



Frequently asked questions: The church congregation as an employer when responding to COVID-19

as at 18 June 2021

Commonwealth and Queensland responses to COVID-19 will impact church congregations and their services directly or indirectly. For those congregations that have employees, this FAQ will assist you in making decisions about your employees if:

- your premises or location is subject to a Queensland Government health direction that requires a full or partial closure or lockdown, or
- an employee is unwell with COVID-19 related symptoms
- an employee reports a positive result for COVID-19.

Stand down

Stand down is the process of directing an employee not to work for a period of time. During the stand down period an employee is usually paid however, the Fair Work Act (s524-525) provides for an employer to stand down an employee if there is a stoppage of work for any cause for which the employer cannot reasonably be held responsible. An employer is not required to make payments to an employee who is stood down in this situation.

Further information about stand down can be found in the following resources:

Fair Work Commission: "[Standing Down Employees](#)"

Fair Work Ombudsman: "[Coronavirus and Australian Workplace Laws](#)"

Employee unwell with COVID-19: An employee who is unwell and either does not attend work or is directed not to attend work is not stood down. They can use personal/carers leave.

Employee not unwell but risk of COVID-19: An employee directed not to work because of a COVID-19 risk, but who is not unwell, is stood down with pay.

Working from home: An employee directed to work from home due to COVID-19 risk or problem, who is not unwell, is not stood down and is paid as normal.

Unable to work: An employee directed not to work because of a COVID-19 risk, who is not ready, willing and able to work, is not stood down.

Unable to work due to closure: An employee unable to work due to circumstances out of the employer's control (e.g. closure of a site, supply breakdown) can be stood down without pay.

Stand down without pay

Under the Fair Work Act, there are conditions that apply to an employer's ability to stand down an employee without pay. These include:



Stoppage of work: It is not enough that work has decreased or is less available. Work must have ceased due to circumstances for which the employer cannot be reasonably held responsible.

Usefully employed: To be eligible to be stood down without pay, an employee must be unable to be usefully employed ie they are not able to complete useful work within the scope of their employment. If an employee can work from home, work at another location, perform work in another way (e.g. remotely) or can undertake tasks within their competency, the employee cannot be stood down without pay.

Cannot reasonably be held responsible: The employer must be able to prove, if challenged by the Fair Work Commission, that the cause of the stoppage of work was something the employer could not reasonably be held responsible for. Examples include:

- An enforceable government order or direction which requires a business to close
- A large proportion of the workforce is required to self-quarantine, resulting in no useful work being able to be performed
- A lack of supply for which the employer could not be held responsible for.

Other situations may need to be considered on a *case by case basis*, for example:

- Administrative and support staff assigned to a specific site that are indirectly affected by a stoppage of work may also be stood down once any remaining work has been completed.
- Where the part of the workplace is closed due to a government order that generates income used to pay administrative staff and the employee cannot be usefully employed (e.g. worship, restrictions in weddings), they could be stood down without pay
- If a business has a reduced number of customers due to government orders, then the employee can be stood down without pay. *The employer must be able to demonstrate the link preferably to a government order*
e.g.:
 - customers/parents have been stood down without pay as their employer is subject to a government order;
 - customers/parents not using the service due to a government order regarding non-essential travel.

Leave accrual: The stand down period counts as service for entitlements including the accrual of leave, such as annual leave and personal/carers leave.

How to stand down an employee: Provide a written notice to the employee. You should refer to:

- the conditions over which the employer has no control
- s524(1)(c) of the Fair Work Act (stoppage of work)
- when the stand down period will commence
- the fact the employee will not be paid wages for hours that would have normally been worked
- the employee may request annual leave and (if eligible) long service leave

Exceptions to stand down without pay: The following are exceptions to an employer standing down an employee without pay:

- where an enterprise agreement or contract of employment has stand down provisions



- where an employee has been employed on a general basis and there has been a loss of work or deterioration of business conditions
- where the employee can still perform useful work.

Enterprise agreements and contracts of employment

An enterprise agreement or contract of employment may contain provisions that place additional responsibilities on an employer which may prevent an employee from being stood down without pay. Where an enterprise agreement or contract of employment has not stand down provisions, an employer can rely on the provisions of the Fair Work Act.

EA or contract has a stand down provision: The employer must comply with the stand down provisions of the EA or contract. The employer cannot rely on the Fair Work Act.

EA or contract is unclear: If the EA or contract mentions stand down but does not provide any specific clause for it, the employer can generally rely on the Fair Work Act.

Broader provisions in EA or contract: An EA or contract may have broader provisions or additional responsibilities than the Fair Work Act. For example, it may require a minimum period of notice, or to stand down an employee when there is no stoppage of work.

Redundancy

If stand down without pay is not possible or practicable, the employer may need to consider making employees redundant to secure the viability of the business or service.

The Fair Work Act provides for several conditions for a redundancy:

- The redundancy must be genuine. The role being performed by the employee must no longer be required to be performed by anyone.
- Consult with the employee – inform the employee of the decision in writing. The notification must include the reasons for the change, the expected effects of the change on the employee and any other matters likely to affect employees (provided that there is no requirement to disclose confidential information that would be contrary to the employer's interests). Acceptable reasons may be incapacity to pay due to economic downturn or loss of contracts.
- Every reasonable effort is made to retrain or redeploy the employee (this may not be possible in all circumstances but must be considered)
- Employees to be given an opportunity to provide alternative proposals (usually within 24 hours)
- Provide notice or pay notice in lieu, as well as redundancy pay if applicable.

Further information on redundancy can be found here:

Fair Work Ombudsman "[Notice of termination and redundancy pay](#)"



The Uniting Church in Australia
QUEENSLAND SYNOD

Fair Work Ombudsman “[Redundancy](#)”

Alternatives to redundancy

Retaining employees ensures that the church and its entities can restart after the COVID-19 pandemic has reduced to an acceptable level of risk. An employer should consider alternatives to redundancy, particularly in the current COVID-19 pandemic, in light of a range of government support payments to business and individuals.

Under the Fair Work Act, some employees who have worked for the same employer for 12 month can request flexible working arrangements, such as changes to hours, patters or locations of work. Use this [link](#) to access more information about flexible working arrangements.

Need assistance

The People and Culture team are available to provide assistance by emailing hr@ucaqld.com.au