

# What does it mean to be 'stood down' from your job?

Being stood down from your job can be upsetting and confusing if it's something you haven't faced before.

Your employer may stand you down temporarily if they can't continue to employ you because of reasons beyond their control, such as the impact of the COVID-19 pandemic.

So, what does it mean to be 'stood down' from your job? Here's more about how it works and what your rights are if it happens to you.

## What does being 'stood down' mean?

Simply put, being 'stood down' means you stop working and you're not paid, but you're still employed by the business and have entitlements. Being stood down is temporary, and is different to being made redundant or being fired.

Under the [Fair Work Act](#), employers aren't required to pay employees who are stood down, says Sam Nottle, an associate lawyer with [Jewell Hancock Employment Lawyers](#).

"When you're stood down without pay, you will still be employed by your employer and will accrue leave entitlements such as annual leave, long service leave and personal leave," Nottle says.

And under most modern award or enterprise agreements (these are legal documents that outline pay and employment conditions), employers are required to consult with their employees about 'major workplace changes'.

There are specific circumstances that make a stand down legal. One of those circumstances is if you can't be 'usefully employed' because of a stoppage of work that

the employer can't reasonably be held responsible for.

Those circumstances might include things like a natural disaster or the COVID-19 pandemic.

Businesses affected by government COVID restrictions, particularly where there is a stay-at-home direction, may be able to lawfully stand down employees without pay. But they can't stand down employees simply because the business is not doing as well as it was before.

If you've been stood down, you should also check your contract, modern award or enterprise agreement, Nottle says. These documents may contain specific provisions which overrule the general provisions in the Fair Work Act.

### **What does 'usefully employed' mean, and why is that important?**

The legal term 'usefully employed' is key here, and is used as a trigger for a stand down.

What it means is that if your employer gains some benefit or value from the work that you do, you're considered usefully employed and you cannot be lawfully stood down from your role.

"An employee is usefully employed where there is work available, and which is within the terms of your contract of employment," Nottle says.

"An employee may also be usefully employed if alternative duties, of benefit to the employer, are available to be performed."

That means that if there is useful work for you in the business that you can reasonably be expected to perform – for example, in a different department such as online rather than shop floor – the stand down may not be lawful.

However, if you can't be usefully employed because of a stoppage of work for which the employer cannot be held reasonably responsible, a stand down is legal, Nottle says. Your employer will need to consider whether there are any alternative duties you can perform.

If there's a consultation period, that's your opportunity to suggest roles that may be outside of your normal role. If a business is shutting down, however, that's unlikely to

be possible.

## **When is a 'stand down' legitimate?**

A stand down might be lawful if an enforceable government direction is in place, such as COVID-19 stay-at-home restrictions, Nottle says.

For example, a furniture store without an online presence will be required to be closed, and therefore shop floor staff could be lawfully stood down for the period of the government direction.

“However, a stand down would not be lawful where there is simply a downturn in business activity,” Nottle says.

“In the case of the same furniture store, while the COVID-19 pandemic might reduce profits for the store, if government restrictions are completely lifted, the employee could be usefully employed. There would be no stoppage of work and therefore the stand down direction could not be maintained.”

## **What are your rights during a stand down?**

Being stood down will affect some of your rights – while others remain untouched.

Remember that being stood down doesn't mean that your role is redundant. You're still employed, but your employer is not required to pay your normal salary during the stand down.

Nottle suggest that you check your contract, modern award or enterprise agreement. Some modern awards include specific provisions relating to leave during the COVID pandemic, including the ability to take extended annual leave at reduced pay.

Whether the stand down occurred due to COVID or another reason, there are rules around what can and can't be done during the stand down period:

**Sick leave and carer's leave:** You cannot access paid sick leave or carer's leave during a period of lawful stand down.

**Annual leave and long service leave:** You can access annual leave and long service leave with agreement from your employer. If the stand down happens while you're on authorised annual leave, it will not come into effect until your annual leave finishes.

**Resigning:** If you want to, you are still able to resign from your job during a stand down. Your employer must pay out the accumulated annual leave that you haven't already taken, as well as your long service leave because your employment is ending.

**Dismissal:** If your employer seeks to dismiss you during a lawful stand down period, this may be a redundancy, and you should seek legal advice, Nottle says.

## **What if the situation that led to the stand down changes?**

Importantly, if the 'stoppage of work' event that triggered the stand down ends, your employer can't legally keep you stood down.

"The stand down will not be lawful if your employer keeps you stood down for longer than you cannot be usefully employed and when there is no stoppage of work," Nottle says.

If the stand down is maintained, seek legal advice, he says. "You can make an application to the Fair Work Commission to deal with a stand down dispute."

## **How to get help**

Being stood down can be unsettling, particularly if you're unsure about your specific situation. Remember that a stand down is usually a temporary measure where you can expect to return to work.

It can be hard to stay on top of changing rules and restrictions, so here's more information about [what your boss can and can't do during COVID](#).

If you're concerned that your employer has breached the rules or you need personal advice about your situation, there is help available. Contact [Fair Work Australia](#) for more information, call your union (if you're a member), or seek legal advice from specialist employment lawyers.

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- [Is that legal? What your boss can and can't do during COVID-19](#)
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