

## Fact Sheet

### Employee Stand-Down

September 2021

#### What is a stand-down?

Put simply, a stand-down means an employer advises their employees to cease work where they cannot be usefully employed. An employer may stand-down employees under the *Fair Work Act 2009 (Cth)* s. 524 in only a few situations.

#### When can an employer stand-down their employees?

Employers can stand down employees under this subsection for the following reasons:

- There has been a stoppage of work that the employer cannot be held reasonably responsible for such as government directives, severe weather, or natural disasters
- Industrial Action (other than industrial action organised or engaged in by the employer). This may occur if an employer decides to 'lockout' its employees
- A breakdown in machinery or equipment, that the employer cannot be reasonably held responsible for the breakdown

#### When is it unlawful and unreasonable to stand-down employees?

An employer must be careful in its direction to advise their employees to stand-down from work for the following reasons. Under subsection (1) and during a period in which the employee cannot be usefully employed because of a circumstance referred to in that subsection if:

1. There is an enterprise agreement, or contract of employment that applies to both the employer and the employee; and
2. That 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:** If an employer is unable to stand down their employees under subsection 1 of the Act, then it may be possible for the employer to stand down their employees in accordance with their Enterprise Agreement or Contract of Employment. It is important for the employer to refer to any clauses or additional requirements covered in either the enterprise agreement or contract of employment that must be adhered to. This may include any periods of notice for stand-downs or consultation with their employees.

#### Does the employer need to pay their employees during a stand-down?

During this time the employee will **not** be paid for the period they are stood down for, however they will continue to accrue entitlements such as personal and annual leave. The reason entitlements continue to accrue is because the period of stand-down is considered a service period served by the employee.

## **What other alternatives should an employer consider before standing down employees?**

An employer should consider asking their employees if they wish to take any annual leave or utilise any long service leave (if they are eligible) in the first instance. Doing so will allow the employee to be covered financially during this time.

## **What happens if an employee is already on paid leave?**

Under the *Fair Work Act 2009*, an employer cannot stand-down an employee if an authorised period of paid leave (such as personal/carers or annual leave) is in motion. Once the period of paid authorised leave ends, then the employer could stand-down their employee.

## **What happens when a public holiday/s occur during the stand-down period?**

The *Fair Work Act 2009* outlines that where a public holiday/s fall during a period of stand-down, then the employee would be entitled to be **paid** for this day/s. This will only apply when the public holiday/s falls on a day the employee would work ordinary hours.

## **What happens if an employer needs to stand-down an employee but there are no provisions under the Act, Enterprise Agreement or Contract of Employment?**

An employer cannot stand-down an employee 'just because'.

If the employer does not have grounds to stand-down an employer under the *Fair Work Act 2009*, Enterprise Agreement or Contract of Employment they must identify an alternative option in relation to 'standing down' the employee.

Some employers find this difficult and frustrating as they believe they have a 'true' reason to stand-down the employee. It is important that all employers follow their obligations under the applicable Industrial Instrument.

## **Need Help?**

Keeping up with employer obligations can be difficult. Seeking expert advice can assist you to stay on the right side of the law if highly recommended. If you need help ensuring you are on top of your obligations, do not hesitate to contact your Advisor.