

## SUSPENSION AND STAND-DOWN

Under certain circumstances, an employer may “suspend” or “stand down” an employee from duty. These terms are often used interchangeably, but they have very different meanings.

**Stand Down**      The sending home of an employee **without pay** when no work is available due to circumstances outside the employer’s control.

**Suspension**      The temporary removal of an employee from the workplace **with pay** generally for the purposes of investigating allegations of misconduct.

### Stand Down under the Fair Work Act

The *Fair Work Act* allows an employer, in limited situations, to stand down employees without pay.

#### When may an employer stand down an employee?

 See *Fair Work Act 2009* (Cth) s. 524

An employer may stand down an employee without pay whenever they ‘cannot usefully be employed’ because of:

- > industrial action (other than an employer-organised lockout);
- > a breakdown of machinery or equipment (if the employer cannot reasonably be held responsible for the breakdown); or
- > a stoppage of work for any cause for which the employer cannot reasonably be held responsible.

#### What are some common examples?

Probably the most common reason employers stand down their employees is when there is a **power failure** (if the failure was beyond the employer’s control). Another common example is the breakdown of important machinery (this may include, for example, a computer network).

#### Are there any alternatives to standing down an employee?

Before considering standing down employees without pay, employers should ask if employees would like to take any annual or long service leave (if eligible). This ensures that employees do not go without pay.

#### If an employee is stood down without pay, do they accrue annual and sick leave?

 See *Fair Work Act* s 524

Yes. Where an employee is stood down without pay his or her annual and personal leave will continue to accrue. This is because the *Fair Work Act* recognises a period of stand down as ‘service’.

#### Can an employee be stood down whilst they are on paid leave?

 See *Fair Work Act* s 525

No. The *Fair Work Act* prohibits an employer from standing down an employee when they are already on paid authorised leave (such as annual or personal/carer’s leave).

 **Note:** Under the NES, a permanent employee can take **carer’s leave** to provide care and support to an immediate family member because of an unexpected emergency. An unexpected emergency would include a natural disaster.

## Do modern awards provide any additional requirements when standing down employees?

No, modern awards do not contain a stand down provision. However, an enterprise agreement or contract of employment may impose additional requirements on an employer when standing down an employee (for example, additional notice or consultation).

## Suspension

An employer may suspend an employee from duty **with pay** pending the outcome of an investigation in to allegations of misconduct or incompetence. Effectively, this means an employee is temporarily barred from attending the workplace and sent home.

Suspension should not be used as a disciplinary tool – and the length of the suspension should only reflect the time needed to conduct the investigation.

## Contacting the Victorian Chamber of Commerce and Industry

The Victorian Chamber's team of experienced workplace relations advisors can assist members with a range of employment, human resources and industrial relations issues.

Our experienced workplace relations consultants can also provide assistance to both members and non-members on a range of more complex matters for a fee-for-service. The consultants can, among other things, provide training to employees, conduct investigations and provide representation at proceedings at the Fair Work Commission.

For assistance or more information, please contact the Workplace Relations Advice Line on **(03) 8662 5222**.

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