

Job affected by the floods? Know your employment rights

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Lawyers
Since 1919

The recent flood crisis will affect the jobs of many Australians, particularly those in Queensland, Victoria and parts of New South Wales. Workers may be faced with redundancy, dismissal and pay issues as employers deal with the impact of the floods.

If your employment is affected by the floods, it is important you know your legal rights.

This information is based on the minimum statutory entitlements under the *Fair Work Act 2009* (Cth). You may have additional entitlements if your employment is covered by an award or collective agreement or if you have a written contract of employment.

The State and Commonwealth Government are offering financial and other assistance to people affected by the floods. This assistance is in addition to the rights set out below. Please note this fact sheet is general in nature, and does not constitute legal advice. If you need further information, you should contact Maurice Blackburn on 1800 810 812.

My employer has been forced to close. Can I be stood down?

The *Fair Work Act* allows employers to **stand down** employees where they cannot usefully be employed because:

- the employer's machinery or equipment has broken down and the employer is not, on reasonable grounds, responsible for the breakdown; or
- work has stopped for a reason outside the employer's control.

Employers do not have to pay employees during these periods of stand down.

Your employer may allow you to take paid or unpaid leave instead of being stood down.

The *Fair Work Act* provisions do not apply where an industrial instrument or contract of employment includes different provisions dealing with stand down in the same circumstances. This means that there may be additional circumstances in which an employer can stand down employees, or additional rules may apply.

You should check your contract of employment and/or industrial agreement for any provisions dealing with stand down.

My employer has been forced to close. Can I be forced to take annual leave?

The *Fair Work Act* allows an employer to require employees to take annual leave. The requirement must be reasonable.

If you are covered by an award or a collective agreement, it may impose additional obligations on your employer. For example, it may require your employer to give you notice before asking you to take annual leave.

An employer must not unreasonably refuse a request by an employee to take annual leave.

If you are covered by an award or a collective agreement, or have a written contract of employment, you may have a more beneficial entitlement.

I couldn't get to work during the floods. Am I entitled to take annual or natural disaster leave?

There is no general entitlement to 'natural disaster leave'.

However, some industrial agreements (including some awards and collective agreements) and some contracts of employment contain provisions allowing employees to take **special leave** during natural disasters such as floods.

Not all employees have access to this leave. You should check your contract of employment, award and collective agreement to see if this applies to you.

An employer may allow employees to take annual leave or long service leave at its discretion. An employer must not unreasonably refuse your annual leave request.

My family has been affected by the floods. Can I take personal or carers leave?

Most employees are entitled to take **paid personal leave** to provide care or support to a member of their immediate family, or a member of their household, who requires care or support because of an unexpected emergency. An 'unexpected emergency' includes a natural disaster such as the flood crisis.

Personal leave accrues at 10 days per year and is cumulative. If you have exhausted your entitlement to personal leave, or you are a casual employee, you may be eligible to take a further two days of **unpaid leave** for each unexpected emergency.

Employees may be required by their employer to provide evidence of the care or support required. You must comply with a request to provide reasonable evidence.

If you are covered by an award or a collective agreement, or have a written contract of employment, you may have a more beneficial entitlement.

A member of my family died or is seriously ill because of the floods. Am I entitled to take compassionate leave?

An employee is entitled to take two days **paid compassionate leave** for each occasion when a member of the employee's household or immediate family dies, or has an injury or illness that poses a serious threat to his or her life. Compassionate leave can be taken to spend time with the ill or injured person. It may also be taken after their death.

Casual employees are entitled to take unpaid compassionate leave.

If you are covered by an award or a collective agreement, or have a written contract of employment, you may have a more beneficial entitlement.

I'm volunteering during the floods. Am I entitled to Community Service Leave?

Employees covered by the *Fair Work Act* have an entitlement to **community service leave** when they are engaged in voluntary emergency management activity, including responding to a natural disaster.

Community service leave under the Act is unpaid. Community service leave covers absences from work for reasonable travelling time, participation in the emergency management activity and reasonable rest time immediate after the activity.

To be eligible for community service leave you must be a member (or have a member-like association with) a recognised emergency management body such as the SES. It is not enough to simply volunteer to assist.

If you take community service leave, you must notify your employer as soon as possible. This can be after the leave has started.

If you are covered by an award or a collective agreement, or have a written contract of employment, you may have a more beneficial entitlement.

I couldn't make it to work during the floods. What happens if I lose my job?

Your employer must have a valid reason to **terminate your employment**. Ordinarily, failure to attend work without notice and/or excessive absenteeism forms a valid reason. However, it may not be a valid reason where you were unable to attend work due to a natural disaster.

Employees should contact their employer as soon as possible and advise them of the reason for their absence, and give a realistic estimate of when they will be able to return to work.

If your employment is terminated because you could not attend work due to the floods, you may be able to bring an **unfair dismissal claim**. Unfair dismissal claims must be brought within 14 days of the date of termination. This timeframe can be extended in particular circumstances, including where you were prevented from bringing the claim due to circumstances beyond your control (such as a flood). However, you should bring your claim as soon as possible. More information on unfair dismissal can be found on our website or at www.fwa.gov.au.

I'm going to lose my job because of the floods. What are my rights?

Following crises such as floods, employers whose businesses are affected may be forced to retrench employees. This is called **redundancy**.

A redundancy must be genuine. A redundancy will be genuine if:

1. your employer no longer wants your job to be done by anyone; or
2. your employer becomes insolvent or bankrupt.

Not all dismissals that arise from the flood crisis will be genuine redundancies. If you believe that your employment has been terminated without a valid reason, you may be able to seek a remedy for **unfair dismissal**. Unfair dismissal claims must be brought within 14 days of the date of termination. This timeframe can be extended in particular circumstances, including where you were prevented from bringing the claim due to circumstances beyond your control (such as a flood).

If your employment is terminated because you were unable to work due to the flood crisis, you may have an unfair dismissal remedy.

More information on unfair dismissal can be found on our website or at www.fwa.gov.au.

Under the *Fair Work Act* you are eligible for redundancy pay if you have been employed for at least 12 months and your job is made redundant. There are some exceptions. Under the Act, only your service from 1 January 2010 is counted for the purpose of calculating your entitlement.

However, if an award or agreement applied to you before 1 January 2010, and that award or agreement provided for a redundancy entitlement, some or all of your service may be counted.

In addition, you will be entitled to be paid in lieu of notice of termination, and to be paid your statutory entitlements, including accrued annual leave.

My employer can't reopen. What happens to my employment entitlements?

If your employer's business closes because of the floods and you lose your job, your employer must still pay your **employment entitlements**, including redundancy (if applicable), notice of termination and your accrued entitlements such as annual leave.

Your employer must pay these amounts to you immediately after your employment is terminated. If your employer cannot pay your entitlements, you may be eligible for assistance through the Commonwealth Government General Employee Entitlements and Redundancy Scheme ('GEERS'). More information on GEERS is available at www.deewr.gov.au/geers.

Need more information?

If your job has been affected by the floods and you need to discuss your employment rights, please email Maurice Blackburn at employment@mauriceblackburn.com.au or call us on 1800 810 812 to arrange an appointment with one of our employment lawyers.

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