

CORONAVIRUS COVID-19

HOSPITALITY VENUE SHUTDOWN EMPLOYMENT UPDATE

23 MARCH 2020



WHAT RESTRICTIONS HAS THE GOVERNMENT INTRODUCED?

The Prime Minister announced a shutdown of places of public gatherings from **12:00pm (midday) on Monday 23 March 2020.**

This includes hotels, bars, nightclubs, casinos, restaurants and cafes.

The following exceptions apply:

- Bottle shops – retail bottle shops and the off-licence operations of licensed premises – ***further clarification is being sought in relation to how this applies to Hotels;***
- Accommodation – the accommodation section of hotels, motels and resorts;
- Restaurants/Cafes – takeaway and home delivery;

A copy of the Prime Minister's statement can be accessed here: <https://www.pm.gov.au/media/update-coronavirus-measures-220320>.

WHAT IS A STAND DOWN OF EMPLOYEES & DOES THE GOVERNMENT'S SHUTDOWN TRIGGER THE STAND DOWN PROVISIONS?

A stand down of full-time and part-time employees can arise where there is stoppage of work for which the employer cannot reasonably be held responsible for **AND** the employees cannot otherwise be usefully employed.

The shutdown of hospitality venues by the Government represents a stoppage of work for which the employer cannot reasonably be held responsible for.

Provided that the employees cannot be usefully employed, it is the Association's view that the Government's shutdown of hospitality venues triggers the operation of the stand down of employee/s provisions in the *Fair Work Act 2009**.

**Enterprise Agreements (EA) or contracts of employment may provide for alternative stand down provisions. If this applies to your circumstances, you must refer to, and apply, the stand down provisions in the EA or contract.*

CAN I STAND DOWN CASUAL EMPLOYEES?

No, casual employees are not stood down. Consistent with the nature of casual employment, casual employees should be advised that there is no further work for them at this time.

CAN A STAND DOWN APPLY IF PART OF THE BUSINESS IS STILL OPERATING ACCOMMODATION OR TAKEAWAY/DELIVERY SERVICES?

Yes. A stoppage of work triggering a stand down can apply to a part or parts of a business which have been shut down, even if another part of the business continues to operate.

WHAT HAPPENS DURING A STAND DOWN OF EMPLOYEES?

During a stand down the employees do not attend work and the employer is not required to make payments to employees for the period of the stand down.

HOW LONG CAN A STAND DOWN PERIOD LAST?

There are no time limits specified in the *Fair Work Act 2009*. The duration of any stand down period will be referable to the stoppage of work and whether or not the employees can be usefully employed. For example, while a business may close for 8 weeks, it may be able to usefully employ some or all of the employees after 7 weeks in order to set-up or prepare for re-opening.

However, the current Government shutdown of hospitality venues in response to the Coronavirus COVIS-19 Pandemic is likely to result in many venues closing and implementing a stand down of employees for an indefinite period of time.

DO I NEED TO INFORM MY EMPLOYEES IN WRITING?

An employer introducing a stand down will be a distressing and confusing period for many employees. Therefore, it is recommended that written notification is provided.

DO I NEED TO KEEP MY EMPLOYEES UPDATED?

As stated above, a stand down will be a distressing and confusing period for employees. It is recommended that you maintain regular communication and updates with your employees.

CAN AN EMPLOYERS'S DECISION TO STAND DOWN EMPLOYEES BE CHALLENGED?

Yes. An employee, a union or Fair Work Inspector can file a stand down dispute in the Fair Work Commission. If you receive a stand down dispute notification please contact us immediately.

DOES ANNUAL LEAVE AND PERSONAL LEAVE ACCRUE DURING A PERIOD OF STAND DOWN?

Yes, the period of stand down is considered service for the purposes of the Fair Work Act 2009. Therefore annual leave and personal will accrue as normal.

DOES LONG SERVICE LEAVE ACCRUE DURING A PERIOD OF STAND DOWN?

That depends on the State or Territory jurisdiction. In New South Wales, long service leave does not accrue during a period of stand down.

CAN AN EMPLOYEE TAKE ANNUAL LEAVE OR LONG SERVICE LEAVE DURING A PERIOD OF STAND DOWN?

Yes. If an employer agrees to an employee's request to take annual leave or long service leave, the employee will not be considered stood down and all the usual rules and payments relating to the

particular leave will apply, including payment for public holidays falling during the period of annual leave or long service leave, and the payment of annual leave loading.

N.B. *There are five public holidays in New South Wales during the month of April – see below for further information relating to the refusal of requests for annual leave.*

If you do approve a period of leave, and if at the end of the approved period of leave, the stoppage of work still exists **AND** the employee cannot be usefully employed, you can then stand down the employee.

CAN I REFUSE AN EMPLOYEE’S REQUEST TO TAKE ANNUAL LEAVE OR LONG SERVICE LEAVE DURING A PERIOD OF STAND DOWN?

Yes. An employer can refuse an employee’s request to annual leave or long service leave, provided the refusal is reasonable. An example of a reasonable refusal would include no capacity to pay the leave during the current trading restrictions arising out of the Coronavirus COVID-19 Pandemic.

IS AN EMPLOYEE ENTITLED TO PAID SICK LEAVE OR CARERS LEAVE DURING A PERIOD OF STAND DOWN?

No, during a period of stand down these payments are not required to be made to employees.

ARE THERE ANY EMPLOYEE SUPPORT MEASURES IN PLACE?

The following Government agencies and organisations can assist employees:

- Services Australia - <https://www.servicesaustralia.gov.au/individuals/subjects/affected-coronavirus-covid-19>;
- National Coronavirus COVID-19 Helpline - 1800 020 080;
- Lifeline – 13 11 14;
- Kids/Young Adults (5-25 years) Helpline – 1800 55 1800.

ARE THERE ANY EMPLOYER/BUSINESS SUPPORT MEASURES IN PLACE?

The Government has announced a range of employer and business support packages, which can be accessed here:

<https://business.gov.au/risk-management/emergency-management/coronavirus-information-and-support-for-business>

FURTHER INFORMATION

The following information and tools are available at our online member portal:

- Employer Guide;
- Template letter for stand down of full-time and part-time employees;
- Template letter for casual employees.

The portal can be accessed [here](#).

If you require further advice or information, please contact the TAA NSW Legal and Industrial Affairs Team on (02) 8218 1855.