



Australian bushfires – Employee entitlements during catastrophic weather conditions

The increasing number of bushfires around Australia have displaced many residents and led to businesses closing in the affected areas.

Many employers are now faced with the challenge of managing the impacts natural disasters may have on their business and employees. It is relevant for employers to understand their rights and obligations when managing employees during periods of a natural disaster.

Stand Down under the Fair Work Act

The *Fair Work Act 2009* (Cth) (**the Act**) provides that employers may stand down an employee without pay during a period in which the employee cannot be usefully employed because of a stoppage of work for any cause for which the employer cannot reasonably be held responsible, such as a bushfire or other natural disaster.

Only when employees are unable to be usefully employed can they be stood down without pay. Depending on the size and scale of the business, it is appropriate first to consider whether an employee could be usefully employed in an alternative location or other meaningful work and for example, considering whether clerical or administrative employees work from home or another location. It is imperative to consider useful alternatives to employ staff and make changes where possible.

Notifying Employees of Stand Down

If employees are to be stood down, an employer should inform staff about the decision and provide the following information:

- staff will be stood down from work due to natural disaster;
- the stand-down will be unpaid (unless it is paid at the employer's discretion);
- staff will continue to accrue leave entitlements during the period of the stand down as this period is regarded as "service"; and
- employees may apply for annual or personal/carer's leave, depending on the circumstances.

It is also worthwhile informing employees that they can contact Centrelink or other government services to provide financial assistance.

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Access to Leave Entitlements

In circumstances where employees have been stood down or are otherwise unable to attend work due to a natural disaster, they may request to access annual leave over this period to mitigate any loss of income. Employers and employees must reach a mutual agreement before annual leave can be processed.

A permanent employee may wish to access their personal/carer's leave during this period. Personal/carer's leave may be taken where the employee is not fit for work due to a personal illness or injury, or to provide care or support to a member of their immediate family or household due to illness, injury or an unexpected emergency. To access this leave, the employee should provide notice and may be required to provide evidence of the reason for the leave upon the request of the employer.

Community Service Leave

Employees may also be requested to volunteer or assist the community with disaster relief activities, through recognised bodies such as the State Emergency Service or fire services.

Under section 108 of the Act, an employee who engages in an eligible community service activity is entitled to be absent from work to engage in such activities, such as bushfire relief. While the period of time of community service leave is not outlined in the Act, there must be an assessment of whether the absence would be reasonable, considering the following:

- the time the employee engages in the activity;
- the reasonable travelling time associated with the activity; and
- the reasonable rest time immediately following the activity.

Employees who wish to invoke their entitlement to community service leave must provide their employer with notice as soon as practicable, including the period (or expected period) of absence and satisfy the evidentiary requirement discussed below.

To be eligible for community service leave the following criteria must be met:

- the employee engages in an activity that involves dealing with an emergency or natural disaster (such as a bush fire);
- the employee engages in the activity voluntarily;
- the employee is a member of, or has a member-like association with, a recognised emergency management body; and
- the employee was requested by or on behalf of the body to engage in the activity or in situations where no such request was made; it would be reasonable to expect that, if the

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circumstances had permitted the making of such a request, it is likely that such a request would have been made.

The nature and extent of this natural disaster is unprecedented and, as such, a considerable degree of tolerance should be afforded to employees at this time and no employer should impose a detriment upon an employee for exercising their right to community service leave.

Army Reservists

The Governor General has initiated a Defence Call Out to assist services with the bushfire crisis beginning on 4 January 2020 until revoked.

Service is protected under the *Defence Reserves Service (Protection) Act 2001*, and it is compulsory for reserves who are called out to provide their service. As an employer, if the absence of your employee due to reserve service causes significant consequences to your business, you are able to contact the Unit point of contact on the form your Reservist and discuss concerns you have.

The *Defence Reserves Service (Protection) Act 2001* further protects employment, and an employee who is a reserve must be released by the employer without being made to take any form of personal/carer's leave or annual leave during this period of service. Employers may be entitled to financial assistance through government schemes to mitigate any further loss to their business.

If you have any further questions regarding employee entitlements during the bushfires ARA members can contact the Employment Relations Team on 1300 368 041.

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