

EMPLOYEE STAND DOWN & JOB KEEPER

We have collated some relevant aspects of the recent changes in the employment, rental and creditor landscape for consideration as part of the larger changes to the economy impacting businesses.

Used together with the right plan, these changes can be applied to assist with the hibernation or partial hibernation of business under distress (reducing costs and exposure) whilst protecting the underlying value in the business and the capability to operate (its employees and operating sites).

The Emergence of Use of the Stand Down

Previously, there had been limited use of stand down provisions in generally specific circumstances, with redundancies more generally used to reduce employees and restructure businesses.

The relevant provisions regarding stand down rights are detailed below on a commercial basis.

Right to Stand Down

The Fair Work Act 2009 provides that employers have a right to stand down employees in certain circumstances. Under the Fair Work Act, an employer *may stand down an employee during a period in which the employee cannot be employed because of one of the following circumstances:*

1. A stoppage of work for any cause for which the employer cannot reasonably be held responsible (pandemics, floods, fire, power failure etc);
2. Industrial action (other than industrial action organised or engaged in by the employer, e.g. a lockout by the employer); and
3. A breakdown of machinery or equipment, if the employer cannot reasonably be held responsible for the breakdown.

Employers may also be able to stand down employees under enterprise agreements or a contract of employment if not available under the Fair Work Act 2009.

Other Key Points relating to Employee Stand down:

Employees stood down in accordance with s.524 of the Fair Work Act are not required to be paid for that period.

The Fair Work Act recognises a period of stand down as 'service', so an employee will continue to accrue entitlements to annual leave and personal/carer's leave under the National Employment Standards (NES) as public holidays that fall on a day of ordinary hours of work.

If employees are required to self-quarantine by law (e.g. have come back from overseas) and are unable to work while in quarantine an employer is not obligated to pay them

Employees who are sick or are caring for someone else who is sick should take carers leave. If the employee does not have sufficient leave employers can ask employees to take annual leave or un-paid leave.

Employers should carefully consider their approach during this time given the stress and pressure many people are experiencing. Unless necessary (to survive) it may have a greater impact on the business giving staff dissatisfaction.

Reference: <https://www.fwc.gov.au/industrial-action-benchbook/payments-relating-industrial-action/standing-down-employees>

The above is general in nature and not legal advice, we recommend legal advice is obtained for your specific situation and are able to refer several highly skilled employment solicitors from our network.

Impact of Job Keeper Payment Program

The Governments JobKeeper Payment Program ("JKP") aims to maintain as many jobs as possible across casuals (that have been in the role for 12 months), part time and full time workers as well as sole traders and self employed workers.

Effectively, the JKP provides employees with support of \$1,500 per fortnight to maintain employees (stood down or not) that they can elect to supplement or not depending upon the individual circumstance.

This enables employees particularly those stood down to receive an income to meet their living costs while the virus period and enables employers to retain employees to assist with the awakening of businesses after the hibernation being suggested by the Government.

This further increases the ability to utilise stand down as an interim cost reduction strategy while the government works through the process of attempting to combat the virus. Another step towards a hibernation of businesses for the Australian winter that is one of the targets of the government.