



Natural Disasters & Severe Weather – Work & Pay

This document has been created to provide Clubs SA members with a summary of the impacts natural disasters and severe weather has on work and employees pay.

Please note that this is not an exhaustive list of everything that may apply where a natural disaster, severe weather or similar event occurs.

Severe Weather

Beginning with severe weather, also referred to as inclement weather, this is where weather conditions occur that could result in work becoming unsafe or it being unreasonable for work to be done.

Examples of this include:

- Severe thunderstorms and storms
- Heavy hail
- High winds
- Extreme cold or heat

When dealing with severe weather a club should consider if there are any reasonable steps they could take to eliminate or safely reduce as much as possible the risks that are present. An example of this would be looking to provide workers undertaking duties outside in extreme heat with additional breaks, sunscreen, shelter and water and seeing if it is possible to start work earlier when it is cooler.

Appropriate personal protective equipment should also be provided where necessary to help reduce risks e.g. hats, jackets, gloves etc.

Clubs should also explore if there are other duties a worker can be given where the risks associated with the severe weather can be reasonably eliminated or safely reduced e.g. there is work they can undertake indoors.

In the case of employees the terms from a relevant Modern Award, contractual clause or Agreement may also set out additional rules and requirements where severe weather occurs, however the *Registered and Licensed Clubs Award 2020* (Clubs Award) does not do so. Clubs that have employees covered by another Award or Agreement need to check these provisions to see if it states any requirements where an employee's work is impacted by severe weather.

Where no reasonable steps can be taken to safely reduce or eliminate the risks caused by severe weather, that it's impossible or too dangerous for work to be undertaken, a Club can direct an employee to stop or not attend work. An example of this is where a severe storm occurs meaning a greenkeeper is unable to undertake any reasonable duties that day.

Natural Disaster

A natural disaster is a widespread and severe incident including things like bushfires, floods and cyclones.

As with severe weather an employee may have specific entitlements under a Modern Award, a contractual term or Agreement if they can't attend work because of an emergency or natural disaster. Under the Clubs Award there is nothing specified in regards to natural disasters, although if an employee is covered by another Award or Agreement then it should be checked to see if it contains anything regarding this.

If a natural disaster affects a workplace in such a manner that it would be unsafe for someone to work or they are unable to undertake their duties then work can be stopped or they can be directed to not attend work.

It is also worth noting that where there is a natural disaster some workers may volunteer with an emergency body such as the Country Fire Service (CFS). The worker may be required to undertake duties with this body and in the case of employees they may need to take leave such as community service leave.

Additionally where a natural disaster occurs which would result in an unexpected emergency for an employee e.g. their children's school has to shut and they can't find someone else to look after them at short notice, they may be entitled to use personal / carer's leave for a period of time.

Employees - Stand Downs

Where a natural disaster occurs or there is sufficiently severe weather a club may be able to stand down their employees.

The rules on stand downs can come from a Modern Award, contract of employment or Enterprise Bargaining Agreement but in the absence of any provisions covering this it will be sections 524 & 525 of the *Fair Work Act 2009* (FW Act) that apply. There are no rules regarding stand downs specified in the Clubs Award.

In order to legally stand down an employee under the FW Act it must be shown that they could not be usefully employed due to a stoppage of work the cause of which is something an employer can't be reasonably held responsible for. For example flooding has meant it is impossible for the club and its premises to be accessed and for work to be done here and the person can't be usefully employed as a result.

A stand down cannot occur just because business is quiet or the amount of work available has been affected by something like poor weather.

When looking to legally stand down an employee a club will need to consider all available options to ensure they legitimately can't be usefully employed. This means an employer has to show all reasonable steps were taken to find useful work and this may include such things as seeing if they can undertake other duties, reasonable measures can be taken to allow their work to be done safely and if they could work from home or at another location.

Should an employee be stood down then they should be consulted with and notice of the stand down should be provided to them in writing ASAP. They should also be provided with an estimated duration for how long

the stand down will last and if lengthy the employee's welfare should be regularly checked on and they should be kept updated.

In the case of casual employees as they are demand based employees and not guaranteed work they wouldn't be subject to a stand down as such. They should however also be consulted with and notified ASAP that due to something out the employers control they will currently not be able to be offered any shifts. It would still also have to be shown they could not reasonably be employed.

Pay During Stand Down

Whilst on stand down under the FW Act an employee does not need to be paid but permanent employees will continue to accrue leave as normal. Permanent employees will also need to be paid for any public holidays that fall during this time if they normally have ordinary hours that day or they would be entitled to payment for this under their Award or Agreement (e.g. full-time employees who have a rostered day off fall on a public holiday still receive an entitlement under Clause 31.4 of the Clubs Award).

Permanent employees who are stood down and have access to annual and long service leave are allowed to utilise this in order to be paid. Should an employee access annual leave or long service leave during a stand down then they won't be considered stood down while on leave.

The Federal Court in 2020 however ruled that when someone is stood down without pay they are not able to take paid personal / carer's leave or compassionate leave. This came from the case of *Communications, Electrical, Electronic, Energy, Information, Postal, Plumbing and Allied Services Union of Australia & Ors v Qantas Airways Limited [2020] FCA 656*.

Alternatives to Stand Downs

Depending on the nature of their employment and the terms of any applicable Award or Agreement a club may explore if they can make alterations to an employee's duties, rosters and hours that will enable them to work.

Another alternative to standing an employee down is asking them if they would be willing to take leave e.g. annual leave or long service leave. Should an employee not have any paid leave entitlements they could agree to go on authorised unpaid leave instead.

As mentioned earlier an employer should also see if it is possible for them to undertake reasonable work from home or at another site.

Disputes – Stand Downs

Where someone disputes a stand down they can apply to the Fair Work Commission to deal with this.

It is important that clubs only use stand downs where they clearly meet the requirements to do so as using this incorrectly could risk penalties being imposed.