



## DISASTER RECOVERY – FREQUENTLY ASKED QUESTIONS FOR EMPLOYERS

AS AT FEBRUARY 2019

In times of natural disaster, both homes and businesses need to take the time to recover from the events that have befallen them.

As an employer, not only do you have to consider your bottom line, but you must also consider your legal and ethical obligations, to both yourself and your employees old and new.

Your legal obligations under workplace relations law and work health and safety law may vary depending on the nature of the business that you operate; before taking any particular action, it is recommended that you seek advice tailored to your specific circumstances.

### **What happens if I can't open my business because of flood or storm damage?**

The *Fair Work Act 2009* (Cth) provides that if work must be stopped due to circumstances for which you cannot be held responsible, such as the results of a natural disaster, you may stand down your employees if they cannot be usefully employed.

During stand down, an employee is not required to be paid. However, if the employer and employee agree, the employee may access their paid leave entitlements. Be aware that if your business is covered by an enterprise agreement, or your contracts of employment include provisions about stand down, additional considerations may need to be taken into account.

#### *What is meant by "usefully employed"?*

It is important to bear in mind that just because the employee's usual duties might not be available does not necessarily mean that the employee cannot be 'usefully employed'.

If the employee can be usefully employed in the clean-up of the business premises, or is able to perform work from another location unaffected by a natural disaster, then stand down will not be available and the employee has the contractual right to be provided with, or paid for, work that they are ready, willing and able to perform.

### **What if the business is open as usual, but an employee tells me that they cannot safely get to work?**

If an employee cannot safely get to work, you technically do not have to pay them for their failure to attend work. However, it is best practice to consider what options there are to allow the employee to perform work regardless; for example, can they perform their work remotely from home? Bear in mind that your health and safety obligations apply to work performed by employees at home, so this may not be a suitable option in all circumstances.

Alternatively, you may agree to allow the employee to access their paid leave entitlements.

### **Can my employee take community service leave to assist with disaster recovery efforts?**

The *Fair Work Act 2009* (Cth) 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, including a voluntary emergency management activity.

Be aware that if your business is covered by an enterprise agreement, or your contracts of employment include provisions about community service leave, additional considerations may need to be taken into account.

There is no cap on the amount of community service leave an employee may take; however, in approving a request for community service leave, employers should have regard to:

- 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 notice as soon as practicable, including the period (or expected period) of the absence, and produce evidence that would satisfy a reasonable person that the absence is because the employee has been or will be engaging in the community service activity.

### **What do I need to consider if my business wanted to engage temporary clean-up employees?**

Following a natural disaster, employers may wish to engage additional staff to help in the clean-up process.

Such staff are likely to be engaged on a temporary basis, so it is important to ensure that they are engaged under lawful and appropriate terms and conditions. Most commonly, casual employment would be offered to these clean-up employees.

*What if I engage these temporary staff on a full-time or part-time basis?*

If you prefer to engage clean-up employees on a temporary full-time or part-time basis, make sure that their employment is clearly expressed to be temporary. Generally, such employment contracts would include a specific date on which employment will come to an end, potentially with an option for the contract to be extended.

If engaging full-time or part-time employees under a temporary contract of employment, make sure that their employment ends on the date specified in the contract (if not before) or a new contract is entered into. If a temporary employee performs work beyond the end date of their temporary contract, they may become a permanent employee.

In all circumstances, employers are encouraged to seek advice regarding minimum rates of pay.

### **What are the main health and safety issues should I worry about?**

It should be no surprise that in a recovering disaster area, work health and safety considerations are paramount. Every natural disaster is different, but your obligations under work health and safety law remain the same.

Importantly, a person conducting a business or undertaking will be responsible for the health and safety of volunteers. In a natural disaster situation, businesses are encouraged to treat volunteers in the same way they treat employees when it comes to work health and safety.

### *What risks should I look out for?*

The risks you should consider will depend on the nature of the natural disaster and how likely that disaster has affected your business – usually closely related to how close to the disaster zone your business is.

At the ‘big picture’ level, consider whether the business premises themselves may have been rendered unsafe by the disaster – floods, bushfires and storms may all affect the safety of a building. This includes damaging the facilities, such as the plumbing, sewerage and wiring.

At the ‘ground level’, consider what the flow-on effects of the disaster might be. For example, if floodwaters have entered the building, they have likely brought debris with them which could include all sorts of nasty surprises. Bushfires could cause smoke damage, which in turn could trigger respiratory conditions if not properly managed.

In almost any disaster, animals will try and seek refuge in dark and confined spaces, especially in relatively sturdy buildings. Consider whether an inspection from a wildlife removal specialist is appropriate in the circumstances.

### *What controls are appropriate?*

In the long term, you would be wanting to get everything back to normal to eliminate those risks created by the disaster. Effective control measures will need to be considered and implemented on a case-by-case basis.

Severe or high risks should be addressed first; structural damage causing a significant safety hazard, for example, should be fixed in full as soon as possible.

In the immediate aftermath of a disaster, control measures should be reviewed continuously to ensure that the workplace remains as safe as it possibly can in the circumstances. As the clean-up operation progresses, you may be able to wind back the regularity of these reviews.

The information in this fact sheet is general in nature and is intended only as a guide. We recommend that you obtain advice tailored to your particular circumstances.

### **For more information**

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#### **IMPORTANT INFORMATION**

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