



NATURAL DISASTERS AND EMERGENCIES

AS AT FEBRUARY 2013

Natural disasters are an increasingly common occurrence in Australia. Floods, bushfires, cyclones, severe storms and earthquakes can cause devastation to communities and financial hardship for individuals and businesses. This factsheet provides information about the employer's obligations and the employee's entitlements in these circumstances.

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

Under the *Fair Work Act 2009* (Cth) (**FW Act**), an employer may stand down an employee without pay during a period in which the employee cannot usefully be employed because of a stoppage of work for which the employer cannot reasonably be held responsible (e.g. a natural disaster).

However, this provision of the FW Act is subject to any stand down provisions which may be included in any award or enterprise agreement. For example, an enterprise agreement may include additional terms such as consultation prior to stand down or the provision of natural disaster leave.

Example 1:

A full time fast food employee is not able to attend work because her home is threatened by bushfires. The shop is not affected by the bushfire and therefore will remain open. The employee calls to advise the owner that they are not able to attend work. While you may choose, as a gesture of good will, to pay the employee despite their absence, there is no obligation for you to do so. Alternatively, the employee may be permitted to take the period as annual leave.

Example 2:

A retail establishment is threatened by floods and is required to close. Notwithstanding that the employees may not have been affected by the floods, they cannot be usefully employed because of the natural disaster. As there are no additional entitlements in the General Retail Industry Award 2010, the employees may be stood down without pay, or permanent employees may be granted annual leave should they request it.

Where an employer decides to stand down employees, it is good business practice to notify employees in writing (where possible), and to include the date the stand down is to commence, whether the employees will or will not be paid and the effect on other employment entitlements. Employers should endeavour to update employees as soon as possible regarding when they believe the stand down will end.

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

What are the alternatives to standing down employees?

Before an employer stands down employees without pay, it may be worthwhile considering other options, such as:

- offering employees to take a period of accrued paid leave (e.g. annual leave);
- where there is more than one worksite and not all sites are affected by the event, temporarily relocating affected employees;
- where appropriate, offering flexible arrangements such as working from home.

Any arrangements to alter an employee's working patterns or location should, however, be implemented in accordance with the FW Act and any applicable award or agreement.

Is an employee able to use their Personal or Carer's leave entitlement?

Full time and part time employees are entitled to paid personal/carer's leave in accordance with the FW Act. An eligible employee may take a period of 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 employee may be entitled to take personal/carer's leave during a disaster, for example, if they have sustained an injury during the disaster, or they need to care for their child if the school has been closed due to the disaster or an emergency.

An employee who wishes to use their personal/carer's leave entitlement must, however, provide the employer with notice that they wish to take the leave and the employer may request evidence to substantiate the reason for taking the leave.

Example 1:

A part time employee sustained an injury to their leg during a flood. This employee is entitled to take any paid personal leave entitlement accrued, subject to notice and evidentiary requirements.

Example 2:

An employee works as a full time retail shop assistant. Despite there being heavy flooding in the area, the retail shop has been able to continue to operate. The employee is a single parent, whose son attends primary school in an area affected by the flood. The school has been forced to close down temporarily and the employee has experienced difficulties with arranging alternative care.

In the event of an unexpected emergency such as this, the employee will be entitled to take carer's leave, subject to notice and evidentiary requirements.

What if an employee wants 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 such the State Emergency Service.

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

The duration of absence permitted is not stipulated, 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, 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; 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.

For more information

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IMPORTANT INFORMATION

The information contained in this fact sheet is accurate at the time of distribution to you. Award conditions and industrial relations laws change regularly, however, and you should ensure that you maintain your copy of this fact sheet in an up to date form. Any revised fact sheets issued will be available at www.nra.net.au. The information contained in this fact sheet is not a substitute for independent professional advice. You should obtain any appropriate professional advice relevant to your particular circumstances.