

# Employment after a natural disaster

Anyone can talk to a lawyer for free at Tasmania Legal Aid.

To get free legal information call 1300 366 611, drop into our Hobart or Launceston office (no appointment necessary) or use the Legal Talk chat function on our website. We are open Monday to Friday, 9am to 5pm.

A lawyer can listen to your story and help identify the next steps you can take.

If your workplace has been affected by a natural disaster the law provides some protection to guide what workers can be asked to do by their workplace.

**If business operations are badly affected and an employer has no work for some or all employees, does the employer have to pay them when they can't provide work for reasons beyond their control?**

Generally, yes (see exceptions below).

**If there is a lot of cleaning up to do at a business premises before it can return to normal work, can an employer ask employees to help with that?**

Generally, yes. However, before asking employees to participate in clean-up work, an employer must be satisfied that they are competent to do so and physically capable of doing the work.

If necessary, the employer should inquire about any physical limitations employees have before allocating work they would not usually perform.

Some tasks might also involve specific safety requirements, safety induction or specific training (e.g. in safely using equipment or cleaning substances or preventing contamination from dirty water). Remember, workplace health and safety obligations will continue to apply, and significant criminal penalties can result from breaching health and safety laws.

**Because of the natural disaster, an employer can't provide an employee with their usual work, but they have other work the employee can do. Can the employer ask or direct the employee to do that work instead?**

Generally, yes, provided the employee is capable (by experience, training or qualification) of doing the work and it presents no safety risks. (See the previous question for more information).

## Can an employer direct an employee to work at a location other than their normal place of work if, because of a natural disaster, it can't be used?

Generally, yes. However, the employer should check any applicable award/agreement to see if it provides otherwise. If it does, an employer's ability to direct an employee to work at another location will be limited by the award/agreement's terms.

Depending on the alternative work location, some employees may not be able to access the location (or do so easily) or may spend a significantly longer time travelling to work, therefore incurring additional costs or attracting additional pay entitlements. In these circumstances, an employee may be able to refuse to work from the other location or may be entitled to reimbursement of additional travel costs incurred and/or payment for additional travel time.

## Can an employer allow or require an employee to work from their home while business premises are affected by a natural disaster?

Generally, yes, although depending on a range of variables, some safety issues might arise over which an employer has no control.

Given the strict liabilities imposed by workplace health and safety laws, this could expose an employer to liabilities they know very little or nothing about.

## Can an employer force an employee to take paid annual or personal leave if they can't usefully employ the employee for a period for reasons beyond their control?

Generally, an employer can direct an employee to take a period of annual leave. An employer cannot, in these circumstances, direct an employee to take personal or carer's leave.

An employer can direct an employee to take a period of annual leave if the direction is reasonable. A direction to do so may be reasonable if a business is being shut down for a period of time.

While a common example is a Christmas shut down period, business closure due to a natural disaster is also likely to be reasonable.

However, employers should carefully review the provisions of any applicable award or enterprise agreement before directing employees to take annual leave, as it might contain more detailed provisions about a direction to take annual leave, many awards require employers to give employees a specified period of notice (such as four weeks) before they can be directed to take annual leave.

In these cases, the required notice periods would usually negate the effectiveness of forcing an employee to take annual leave to cover a forced absence from work.

## Does an employer have to make any adjustments to leave entitlements of employees who were on paid leave of any kind during interruptions to a business caused by a natural disaster?

With some exceptions, the answer is generally no. However, an employee cannot be on annual leave if they are on any other form of leave (except parental leave) at the same time. For example, an employee on annual leave who becomes entitled to take paid sick or carer's leave during or as a result of a natural disaster, may apply to take sick or carer's leave for the relevant period and ask that an employer credit their annual leave entitlement accordingly.

Similarly, an employee on annual leave called up as a member of the State Emergency Service or other recognised emergency management body (as defined in [Section 109\(3\) of the Fair Work Act](#)) to assist in managing a natural disaster would be eligible to take community service leave. An employee in this position might request to have their annual leave balance adjusted for the period they were on community service leave, although community service leave is generally unpaid.

## While business operations are restored, an employer has nothing

## else for some or all of their employees to do. Can the employer 'suspend' their employment without pay while they are unable to provide work? If so, how would an employer go about that?

Generally, yes. [Section 524 of the Fair Work Act](#) allows an employer to stand down (or 'suspend') an employee without pay in specified circumstances. This includes where an employer has had to close its workplace for a reason for which the employer could not reasonably be held responsible. Recent (and ongoing) interruption to a workplace by a natural disaster is unlikely to meet this description.

However, if an employment contract or enterprise agreement provides for a stand down in the case of, for example a flood, the contract or enterprise agreement's terms will apply instead.

Employers should review their employment contracts and any applicable enterprise agreement to determine if they contain stand down provisions and these should be followed if any employees need to be stood down.

If an employer needs to suspend an employee without pay, the employer should confer with the employee to inform them of the decision and the reasons behind it. This might also be a time to discuss other options, including those outlined earlier relating to alternative work arrangements or using available leave entitlements.

To the extent that it is possible, an employer should give affected employees an estimate of the period for which their employment may be suspended. An employer should keep in regular contact with employees during this period to keep them up to date with the business recovery process.

Some employees suspended from their employment on an unpaid basis in these situations may choose to resign so they can get other paid work. They are entitled to do so.

## If a business has been so badly affected that it will not be reopening at all or won't be able to operate for some time, can an employer dismiss employees on the grounds that their services are not going to be required for the foreseeable future? What are the implications of that?

Yes, subject to compliance with applicable industrial requirements relating to redundancy situations. In many cases employers will have obligations to consult affected workers and genuinely consider redeployment opportunities. On termination, employers will have obligations to give up to five weeks' notice or pay in lieu, and, for employers with 15 employees or more, to pay up to 16 weeks' severance or redundancy pay.

## An employee's home was badly affected by the natural disaster. Are they entitled to paid or unpaid leave to sort out the personal problems caused by the natural disaster?

Generally, yes. Paid carer's leave is available where an employee is required to provide care or support for members of their immediate family or household because of an unexpected emergency.

A significant flooding event or bushfire event will qualify an employee to take carer's leave to deal with the aftermath and to support their immediate family or household. Carer's leave is limited and comes out of the personal leave entitlement.

An employee who has accrued annual leave available may apply to take it in these circumstances (with an employer's agreement). An employer can also agree to allow an employee to take annual leave in advance.

Long serving employees (with more than 10 years continuous service) who are entitled to take paid long service leave may apply (with an employer's agreement) to take leave in these circumstances.

Long serving casual wharf employees in Tasmania are also entitled to paid long service leave.

If an employee was injured or falls ill during a flood, storm or bushfire or the clean-up process, they may also be entitled to take paid sick leave (subject to their leave balance and the provision of any medical certificates that may be required by their employer).

Sick leave, like carer's leave, also comes out of the limited personal leave entitlement.

Where a member of an employee's immediate family or household sustains a life-threatening injury or illness, or dies, the employee is entitled to two days' compassionate leave (unless they are casual employees, in which case the leave is unpaid). Compassionate leave is separate from the personal leave entitlement, available to be taken as sick or carer's leave.

Where an employee is not entitled to any of the above paid leave, an employer can allow the employee to take paid or unpaid 'special leave' to address their personal circumstances.

## **An employee can't physically get to work because flooding, storm damage or damage from a bushfire has prevented their access. Does an employer have to keep paying them while this continues?**

Generally, no, although an employer could allow the employee to access any accrued but untaken annual or long service leave entitlements, or to take paid annual leave in advance, provided the employer and the employee agree to that.

## **An employee is not directly affected by the natural disaster but has taken time off to assist family members who are directly affected. What is their entitlement to do that?**

An employee may be entitled to take paid or unpaid carer's leave in this circumstance. Carer's leave is available when an employee is required to provide care or support for members of their immediate family or household because of an unexpected emergency. Natural disasters will qualify.

Where an employee exhausts their entitlement to paid carer's leave, they may be entitled to take further periods of unpaid carer's leave.

## **An employee was not directly affected by the floods, storm or bushfire but wants to take time off work to perform voluntary community work. Does an employer have to allow that?**

Generally, no, but an employer can allow it on a paid or unpaid basis if they want to do so.

## **An employee is a member of the State Emergency Service and was called to perform emergency service work during the natural disaster. Are they entitled to time off for that and, if so, are they entitled to paid leave?**

Employees who are members of the State Emergency Service, or another recognised emergency management body (as defined in [Section 109\(3\) of the Fair Work Act](#)) are entitled to take community service leave for the time they were engaged in the emergency work.

This leave is generally unpaid, although some employers treat it (or part of it) as paid leave, either because they choose to do so or have agreed to do it.

The period for which an employee can be absent on community service leave is not specified in the [Fair Work Act](#) but must be reasonable considering:

- the time the employee is engaged in the emergency work
- reasonable travelling time associated with the work
- reasonable rest time after performing such work.

To be considered community service leave, the employee must, as soon as practicable, notify their employer of their absence and advise of

the expected period of their absence.

This is written for people who live in or who are affected by the laws of Tasmania, Australia. The law changes all the time – this information is not legal advice. If you have a legal problem, you should talk to a lawyer before making a decision about what to do.