, may require an employee to provide evidence in support of the leave period. For example, an employer may request that the employee provide a medical certificate.

Case Study: Carer's leave

For the last three years, Murray has worked as a cleaner on a full-time basis for a cleaning company that operates in the Torquay region. Despite heavy flooding in the area, the company has been able to continue operating and all staff are able to maintain their employment.

Murray has a son, Greg, who attends primary school in Torquay. The school was damaged by the floods and was forced to close down temporarily. Since the school closed down, Murray has experienced difficulties with arranging alternative care for Greg and was hoping to ask his employer if he could take time off to care for his son.

Murray contacts the Fair Work Infoline to find out if this is possible. He is advised that in the event of an unexpected emergency, under the NES he can access any paid personal/carer's leave he has accrued in order to care for a family member as they are affected by an unexpected emergency. In addition, where this leave has been exhausted, he can also access up

to two days unpaid carer's leave per occasion. Murray is also advised that he would need to ensure that he provided the employer with notice of taking the leave and is informed that the employer is entitled to request evidence to substantiate the reason for taking the leave.

Murray contacts his manager, Michael, to tell him about his situation and to notify him of the leave. He forwards Michael a copy of an email from the school's principal regarding the school's closure to support the reason for the leave. Michael accepts this and also offers Murray the option of accessing his accrued annual leave if he requires any more time off.

Information for those who want to assist with disaster-relief activities

Employees may be requested to volunteer to assist the community with disaster relief activities through recognised emergency management bodies like the State Emergency Service. Employers and employees should be aware of what entitlements apply to those employees who wish to volunteer in these activities.

Community service leave

The NES entitles an employee who is a member of a recognised emergency management body to take a period of unpaid leave for the purpose of engaging in an eligible community service activity, such as dealing with a natural disaster.

Awards and agreements may also contain specific provisions in relation to community service leave in addition to the NES.

Under the NES, the duration of the period of absence is not specified, however it must be reasonable having regard to the following circumstances:

- the time that the employee is engaged in the activity,
- reasonable travel time associated with the activity, and
- reasonable rest time immediately following the activity.

An employee who wishes to take a period of community service leave must provide their employer with notice as soon as practicable, including the period (or expected period) of the absence, and satisfy any evidentiary requirements. In addition, all four of the following criteria must be met:

1. The employee engages in an activity that involves dealing with an emergency or natural disaster, and
2. The employee engages in the activity on a voluntary basis (whether or not the employee directly or indirectly takes or agrees to take an honorarium, gratuity or similar payment wholly or partly for engaging in the activity), and

3. The employee is a member of, or has a member-like association with, a recognised emergency management body and
4. either:
 - a. The employee was requested by or on behalf of the body to engage in the activity, or
 - b. No such request was made, but it would be reasonable to expect that, if the circumstances had permitted the making of such a request, it is likely that such a request would have been made.

Case Study: Community service leave

Shona is a registered volunteer for the Victoria's State Emergency Services and has been asked to volunteer for one week in response to a bushfire. Shona would really like to participate, but wants to know whether she can take time off work and whether she is entitled to any income.

Shona looks on the Fair Work Ombudsman's website to find out her entitlements. Shona finds that her award does not provide for any payment in this circumstance. However, because the Victorian State Emergency Services is a "recognised emergency management body", she is entitled to unpaid community service leave for volunteering in an emergency and/or natural disaster.

Shona decides that she would still like to volunteer, so she writes a letter to her employer, Eva, to notify her that she will be taking community service leave and that her expected date of return is in 7 days. After further discussion, Eva asks Shona to provide her with a formal letter from the Victorian State Emergency Services for evidence of the reason for her absence.

After a week's service, Shona completes her final night shift assisting the Victorian State Emergency Service. However, Shona was scheduled to begin work at 5am the next day. Shona requests, and is granted, the day off to provide for adequate rest time as part of the community service leave.

Further information

The Fair Work Ombudsman has published a fact sheet on each NES entitlement. For further information on a specific NES entitlement, please see the relevant fact sheets at www.fairwork.gov.au.

Stand down provisions are provided for by section 524 of the *Fair Work Act 2009*.

Personal/carer's leave is provided for by sections 95–106 of the *Fair Work Act 2009*.

Community service leave is provided for by sections 108–112 of the *Fair Work Act 2009*.

For further information, visit www.fairwork.gov.au or contact the Fair Work Infoline on **13 13 94**.

Find out more:

If you have been affected by a natural disaster such as a flood or bushfire, please visit:

- Australian Government website:
Australian Government Disaster Assist
<http://www.disasterassist.gov.au>
- Or call: Australian Government Disaster Recovery Payment Emergency Assistance Hotline: **180 2266**
- Queensland Disaster Recovery Hotline: **1800 173 349**
- NSW Government: Emergency Management NSW:
<http://www.emergency.nsw.gov.au>
- South Australian Government: Department for Communities and Social Inclusion:
<http://www.dcsi.sa.gov.au/services/disaster-recovery>
- Victorian Government: Department of Human Services Emergency Management: **1300 650 172**
- Western Australia Natural Disaster Relief and Recovery Arrangements Administrator: **(08) 9323 9552**
- Lifeline – **13 11 14**, www.lifeline.org.au

Contact us

Fair Work Online: www.fairwork.gov.au

Fair Work Infoline: **13 13 94**

Need language help?

Contact the Translating and Interpreting Service (TIS) on 13 14 50

Hearing & speech assistance

Call through the National Relay Service (NRS):

- For TTY: 13 36 77. Ask for the Fair Work Infoline 13 13 94
- Speak & Listen: 1300 555 727. Ask for the Fair Work Infoline 13 13 94