



# Employment entitlements during natural disasters and emergencies

## 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 toward 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 when there is no useful work for them do. This can only happen if the reason for the stand down is outside the employer's control, such as a natural disaster. A stand down can be unpaid, but an employer may choose to pay their employees instead.

These stand down provisions only apply when an employee's award, agreement or employment contract don't contain stand down provisions that deal with the same circumstances. You should check your award, agreement or employment contract to see if it contains any stand down provisions.

Employees who are award or agreement free can be required to take paid annual leave if the requirement is reasonable.

If an employer does stand down employees, 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.
- 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 award does not have any provisions that deal with business closures due to natural disasters.

Anthony is told that this means the FW Act allows him to stand down his employees with or without pay, since he can't be held responsible for the flood and there is no useful work for his employees to do.

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 or compassionate leave.

For example, if an employee is injured during a flood or bushfire they may be entitled to personal leave. An employee would also be eligible for personal/carer's leave if their child's school 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 and support to a 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 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 see our [Personal/carer's leave and compassionate leave and the National Employment Standards fact sheet](#).

### 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 a family member as they are affected by an unexpected emergency. In addition, if he uses up all this leave, 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.

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 it must be reasonable taking into account:

- 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 provide any required evidence of the reason for the leave. In addition, an employee must also be:

1. engaging in an activity that involves dealing with an emergency or natural disaster
2. 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)
3. a member of, or has a member-like association with, a recognised emergency management body
4. requested to engage in an activity, **or** it would be reasonable to expect that such a request would have been made if circumstances had permitted .

### Example

Shona is a registered volunteer for Victoria's State Emergency Services 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 Services 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 Services 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](#) or call **180 22 66**
- **ACT:** Visit the [ACT Emergency Services Agency](#) or call **13 22 81**
- **NSW:** Visit [Emergency Management NSW](#) or call **(02) 9212 9200**
- **NT:** Visit [SecureNT](#) or call **131 444**
- **QLD:** Visit [Recovery after a disaster](#) or call **1800 173 349**
- **SA:** Visit the [Department for Communities and Social Inclusion](#) or call **1800 302 787**
- **VIC:** Visit the [Department of Human Services Emergency Management](#) or call **1300 650 172**
- **WA:** Visit [Natural Disaster Relief and Recovery Arrangements](#) or call **(08) 9323 9552**
- **Lifeline:** Visit [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 & speech assistance

Call through the National Relay Service (NRS):

For TTY: **13 36 77**. Ask for the Fair Work Infoline **13 13 94**

Speak & Listen: **1300 555 727**. Ask for the Fair Work Infoline **13 13 94**