

Fair Work | Fact Sheet



Stand Down

The information in this sheet concerns national system and Victorian employers. It refers to the stand down provisions in the Fair Work Act 2009 (Cth) which come into effect on 1 July 2009.

An employer's right to stand down employees: overview

In the absence of any lawful right to stand down an employee arising under an employment contract or enterprise agreement, the Fair Work Act 2009 (Cth) provides a default right for an employer to stand down employees for a certain period. The effect of standing down an employee is that the employer is not required to make payments to the employee for that period. The Fair Work Act 2009 (Cth) right to stand down arises when an employee cannot usefully be employed during a period of time because of one or more of the following circumstances:

- industrial action (other than industrial action organised or engaged in by the employer);
- a breakdown of machinery or equipment, provided that the employer cannot reasonably be held responsible for the breakdown (this applies also to a breakdown of machinery of a third party supplier)
- a stoppage of work for any cause for which the employer cannot reasonably be held responsible (for example a flash flood which prevents employees from entering their work premises).

An employer can only exercise a Fair Work Act 2009 (Cth) right to stand down an employee if they cannot be usefully employed. If an employer could obtain some benefit or value from work performed by an employee then the employer will not be able to stand down that employee.

An employee is not taken to be stood down under the Fair Work Act 2009 (Cth) provisions during a period which the employee is taking paid or unpaid leave that is authorised by the employer or is otherwise authorised to be absent from his or her employment.

Where an employer stands down an employee the employee's continuity of service is not affected and service-based entitlements such as annual leave or long service leave continue to accrue during the stand down period.

An employee may refer a dispute about the exercise or purported exercise of Fair Work Act 2009 (Cth) stand down rights by his or her employer to Fair Work Australia (FWA). FWA may deal with that dispute by mediation, conciliation, arbitration or in any other way exercising its powers to deal with disputes.



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Stand down rights under enterprise agreements or employment contracts

An enterprise agreement or employment contract may include a stand down provision. If the circumstances in which that provision operates is the same as one or more of the circumstances specified in the Fair Work Act 2009 (Cth) then the provision in the enterprise agreement or contract of employment operates in lieu of the Fair Work Act 2009 (Cth) provisions.

A stand down provision in an enterprise agreement or employment contract may operate in other circumstances other than those specified in the Fair Work Act 2009 (Cth). Those provisions 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).

Where an employee is stood down under the terms of an enterprise agreement, any dispute about the stand down may be dealt with under the agreement's dispute settlement procedure (if that is provided for).



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