

Frequently Asked Questions

Industrial Relations

STAND DOWN AND REDUNDANCY FAQs



The COVID-19 pandemic is undoubtedly presenting many new challenges for you and your business. As a result of this unprecedented situation, you may need to make some difficult decisions in relation to your workforce.

The purpose of this fact sheet is to assist you with this process. We have compiled some of the commonly asked questions in relation to stand down and redundancy.

Where possible, we encourage you to work together with your employees to find appropriate arrangements to deal with this tough situation. Although this fact sheet deals with primarily stand down and redundancy, you may have other options at your disposal. For example, you may consider having your employee take paid or unpaid leave or may be able to reduce working hours through consultation and agreement with your employees.

Notwithstanding these alternatives, we understand you may have no other choice but to stand down employees or make them redundant. We want to remind you that there is a high threshold to meet in order to stand employees down without pay. There are also specific processes that must be followed when making employees redundant.

In the possible event of a Federal or State Government mandated industry lock down, it may be a better option for you to stand employees down, rather than making them redundant. As the employer, it will mean you don't have to pay employee wages and allow you to maintain your workforce on stand-by for when work is able to resume. For your employees, it means they have a livelihood to return to after the lock down.

We would like to remind you that we are always available to work through options and provide advice based on your circumstances. If you have further questions, please call the Industrial Relations team on (03) 9411 4555.

For more information,
contact the team at MBV at
mbassist@mbav.com.au or (03) 9411 4555

Frequently Asked Questions

Industrial Relations

STAND DOWN AND REDUNDANCY FAQs

Under what circumstances can I stand down employees?

Under the Fair Work Act, an employer can stand down employees in certain circumstances. These include situations where the employee cannot be usefully employed due to a stoppage of work for which the employer cannot be reasonably held responsible. A period of stand down is without pay.

Standing an employee down without pay is a drastic measure. Before standing employees down without pay, employers should consider whether the following circumstances exist:

1. There is a stoppage of work;
2. The stoppage means that the employer cannot usefully employ the employee; and
3. The employer cannot reasonably be held responsible for the stoppage.

The ability to stand down an employee without pay is a high threshold to meet. Members must ensure they meet the threshold requirements of a stand down. Members should also consider whether their Enterprise Agreement (EBA) or contract of employment prescribe any additional stand down requirements before standing down employees.

If members unlawfully stand down employees (i.e. they don't meet the requirements), the stand down may be challenged and the employer may be ordered to pay the employees' wages during the period of the stand down.

In our current climate, a government directive to lock down the entire building industry is likely to amount to a stand down. Other scenarios may also amount to a stand down, where the above requirements are met. However, members should note that they are not able to stand down employees because of a downturn in work.

For this situation, members would need to consider other options, including reducing hours by agreement, coming to agreements for employees to take paid or unpaid leave, or as a final resort redundancy.

Please refer to the [Fair Work's website](#) for further information about stand down.

Frequently Asked Questions

Industrial Relations

STAND DOWN AND REDUNDANCY FAQs

If I stand down my employees what are they entitled to?

Employee entitlements during stand down

Employees who are lawfully stood down are not entitled to payment. However, while employees are stood down you can still reach an agreement with them to take accrued annual leave, long service leave or banked RDOs, if your business can sustain it. You may even choose to allow employees to access a limited number of leave days.

For employees who have been in the construction industry for more than seven years, they may be able to access a lump-sum payment for accrued long service leave available through CoINVEST. Employees should be directed to contact [CoINVEST](#) to access those entitlements.

Employees who are covered by the CFMEU EBA (2011-2015, 2016-2018 and 2019-2020) are not entitled to CBUS superannuation payments and Incolink redundancy payments while stood down. The Incolink insurances are still payable, which are around \$25 a week. RDOs do not accrue while employees are stood down.

Accessing Leave

Employees can request to take annual leave, long service leave or banked RDOs if both parties agree. You can accept or reject this request on reasonable business grounds.

If your business cannot sustain employees using their accrued leave for the entirety or majority of the stand down period, you can allow employees to access a limited number of annual leave days, for example 2 days per week. You can provide this option for all employees provided that they have enough accrued leave.

If employees can avoid drawing upon their entitlements or they do not have enough accrued entitlements, they may be able to access Government payments and/or the Incolink COVID-19 payment, which are explained below under FAQ3.

Please note that employees may not be eligible for Government payments if they take annual leave or long service leave or are accessing Income Protection Insurance.

Frequently Asked Questions

Industrial Relations

STAND DOWN AND REDUNDANCY FAQs

If my employees are stood down can they access financial support?

During the next six months there will be expanded access to the income support from the Government and other agencies. This may be a better option for employees and employers, rather than employees accessing all their leave entitlements.

1. Employees who are stood down may be able to access the following payments:
2. Wage Subsidy / JobKeeper Payment;
3. JobSeeker Payment;
4. Coronavirus Supplement;
5. Early access to superannuation; or
6. If applicable, Incolink COVID-19 payment.

Wage Subsidy Payment

The JobKeeper Payment is a payment made to eligible businesses and not-for-profits affected by the Coronavirus to support them in retaining employees.

Further information is available on the Treasury's website and specifically the FAQs.

JobSeeker Payment and Coronavirus Supplement

The Government is temporarily expanding eligibility to its JobSeeker payment category and establishing a new, time-limited Coronavirus supplement to be paid at a rate of \$550 per fortnight. The total amount for individuals on JobSeeker will therefore be \$1,100 per fortnight. The expanded eligibility will include permanent employees who are stood down or lose their employment.

Therefore, permanent employees who are stood down or lose their employment may be eligible for the JobSeeker payment (commenced from 25 March 2020) as well as the new Coronavirus supplement (commencing from 27 April 2020). This supplement will be paid to new recipients in addition to existing recipients of the JobSeeker payment. In determining eligibility, the income test still applies but the asset testing will be waived. Waiting times will also be reduced.

Employees need to be aware that they will not be eligible for these payments if they are accessing leave entitlements at the same time.

Please see the following example below on the payments, which has been taken from the [Fact Sheet produced by the Australian Government](#):

Frequently Asked Questions

Industrial Relations

STAND DOWN AND REDUNDANCY FAQs

Example

Leonie is in her mid-30s, with two dependent children aged 10 and 12 and works as a telephone consultant for a travel agency. The economic downturn due to Coronavirus has caused the travel agency where she works to close for a six month period, and resulted in Leonie's hours being reduced to zero. Leonie will be eligible to apply for JobSeeker Payment and the Coronavirus supplement under the new streamlined process.

Leonie can apply on-line and make a declaration about her identity, residency status, income and that she has had her hours reduced to zero as a result of the economic downturn due to Coronavirus.

Leonie is eligible for Jobseeker Payment and will receive \$1,171.50 per fortnight, comprising:

JobSeeker Payment single, with dependent child rate of \$612.00 per fortnight; plus

Energy Supplement of \$9.50 per fortnight; plus

Coronavirus supplement of \$550 per fortnight.

Leonie will also receive Family Tax Benefit Part A and Part B of \$483 a fortnight.

Having recently left employment, Leonie is already job ready.

An employment service provider will look to match Leonie's skills with available opportunities (for example, in another call centre) so Leonie's skills can be used in another industry and Leonie can get another job quickly.

Further information on the JobSeeker payment and Coronavirus supplement can be found by [clicking here](#).

Early access to superannuation

We recommend suggesting to employees that financial advice is sought before this option is used as it potentially will have long-term detrimental impacts on their superannuation that need to be understood and considered.

The Government is also allowing individuals to have early access to their superannuation. Eligible individuals will be able to access up to \$10,000 of their super before 1 July 2020 (this financial year), and also a further \$10,000 from 1 July 2020 until 24 September 2020 (next financial year).

Individuals who are unemployed, are made redundant, or have had their working hours reduced by 20% or more are able to apply. Individuals may also be eligible if they fulfill other specific criteria.

Frequently Asked Questions

Industrial Relations

STAND DOWN AND REDUNDANCY FAQs

Eligible individuals can apply through the ATO on the myGov website from 20 April 2020.

Further information on the early access to super can be found [by clicking here.](#)

Incolink COVID-19 Payment

Eligible Incolink members with an available balance will be able to access a COVID-19 payment of \$2,000 (or the balance of their account whichever amount is lower). This payment will be taxed at 32%. This payment is available now in WorkerLink only to eligible members. Further payments can be requested every 28 days after the initial payment if the worker continues to be eligible.

Employees will only be eligible if they are not earning an income from you (this includes leave entitlements) because:

of site closures due to COVID-19; or

they are required by a medical professional to self-isolate due to exposure to COVID-19 for any period prescribed by federal or state governments.

You as the employer must also complete a declaration via EmployerLink to confirm the conditions above. Please click here for further instructions on how to do this.

Please note that if employees are receiving PSLi payments they cannot claim the Incolink COVID-19 payment.

Full details of the Incolink COVID-19 payment can be [accessed by clicking here.](#)

4. Can I stand employees down if a large number of my employees have to self-isolate/self-quarantine?

Bearing in mind the earlier advice that there is a high threshold that must be met before you can stand down employees, you may be able to stand down employees in this situation if the remaining employees/workforce cannot be usefully employed. There is no definition of a 'large number', for instance over 50% of the workforce, rather you need to consider whether it effectively leads to a stoppage of work and whether there is any other useful work that the remaining employees could undertake.

Some examples of this might be:

- Due to the number of employees self-isolating/self-quarantining you don't have enough employees on-site to continue the job in a safe manner and you don't have any other useful work for the remaining employees to perform

Frequently Asked Questions

Industrial Relations

STAND DOWN AND REDUNDANCY FAQs

- You are a sole trader with an apprentice and you have to self-isolate/ self-quarantine

5. Do I have to pay employees for public holidays while they are stood down?

Employees that are stood down by their employer under the Fair Work Act are still entitled to be paid for public holidays that fall during the stand down period. This requirement only applies if the public holiday falls on a day that the employee would usually have worked.

In Victoria the upcoming public holidays are:

-10 April Good Friday

-12 April Easter Sunday

-13 April Easter Monday

-25 April Anzac Day

-8 June Queen's Birthday

6. If I stand down my employee and they resign what are they entitled to?

If an employee resigns they will be entitled to all outstanding payments owed such as unused annual leave. If they are covered by the Building and Construction General On-site Award 2010 or a CFMEU on-site EBA, they will also be entitled to severance payment (please refer to point 8 and 9 below for payments calculations).

Incolink members will also be able to access funds in their accounts, but only up to \$8,000 in monthly instalments. Monthly instalments will continue to be available until the balance of the account is exhausted.

Please [click here](#) for further details on the Incolink website.

Early access to superannuation

Employees who resign may also be eligible to apply for the early access of their superannuation as outlined in point 3 above.

Frequently Asked Questions

Industrial Relations

STAND DOWN AND REDUNDANCY FAQs

We recommend suggesting to employees that financial advice is sought before this option is used as it potentially will have long-term detrimental impacts on their superannuation that need to be understood and considered.

Individuals who are unemployed, are made redundant, or have had their working hours reduced by 20% or more are able to apply. Individuals may also be eligible if they fulfill other specific criteria.

Eligible individuals can apply through the ATO on the myGov website from 20 April 2020.

Further information on the early access to super can be found by [clicking here](#).

7. If I make my employee redundant and they are covered by the CFMEU EBA what are they entitled to?

As a final option, members may consider making employees redundant.

Consultation

Members should be aware that the various versions of the CFMEU EBA (2011-2015, 2016-2018 and 2019-2020) have specific consultation and redundancy provisions that must be followed before selecting employees for redundancy. Failure to follow these consultative and redundancy provisions may result in the redundancy being challenged in the Fair Work Commission.

Notice of Termination

Employees selected for redundancy will be entitled to notice on termination. The length of notice that must be provided, or paid in lieu, will depend on the employee's engagement type. The majority of employees covered under the CFMEU EBAs will be daily-hire employees and entitled to one day's notice, or pay of a day in lieu. However, if the employee is a mechanical/plant operator, the employee will be entitled to notice in accordance with the National Employment Standards. This may range between one to five weeks.

Severance/redundancy payment

Employees made redundant will be entitled to a redundancy payment from Incolink. Employees will also need to be paid out any accrued annual leave entitlements, as well as any banked RDOs, and any unpaid wages.

Members considering making employees redundant should contact the Master Builders Industrial Relations team on (03) 9411 4555.

For more information,
contact the team at MBV at
mbassist@mbav.com.au or (03) 9411 4555



Frequently Asked Questions

Industrial Relations

STAND DOWN AND REDUNDANCY FAQs

8. If I make my employee redundant and they are covered by the Building and Construction General On-Site Award 2010, what are they entitled to?

As a final option, members may consider making employees redundant.

Consultation

The Building and Construction General On-site Award 2010 (the Award) has specific consultation requirements that must be followed before selecting employees for redundancy. Failure to follow these consultative provisions may result in the redundancy being challenged in the Fair Work Commission.

Notice of Termination

To assist you in navigating the consultation requirements, we have a [Best Practice Guide](#) to making employees redundant under the Award.

Members that make employees redundant must provide them with notice. The length of notice required will depend on whether the employee is engaged on a daily hire or weekly hire basis. Notice requirements may also be varied by a contract of employment.

If the employee is engaged on a **daily hire basis**, the employee will be entitled to one day's notice or payment of a day in lieu of notice.

If the employee is engaged on a **weekly hire basis**, the notice requirements are those set by the National Employment Standards (NES). NES notice requirements are set out below.

Employee's period of continuous service with the employer at the end of the day the notice is given	Period of notice
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Not more than 1 year	1 week
More than 1 year but not more than 3 years	2 weeks
More than 3 years but not more than 5 years	3 weeks
More than 5 years	4 weeks

If an employee is over the age of 45, the employer must give the employee an additional week's notice above the requirements set in the above table.

Frequently Asked Questions

Industrial Relations

STAND DOWN AND REDUNDANCY FAQs

Severance/redundancy payment

An employer will also need to make a redundancy payment to the employee in accordance with the Award. Please note, that this redundancy payment will need to be made by all employers, regardless of whether they are a small business or not.

A redundant employee will receive a redundancy/severance payment in accordance with the following table:

Period of continuous service with an employer	Redundancy / severance pay
Less than 1 year	1.75 hours per completed week of service.
1 year or more but less than 2 years	2.4 weeks' pay plus for all service in excess of 1 year, 1.75 hours pay per completed week of service up to a maximum of 4.8 weeks pay.
2 years or more but less than 3 years	4.8 weeks' pay plus, for all service in excess of 2 years, 1.6 hours pay per completed week of service up to a maximum of 7 weeks pay.
3 years or more than but less than 4 years	7 weeks' pay plus, for all service in excess of 3 years, 0.73 hours pay per completed week of service up to a maximum of 8 weeks' pay.
4 years or more	8 weeks pay.

Please note, members that have been making contributions into a redundancy payment fund (i.e. Incolink) may have this redundancy pay obligation offset partially or in full.

It is recommended that members that make employees redundant refer the employee to various support payments available. Please see point 3 above for further information.

DISCLAIMER

While we have taken every care in preparing this fact sheet, Master Builders Victoria does not accept any responsibility or liability for the accuracy of information.