

Employment conditions during natural disasters and emergencies

Respect@Work: Changes to the Fair Work Act 2009

On 10 September 2021, the Fair Work Act 2009 was updated to include miscarriage as a reason to access compassionate leave.

We're reviewing the information in this fact sheet in light of these changes. We encourage you to keep checking back here for updates.

Find out more at [New sexual harassment protections take effect \(www.fairwork.gov.au/about-us/news-and-media-releases/web-site-news/new-sexual-harassment-protections-take-effect\)](http://www.fairwork.gov.au/about-us/news-and-media-releases/web-site-news/new-sexual-harassment-protections-take-effect) .

Read our fact sheet on employment conditions during natural disasters and emergencies.

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Download the fact sheet:

- [Employment conditions during natural disasters and emergencies \(PDF 390.4KB\) \(www.fairwork.gov.au/ArticleDocuments/551/Employment-entitlements-during-natural-disasters-and-emergencies.pdf.aspx\)](http://www.fairwork.gov.au/ArticleDocuments/551/Employment-entitlements-during-natural-disasters-and-emergencies.pdf.aspx)

Overview

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.

An employee may have entitlements under their award or agreement that are relevant when they're unable to attend work due to an emergency or natural disaster. If no such entitlement exists, this fact sheet will outline 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. Furthermore, state workplace health and safety laws provide for a general duty of care towards employees that should be considered.

What if an employer has to temporarily close?

Employers will have to determine employee entitlements if they have to temporarily close as a result of a natural disaster or emergency. This may include offering the choice of taking accrued paid leave or, in some cases, standing down employees.

The Fair Work Act 2009 (FW Act) allows employers to stand down employees in certain circumstances when the employee cannot be usefully employed. This includes where the employer cannot be reasonably held responsible for a stoppage of work. This may include work stoppages caused by natural disasters, such as bushfires or floods. An employer is not required to make payments to an employee for the period of a stand down, but may choose to pay their employees if they wish.

Under the FW Act employee stand down provisions do not apply during a period when an employee is taking authorised paid or unpaid leave (such as annual leave) or is otherwise entitled to be absent from work (such as on a public holiday). It may be appropriate to seek guidance on these matters if you are unsure.

The FW Act stand down provisions only apply when an employee's enterprise agreement or employment contract doesn't contain stand down provisions that deal with the same circumstances. You should check your enterprise agreement or employment contract to see if

it contains any stand down provisions. If an employer stands down an employee under an applicable enterprise agreement or employment contract, the employer is required to comply with the terms of the enterprise agreement or employment contract in relation to stand down.

If an employer does stand down employees under the FW Act provisions, it's best practice to tell those employees in writing (where possible), including:

- the start date of the stand down
- whether the employees will or will not be paid
- the effect on other employment entitlements.

An employer should also try to update employees about when they believe the stand down will end.

Employees who have been stood down without pay should contact Centrelink on 13 28 50 to discuss other available options for assistance.

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:

- inviting employees to take a period of accrued paid leave (for example, annual leave)
- requiring employees to take annual leave if their award or agreement allows it, or if the employee is award or agreement free (and the requirement is reasonable)
- if there are multiple worksites and not all sites are affected, consider voluntary work sharing arrangements (for example, employees at non-affected sites may offer to take paid leave while their position is temporarily filled by someone 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 made in accordance with the FW Act and any relevant award or agreement.

Example

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 paying his employees. He contacts the Fair Work Infoline and is advised that the relevant enterprise agreement does not have any provisions that deal with business closures due to natural disasters.

Anthony is able to stand down his employees during the period in which the employees cannot be usefully employed because of the flood.

If possible, Anthony would prefer his employees be paid during the stand down. He checks their current leave entitlements as an alternative to an unpaid stand down. He finds that of his three employees:

- two have accrued annual leave
- one has accrued annual leave and long service leave.

On this basis, Anthony contacts each employee to advise them that the business is unable to remain open because of the flooding and he cannot provide them with useful employment at this stage. He also tells them that in accordance with the FW Act, he will be standing them down without pay until the business is able to reopen.

He offers his employees the option of using their leave entitlements during the period as an alternative to being stood down without pay.

Anthony makes it clear that it is entirely optional and there is no obligation to take this leave. Two employees choose to take paid leave, while one decides to hold on to their leave 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.

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. An employee can take accrued paid personal/carer's leave if they are unfit for work due to an illness or injury or if they need to provide care or support to an immediate family or household member due to illness, injury or in the event of an unexpected emergency.

For example, if an employee is injured during a flood or bushfire they may be entitled to personal leave. An employee may also be eligible for personal/carer's leave to care for their child if their child's school is closed due to a natural disaster or emergency.

Employees who have used all of their paid personal/carer's leave entitlement, and casual employees, are entitled to two days unpaid carer's leave per occasion to provide care or support to an immediate family or household member due to illness, injury or in the event of an unexpected emergency.

Compassionate leave

All employees are entitled to two days of compassionate leave per occasion 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 National Employment Standards (NES) require an employee to notify their employer when they take personal/carer's leave or compassionate leave. The employer, after being notified, may require the employee to provide evidence to support the leave period.

For example, an employer may ask the employee to provide a medical certificate.

For more information about [personal and carer's leave](http://www.fairwork.gov.au/leave/sick-and-carers-leave) (www.fairwork.gov.au/leave/sick-and-carers-leave) visit www.fairwork.gov.au/leave

Example

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's son, Greg, 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 he can access his accrued paid personal/carer's leave to care for an immediate family member for the period that his son requires care due to an unexpected emergency. In addition, if he uses up all this paid leave, and his son still needs care due to an unexpected emergency, he can also access up to two days unpaid carer's leave per occasion.

Murray is also advised to tell his employer that he's taking leave and that he may need to provide evidence of the reason for taking leave if his employer requests it.

Murray contacts his manager, Michael, to tell him about his situation and to tell him of the leave. He forwards Michael a copy of an email from the school's principal about 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 employees who are members of a recognised emergency management body to take unpaid community service leave for certain emergency management activities such as dealing with a natural disaster.

An employee must also be:

- engaging in an activity that involves dealing with an emergency or natural disaster

- engaging 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)
- a member of, or has a member-like association with, a recognised emergency management body
- requested to engage in an activity by or on behalf of the body, or it would be reasonable to expect that such a request would have been made if circumstances had permitted.

A recognised emergency management body is:

- a body that has a role or function under a plan that is for coping with emergencies / natural disasters (prepared by the Commonwealth or a state or territory)
- a fire-fighting, civil defence or rescue body
- any other body which is mainly involved in responding to an emergency or natural disaster.

This includes bodies such as:

- the State Emergency Service (SES)
- Country Fire Authority (CFA)
- the RSPCA (in respect of animal rescue during emergencies or natural disasters).

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

Under the NES, the amount of time that can be taken is not specified, however the employee is entitled to the following time off work as long as the absence is reasonable in all the circumstances:

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

An employee who wants to take a period of community service leave must tell their employer as soon as practicable, including the expected period of the absence and, if required by their employer, provide reasonable evidence of the reason for the leave.

Example

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

Shona looks on the FWO's website to check her entitlements. Shona finds that her award does not provide for any payment in this circumstance. However, because the Victorian State Emergency Service 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 emails her employer, Eva, telling her that she will be taking community service leave and that she expects to be back in seven days. After further discussion, Eva asks Shona to provide her with a formal letter from the Victorian State Emergency Service 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.

Find out more

If you have been affected by a natural disaster please visit:

- National: Visit [Australian Government Disaster Assist](https://www.disasterassist.gov.au/Pages/home.aspx)  (<https://www.disasterassist.gov.au/Pages/home.aspx>) at www.disasterassist.gov.au or call 180 22 66
- ACT: Visit the [ACT Emergency Services Agency](http://esa.act.gov.au) (<http://esa.act.gov.au>)  (<http://www.disasterassist.gov.au/>) at www.esa.act.gov.au or call 13 22 81
- NSW: Visit [Emergency Management NSW](http://www.emergency.nsw.gov.au/) (<http://www.emergency.nsw.gov.au/>)  (<http://www.emergency.nsw.gov.au/>) at www.emergency.nsw.gov.au or call (02) 9212 9200
- NT: Visit [SecureNT](https://securent.nt.gov.au/home) (<https://securent.nt.gov.au/home>)  (<http://www.emergency.nsw.gov.au/>) at [secure.nt.gov.au](https://securent.nt.gov.au) or call 131 444
- QLD: Visit [Recovery after a disaster](https://www.qld.gov.au/community/disasters-emergencies/recovery-after-disaster/)  (<https://www.qld.gov.au/community/disasters-emergencies/recovery-after-disaster/>) at www.qld.gov.au/community or call 1800 173 349
- SA: Visit the [Department for Communities and Social Inclusion](https://www.dcsi.sa.gov.au/services/disaster-recovery/)  (<https://www.dcsi.sa.gov.au/services/disaster-recovery/>) at www.recovery.sa.gov.au or call 1800 302 787

- VIC: Visit the [Department of Human Services Emergency Management](http://www.dhs.vic.gov.au/for-individuals/crisis-and-emergency/emergency-assistance) [☞](http://www.dhs.vic.gov.au/for-individuals/crisis-and-emergency/emergency-assistance) (<http://www.dhs.vic.gov.au/for-individuals/crisis-and-emergency/emergency-assistance>) at services.dhhs.vic.gov.au/emergencies or call 1300 650 172
- WA: Visit [Natural Disaster Relief and Recovery Arrangements](https://www.dfes.wa.gov.au/recovery/Pages/default.aspx) [☞](https://www.dfes.wa.gov.au/recovery/Pages/default.aspx) (<https://www.dfes.wa.gov.au/recovery/Pages/default.aspx>) at dfes.wa.gov.au/recovery or call (08) 9323 9552
- Lifeline: Visit [Lifeline](https://www.lifeline.org.au/) [☞](https://www.lifeline.org.au/) (<https://www.lifeline.org.au/>) at www.lifeline.org.au or call 13 11 14

For further information about your workplace rights and obligations visit www.fairwork.gov.au or contact the Fair Work Infoline on 13 13 94.

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 and speech assistance

Call through the National Relay Service (NRS):

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

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The Fair Work Ombudsman is committed to providing advice that you can rely on. The information contained on this website is general in nature. If you are unsure about how it applies to your situation you can call our Infoline on 13 13 94 or speak with a union, industry association or workplace relations professional. Visitors are warned that this site may inadvertently contain names or pictures of Aboriginal and Torres Strait Islander people who have recently died.