

RIGHT TO STAND DOWN EMPLOYEES

The *Workplace Relations Act 1996* (WR Act) provides that an employer can stand down an employee without pay in certain circumstances.

This fact sheet explains when an employer can stand down an employee and also explains the consequences of an unauthorised stand down.

When can an employer stand down employees?

An employer can stand down an employee, without pay, if that employee cannot be usefully employed because of:

- a strike;
- a break down in machinery; or
- a work stoppage for which the employer cannot reasonably be held responsible; eg, a natural disaster.

The default stand down provision in the WR Act only applies where a contract of employment or industrial instrument does not provide for a stand down in the circumstances outlined above.

However, if the stand down provision in a contract of employment or industrial instrument requires a stand down to be authorised by a third party (such as the Australian Industrial Relations Commission), the default stand down provision in the WR Act will apply.

If a provision in a contract of employment or industrial instrument provides for an employee to receive remuneration during a stand down, then the employer will be required to continue to comply with the instrument or contract.

Why is there a stand down provision?

In the absence of a stand down provision, an employer will usually have to choose between terminating an employee's employment or continuing to pay the employee despite the lack of work.

The default stand down provision is based on stand down provisions that previously applied in Victoria and in numerous federal awards such as the Metal, Engineering and Associated Industries Award 1998 and agreements.

Stand downs and employee entitlements

If an employee is stood down in accordance with the WR Act, the employee's continuity of service is not broken and the employee will continue to accrue entitlements such as annual and personal leave during the stand down period.

What are the remedies for unauthorised stand downs?

To ensure the protection of employees, the WR Act prohibits unauthorised stand downs.

Where an employer cannot show that an employee cannot be usefully employed because of one of the prescribed circumstances, a stand down will not be authorised under the WR Act or an applicable provision of an industrial instrument or contract of employment. An unauthorised stand down is subject to a civil penalty. A court may impose penalties of up to \$33,000 on a corporation for an unauthorised stand down of an employee.

An employee who is stood down, or a workplace inspector, can also seek an injunction from the Australian Federal Court or the Australian Federal Magistrates Court to require an employer to not stand down an employee where it is not authorised.

In addition, if an employee's stand down is found to be unauthorised then an employee will be entitled to recover unpaid wages for the duration of the unauthorised stand down.

Parties disputing an employer's stand down can use the model dispute resolution process set out in the WR Act to try and resolve the dispute.