

## Stand downs

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Employers may be able to stand their employees down during the coronavirus outbreak for various reasons. This includes when:

- the business has closed because of an enforceable government direction (which means the employee can't be usefully employed, even from another location)
- there's a stoppage of work due to lack of supply for which the employer can't be held responsible.

Learn more about the different types of stand downs, rules for stand downs and what entitlements and obligations apply below.

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## Enforceable government directions

An employer doesn't have to pay an employee when either the federal or a state or territory government or officer makes an enforceable government direction that prevents an employee from working.

This could happen, for example, where an enforceable government direction:

- requires an employer to close down a work site or reduce staffing levels, and employees can't work remotely, or
- prevents a particular employee from working because they're required to self-isolate.

In these instances, the employer doesn't have to pay the employee, unless the employee takes paid leave. Whether or not the enforceable government direction prevents an employee from working will depend on the facts in each case.

Find out more at [List of enforceable government directions during coronavirus \(\[www.fairwork.gov.au/coronavirus-and-australian-workplace-laws/tools-and-help-during-coronavirus/other-government-information-and-assistance/list-of-enforceable-government-directions-during-coronavirus/default\]\(http://www.fairwork.gov.au/coronavirus-and-australian-workplace-laws/tools-and-help-during-coronavirus/other-government-information-and-assistance/list-of-enforceable-government-directions-during-coronavirus/default\)\)](#).

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## Standing down employees

Before standing down an employee, employers should consider all other options. Use the checklist below to make sure all options have been considered before an employee is stood down.

## **Before standing down employees: employer checklist**

Employers should consider all available options before making the decision to stand down their employees.

### **1: Working from home arrangements**

Alternative working arrangements such as working from home might be suitable depending on the nature of the employee's work. Employees and employers are encouraged to discuss how this could work for them.

Find out how to introduce and manage working from home arrangements at [Alternative work arrangements \(www.fairwork.gov.au/coronavirus-and-australian-workplace-laws/alternative-work-arrangements/default\)](http://www.fairwork.gov.au/coronavirus-and-australian-workplace-laws/alternative-work-arrangements/default) .

### **2: Changes to duties, hours of work or rosters**

Employers should talk to their employees about temporarily agreeing to change their duties, rosters or hours if this means an employee can keep working. There are different ways that employers and employees may be able to make these kinds of changes.

Employers need to check the rules under the applicable award or agreement, as well as the employee's employment contract and any relevant workplace policies. Employers will usually need to consult with their employees about these types of changes.

The Fair Work Commission has also temporarily varied some awards to increase workplace flexibility during coronavirus. Check if your award is affected at [Changes to workplace laws during coronavirus \(www.fairwork.gov.au/coronavirus-and-australian-workplace-laws/changes-to-workplace-laws-during-coronavirus\)](http://www.fairwork.gov.au/coronavirus-and-australian-workplace-laws/changes-to-workplace-laws-during-coronavirus) .

More information:

- Understand how to change workplace duties or hours of work at [Changes in working hours and duties \(www.fairwork.gov.au/coronavirus-and-australian-workplace-laws/alternative-work-arrangements/changes-in-working-hours-and-duties/default\)](http://www.fairwork.gov.au/coronavirus-and-australian-workplace-laws/alternative-work-arrangements/changes-in-working-hours-and-duties/default)
- Use Find my award (<https://www.fairwork.gov.au/awards-and-agreements/awards/find-my-award/>) if you're not sure which award applies to you
- Directions to return to work and the workplace ([www.fairwork.gov.au/coronavirus-and-australian-workplace-laws/returning-to-work-and-the-workplace/directions-to-return-to-work-and-the-workplace](http://www.fairwork.gov.au/coronavirus-and-australian-workplace-laws/returning-to-work-and-the-workplace/directions-to-return-to-work-and-the-workplace))

### **3: Accessing paid or unpaid leave**

Options include:

- taking accrued annual leave (including at half pay)
- taking any other paid leave (such as long service leave or paid leave available under an award, enterprise agreement or employment contract)
- directing employees to take accrued annual leave in certain circumstances
- taking any other paid leave by agreement between the employee and the employer.

Some awards provide for 2 weeks' unpaid pandemic leave and allow employees to take twice as much annual leave at half their normal pay if their employer agrees. Go to [Unpaid pandemic leave and annual leave changes to awards \(www.fairwork.gov.au/coronavirus-and-australian-workplace-laws/changes-to-workplace-laws-during-coronavirus/unpaid-pandemic-leave-and-annual-leave-changes-in-awards/default\)](http://www.fairwork.gov.au/coronavirus-and-australian-workplace-laws/changes-to-workplace-laws-during-coronavirus/unpaid-pandemic-leave-and-annual-leave-changes-in-awards/default) to find out which awards have these entitlements. You can also read the rules about when and how it can be taken.

Additionally, some awards have been varied to give employers and employees extra flexibility to agree on alternative working arrangements and make requests about annual leave. Read more at [Changes to workplace laws during coronavirus \(www.fairwork.gov.au/coronavirus-and-australian-workplace-laws/changes-to-workplace-laws-during-coronavirus\)](http://www.fairwork.gov.au/coronavirus-and-australian-workplace-laws/changes-to-workplace-laws-during-coronavirus) .

In some circumstances, employees won't have access to paid leave. For example, if they're permanent but have already used all their accrued leave entitlements. In these situations, employers and employees can agree for an employee to take unpaid leave.

Find out more about pay and leave entitlements during coronavirus at [Pay, leave and stand downs \(www.fairwork.gov.au/coronavirus-and-australian-workplace-laws/pay-leave-and-stand-downs\)](http://www.fairwork.gov.au/coronavirus-and-australian-workplace-laws/pay-leave-and-stand-downs) .

## Options for standing down employees

Employers may be able to stand down employees:

- under the general Fair Work Act provisions
- under any applicable award, enterprise agreement, employment contract or workplace policy, in case any different or extra rules apply.

### General Fair Work Act stand down provisions

Under section 524 of the Fair Work Act, an employer can stand down an employee without pay where they can't usefully be employed because of a stoppage of work for any cause for which the employer can't reasonably be held responsible.

Employees who are stood down without pay are still employed for the period of the stand down.

To stand down an employee using these provisions, an employer needs to be able to show that:

- there is a stoppage of work
- the employee to be stood down can't usefully be employed because of the stoppage (this isn't limited to the work an employee usually performs)
- the cause of the stoppage must be one that the employer can't reasonably be held responsible for.

Employers generally can't stand down employees under the Fair Work Act stand down provisions simply because of a deterioration of business conditions or because an employee has coronavirus.

If an enterprise agreement or employment contract applies to the employees and allows the employer to stand down employees because of a stoppage of work, the employer has to use the provisions in the agreement or contract. They can't use the general Fair Work Act provisions.

If an employer unlawfully stands down employees without pay, their employees may be able to recover unpaid wages.

Some examples of when employers may be able to stand down employees include:

- if an enforceable government direction required the business to close (which means the employee can't be usefully employed, even from another location)
- if a large proportion of the workforce was required to self-quarantine and the remaining employees/workforce can't be usefully employed
- if there was a stoppage of work due to a lack of supply for which the employer can't be held responsible.

An employer should discuss and communicate any decisions they make about implementing a stand down with their employees.

Employers can use our [Template letter for standing down employees – due to the impacts of coronavirus \(DOCX 63.2KB\)](http://www.fairwork.gov.au/ArticleDocuments/218/template-letter-for-standing-down-employees-due-to-coronavirus.docx.aspx) ([www.fairwork.gov.au/ArticleDocuments/218/template-letter-for-standing-down-employees-due-to-coronavirus.docx.aspx](http://www.fairwork.gov.au/ArticleDocuments/218/template-letter-for-standing-down-employees-due-to-coronavirus.pdf.aspx)) (PDF 310KB) ([www.fairwork.gov.au/ArticleDocuments/218/template-letter-for-standing-down-employees-due-to-coronavirus.pdf.aspx](http://www.fairwork.gov.au/ArticleDocuments/218/template-letter-for-standing-down-employees-due-to-coronavirus.pdf.aspx)). The template includes steps to consider before standing down employees, as well as a letter template for notifying an employee that they are being stood down under the Fair Work Act provisions.

Employers also need to consider any applicable award, enterprise agreement, employment contract or workplace policy. These can have different or extra rules about when an employer can stand down an employee. For example, some awards and agreements include a requirement to notify or consult with staff before they can be stood down.

You can use [Find my award](https://www.fairwork.gov.au/awards-and-agreements/awards/find-my-award/) (<https://www.fairwork.gov.au/awards-and-agreements/awards/find-my-award/>) if you're not sure which award applies to you.

### Reducing staffing levels to comply with an enforceable government direction

An employer may need to reduce the number of staff they have to comply with an [enforceable government direction](http://www.fairwork.gov.au/coronavirus-and-australian-workplace-laws/tools-and-help-during-coronavirus/other-government-information-and-assistance/list-of-enforceable-government-directions-during-coronavirus) ([www.fairwork.gov.au/coronavirus-and-australian-workplace-laws/tools-and-help-during-coronavirus/other-government-information-and-assistance/list-of-enforceable-government-directions-during-coronavirus](http://www.fairwork.gov.au/coronavirus-and-australian-workplace-laws/tools-and-help-during-coronavirus/other-government-information-and-assistance/list-of-enforceable-government-directions-during-coronavirus)). Find out more at [Reducing staffing levels to comply with an enforceable government direction](http://www.fairwork.gov.au/coronavirus-and-australian-workplace-laws/pay-leave-and-stand-downs/stand-downs/reducing-staffing-levels-during-coronavirus) ([www.fairwork.gov.au/coronavirus-and-australian-workplace-laws/pay-leave-and-stand-downs/stand-downs/reducing-staffing-levels-during-coronavirus](http://www.fairwork.gov.au/coronavirus-and-australian-workplace-laws/pay-leave-and-stand-downs/stand-downs/reducing-staffing-levels-during-coronavirus)).

## Payment during a stand down

### General Fair Work Act stand downs

## Sick and carer's leave and compassionate leave during a stand down

On 27 November 2020, the Full Federal Court of Australia confirmed that an employee who has been stood down under the Fair Work Act can't take paid sick and carer's leave or compassionate leave. On 21 May 2021, the High Court of Australia refused an application for special leave to appeal this decision. The information on this page remains accurate. You can read the Full Federal Court's decision at [CEPU & Anor v Qantas Airways Ltd \[2020\] FCAFC 205](https://www.judgments.fedcourt.gov.au/judgments/Judgments/fca/full/2020/2020fcafc0205) (<https://www.judgments.fedcourt.gov.au/judgments/Judgments/fca/full/2020/2020fcafc0205>) <sup>1</sup>.

Employees who are stood down without pay by their employer under the Fair Work Act can't use paid sick and carer's leave or compassionate leave during the stand down.

Employees can use other types of leave by agreement with their employer during a stand down, including annual leave or long service leave.

### Public holidays during a stand down

Employees who are stood down without pay by their employer under the Fair Work Act are still entitled to be paid for public holidays that fall during the stand down period. This applies if the employee would normally have ordinary hours of work falling on the day of the public holiday.

#### Example: Public holiday falling during an employee's stand down

Shane is a part-time employee at a gym selling memberships and providing customer service support. His rostered days are Monday, Wednesday and Friday with 7.5 hours each shift.

Because of an enforceable government direction to close all non-essential services including gyms, Shane's workplace has closed. His employer tells him that he will be stood down without pay for 2 months. Shane's enterprise agreement and employment contract don't say anything about stand downs. His employer has relied on the general stand down provisions under the Fair Work Act.

A public holiday falls on the Monday during the second week of the gym's closure.

Shane is entitled to be paid for this public holiday. This is because he would have normally been absent from work and paid for the public holiday on that day. He is entitled to be paid for 7.5 hours, which are the hours he usually works on that day.

Different rules might apply if the employee has been stood down under an employment contract or enterprise agreement. You'll need to check the agreement or contract for details.

For more information about public holidays, go to [Public holidays \(https://www.fairwork.gov.au/leave/public-holidays\)](https://www.fairwork.gov.au/leave/public-holidays) .

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## Fair Work Act stand down examples

#### Example: Lack of vital supply – stand down

Sally's company operates a business that imports and sells electrical goods which are manufactured in China. The factory in China ceases to operate as a result of coronavirus and announces that it won't be exporting any goods for at least 3 months.

Sally explores other options but is unable to identify any alternative work of any value for her 20 permanent employees to do.

Sally closes her shop and regrettably informs her employees that they will be stood down without pay. Sally explains that they're entitled to take any accrued paid leave during the period as an alternative to being stood down without pay.

### **Example: Non-essential services – stand down of employees**

Gemma is a part-time employee at a cinema complex in Melbourne's CBD. The cinema employs 10 permanent employees and 15 casual employees. The Victorian Deputy Chief Health Officer issued an enforceable government direction that certain non-essential services need to shut down because of coronavirus.

Gemma's manager calls her to explain that the cinema is closed for the duration of the Government's direction and that cinema management will need to stand all employees down without pay, as they can't be usefully employed.

Gemma and her colleagues are advised that permanent employees can take any accrued annual leave they have as an alternative to being stood down without pay. However, casual employees aren't entitled to be paid while the business is closed.

### **Example: Non-essential services – no stand down of employees**

Teddy is a part-time food and beverage attendant in a Sydney restaurant. The New South Wales Government issued an enforceable government direction that certain non-essential services must shut down because of coronavirus.

Teddy's employer contacts him to let him know that the restaurant has closed its dining service immediately for the duration of the direction. The restaurant will continue offering its take away and delivery service. Teddys employer lets him know that instead of carrying out his usual waiting duties at the restaurant, he and the other waiting staff will be needed to help with receiving, packing and delivering orders.

This is not a stand down because Teddy can still be usefully employed, so he'll continue to be paid.

### **Example: Small business owner – stand down of employee**

Tom is a hairdresser who runs a hairdressing business in Adelaide. Tom's only employee is a part-time hairdressing assistant, James, who washes clients' hair and cleans the shop.

Tom needs to self-quarantine for 14 days because of an enforceable government direction.

Tom calls James to let him know that he needs to close the business while he's in quarantine. He also explains that he will need to stand down James without pay while the business is closed, as James can't be usefully employed. Tom lets James know that as a permanent employee he can take accrued annual leave instead of being stood down without pay.

### **Example: Small business owner – no stand down of employees**

Mary runs a painting business in Brisbane. She employs three full-time painters.

Mary needs to self-quarantine for 14 days as a result of an enforceable government direction.

Mary calls her employees to let them know that she can't come into work while she's in quarantine. She explains the painting jobs the business has coming up and explains over the phone how to carry out that work. Because there hasn't been a stoppage of work and her employees can still be usefully employed while Mary isn't at work, Mary can't stand them down without pay.

### **Example: Large proportion of workforce required to self-quarantine – remaining employees stood down**

Waterpurr Corporation operates a business that manufactures water purifying machines. It employs 12 employees in its manufacturing division.

9 of the employees in Waterpurr's manufacturing division need to self-quarantine for 14 days because of an enforceable

government direction.

Waterpurr can't identify any other way to keep the manufacturing work going. This means that for those 14 days, the remaining 3 manufacturing employees aren't able to continue manufacturing water purifying machines, because they don't have enough manufacturing employees on site to safely operate the machinery. There isn't any useful work for these employees to perform during those 14 days.

Waterpurr stands down the 3 remaining manufacturing employees without pay for 14 days (until the 9 self-quarantined employees can return to work) as they can't be usefully employed.

### **Example: Large proportion of workforce required to self-quarantine – remaining employees not stood down**

Screen Go Corporation operates a business that manufactures and distributes computer screens. It employs 8 full-time employees in its manufacturing division.

5 of the employees in Screen Go's manufacturing division need to self-quarantine for 14 days because of an enforceable government direction.

This means that for those 14 days, the remaining 3 employees can't continue manufacturing computer screens, because they don't have enough manufacturing employees on site to safely operate the machinery.

However, they can be re-assigned to help Screen Go's packaging division pack and distribute computer screens.

As these manufacturing employees can be usefully employed, Screen Go can't stand them down without pay.

### **Example: Businesses who service non-essential businesses which have closed down – employees stood down**

Anica owns a business called Gym Fix, which provides repair services for gym equipment onsite at two large fitness centres in Victoria. Gym Fix employs 3 full-time technicians to perform this work.

Gym Fix's two fitness centre clients contact Anica and say they have closed because of the Victorian Government's enforceable government direction. Anica asks the fitness centres if her business can continue repair work while the centres are closed. The centres say that no repair work can be performed during this period as they will be completely closed and it's not possible for equipment to be moved offsite for this purpose.

Anica calls the 3 technicians and explains that they cannot be usefully employed as their repair work at the fitness centres has stopped, and there is no other useful work for them to do.

Anica informs the technicians that they are stood down without pay for the period that the fitness centres are closed, and that they can take any accrued annual leave if they prefer.

### **Example: Stand down not needed for casual employees in a labour hire business**

Star Staffing is a business which provides temporary workers for plays and concerts in theatres across Queensland. Star Staffing engages 30 casual employees to do this work. The casual employees are mostly university students who work different hours depending on what plays and concerts are on, and their study commitments. They work irregular hours and don't have guaranteed hours of work.

An enforceable government direction is issued by the Queensland Chief Health Officer requiring all theatres to close. All of Star Staffing's customers tell them that while the government direction is in force, they won't require any temporary workers.

Star Staffing contacts each of their casual employees before the start of their next shift to tell them that because the theatres are closed, there won't be any shifts until further notice. Star Staffing doesn't rely on the stand down provisions under the Fair Work Act because they are casual employees and don't have regular guaranteed hours of work.

Star Staffing or their casual employees may be able to access some form of government funding or a subsidy. Find out more about the government agencies and services that can assist in our [Other government information and assistance \(www.fairwork.gov.au/coronavirus-and-australian-workplace-laws/tools-and-help-during-coronavirus/other-government-information-and-assistance/default\)](http://www.fairwork.gov.au/coronavirus-and-australian-workplace-laws/tools-and-help-during-coronavirus/other-government-information-and-assistance/default) section.

### **Example: Social distancing restrictions in a shop**

Sammie owns Sammie's Shoe Repairs, which employs 2 full-time shoe repairers, Ivette and Tao. The 2 employees work in a small shop which is 3.5 square metres in size.

Sammie considers whether one of the employees could usefully work from home, but this isn't possible because the work requires the shoe repair machine and it can't be removed from the shop. Sammie also considers whether one of the employees could do different work from home, like stock ordering or invoicing, but can't identify any relevant work.

Sammie can't use the stand down provisions under the Fair Work Act for Ivette or Tao because there's no stoppage of work. The business can still trade and there is still work performing shoe repairs, but with restrictions.

Sammie speaks with both the employees and tells them that as only one can work at a time, she'd like to look at varying their hours of work, or them taking alternating periods of leave while the direction is in place.

### **Example: Slowdown in sales because of a government direction**

Carrie's Coffee delivers coffee beans to inner city cafés in Sydney and employs 5 full-time delivery drivers. Due to enforceable government directions limiting cafés to takeaway service only, cafés have reduced demand for coffee. Cafés are the only clients of Carrie's Coffee.

This means the number of deliveries that Carrie's Coffee makes each day falls by 40%. Each driver is only completing 6 deliveries per day rather than the 10 deliveries they would usually complete.

Carrie's Coffee decides that it really only needs 3 of the 5 drivers to complete this reduced amount of deliveries, and considers what to do about the remaining 2 drivers.

Carrie's Coffee can't stand down 2 of its drivers in these circumstances. This is because while the volume of work has reduced, there hasn't been a stoppage of the work.

Carrie's Coffee could consider varying the employees' hours or asking them to take some leave. If Carrie's Coffee determines that the jobs of some employees are no longer needed at all, it may need to make some drivers redundant. Read more about [Redundancy \(https://www.fairwork.gov.au/ending-employment/redundancy\)](https://www.fairwork.gov.au/ending-employment/redundancy).

Carrie's Coffee or their employees may be able to access some form of government funding or subsidy. Find out more about the government agencies and services that can assist in our [Other government information and assistance \(www.fairwork.gov.au/coronavirus-and-australian-workplace-laws/tools-and-help-during-coronavirus/other-government-information-and-assistance/default\)](http://www.fairwork.gov.au/coronavirus-and-australian-workplace-laws/tools-and-help-during-coronavirus/other-government-information-and-assistance/default) section.

### **Example: Shorter than expected stand down**

Frank's Fashions makes designer clothing using fabric imported from Italy and has 5 full-time employees who cut and sew the clothing.

Due to the coronavirus outbreak, the supply of fabric from Italy is disrupted, and the business runs out of fabric. Frank's Fashions attempts to find alternative fabrics from other suppliers but none are of suitable quality for the designer clothing.

Because of the lack of fabric, the work of the business can't be done and the employees can no longer be usefully employed. The business can't find other work for the employees.

Frank's Fashions expects additional fabric from Italy to arrive in 7 days' time, and tells the employees that the business will be closed for the next week and they will be stood down. The fabric actually arrives in 3 days. Frank's Fashions

immediately contacts the employees to tell them they are no longer stood down as the reason for the stoppage of work (lack of fabric) has ended.

If Frank's Fashions had continued to stand down the employees after fabric had arrived, the stand down would not have been permitted by the Fair Work Act. The employees would have been entitled to payment for when the fabric arrived and the stoppage of work was ended.

More information:

- [Pay during inclement weather & stand down \(https://www.fairwork.gov.au/pay/pay-during-inclement-weather-and-stand-down\)](https://www.fairwork.gov.au/pay/pay-during-inclement-weather-and-stand-down)

Read more in our Library about:

- [difference between stand down, unpaid leave and shut down \(https://www.fairwork.gov.au/library/k600633\\_difference-between-stand-down-unpaid-leave-shut-down\)](https://www.fairwork.gov.au/library/k600633_difference-between-stand-down-unpaid-leave-shut-down)
- [unpaid leave and continuous service \(https://www.fairwork.gov.au/library/k600426\\_unpaid-leave-continuous-service\)](https://www.fairwork.gov.au/library/k600426_unpaid-leave-continuous-service)
- [stand down of employees and continuous service \(https://www.fairwork.gov.au/library/k600488\\_stand-down-of-employees-continuous-service\)](https://www.fairwork.gov.au/library/k600488_stand-down-of-employees-continuous-service) .

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