

## WHAT DO I NEED TO KNOW ABOUT BEING STOOD DOWN?

Being stood down means you still have a job. You should not resign or be asked to resign.

You do not go to work, and generally you do not get paid. You still accrue leave entitlements as if you were still going to work.

You can be stood down if you cannot do useful work because the work has stopped in a situation that your employer is not responsible for, like the COVID-19 pandemic.

On 9 April 2020 the Government made a new JobKeeper payment that may help you if you have been stood down.

If you have been stood down, you can ask for help from the **Migrant Employment Legal Service**.

## WHAT IS STANDING DOWN?

Employers can stand down employees in certain situations. This includes situations where employers can show there is a “stoppage of work”, the stoppage is one the employer cannot reasonably be responsible for, and there is no “useful work” for the employee to do.

A “stoppage” means that there is no work and it’s not the employer’s fault. COVID-19 is something that is beyond your employer’s control. Your employer cannot stand you down just because the business is quiet, or there isn’t enough work, or because you are sick. There has to be a connection between the COVID-19 pandemic and there not being any work.

### **Example: COVID-19 Stoppage of work**

Somchai works in a shop selling mobile phones. As stock comes from China they have been unable get new stock due to COVID-19 and there is nothing to sell. As a result, Somchai is stood down.

The Federal and State Governments ordered the closure of certain types of business because of COVID-19 to stop the spread of the virus in the community. If you cannot do “useful work” because your work has closed down, then your employer can stand you down.

### **Example: COVID-19 Useful work**

Zeynep works in a pub serving meals and drinks. The Government has ordered that pubs shut to slow down the pandemic. As a result, Zeynep’s pub closes and she could be stood down.

Before you are stood down, your employer must consider whether there is any other useful work you can do. In Zeynep’s case if the pub had a bottle shop that could trade, the employer would have to consider giving Zeynep some of this work.

If there is a stoppage of work and there is no other useful work for you to do then you can be stood down.

Not everyone in the workplace needs to be stood down. There may still be some work, but not enough for everyone. It’s very important that these decisions are not made on a discriminatory basis, that is, because of things like your race, sex, nationality, or because you have a disability or carer’s responsibilities.

## **WHAT ARE MY RIGHTS WHEN I AM STOOD DOWN?**

*You still have a job.* Being stood down means that you still have a job. This means when there is work to do, you can return to work. If you are offered other work you may be able to work somewhere else while you are stood down, but you may need your employer’s permission before you can do this.

*You still accrue leave entitlements.* Because you are still employed, you continue to accrue your leave entitlements even though you are not working.

*You can ask to take leave.* If you have leave owing to you, you can ask your employer if you can take some paid leave. If you are already on approved leave (paid or unpaid), or you are allowed to take the leave owing to you, you cannot be stood down until your approved leave has ended.

*Pay?* In most cases, the law says that your employer does not have to pay you while you are stood down. Your award, enterprise agreement or contract might say something different and provide some pay. You will need to check to see if there are other rules about being stood down in your enterprise agreement or contract.

You may wish to talk to your employer about whether they are eligible for the new **JobKeeper payment** while you are stood down.

## **JOBKEEPER PAYMENT**

On 9 April 2020, the Australian Government passed a law about a new JobKeeper payment. It will make a payment to businesses to help pay wages so that the businesses can keep their workers. The payment will be backdated to 1 March 2020 to include anyone who had already been stood down because the business was affected by the COVID-19 pandemic.

The JobKeeper payment is \$1,500 before tax every fortnight. To be able to get this money *both* you and your employer need to be eligible.

*Is your employer eligible?* This will depend on how much money their business has lost because of COVID-19. You should ask your employer if the business is eligible.

*Are you eligible?* To be eligible you must be an Australian resident. You are an Australian resident if you live in Australia and are either: an Australian citizen, a permanent residence visa holder or a protected Special Category visa (SCV) holder (someone who arrived in Australia on a New Zealand passport prior to specific dates in 2001).

You must also be over 16, and working for your employer as at 1 March 2020. If you are a casual worker, you will only be eligible if you have been regularly working for your employer for at least 12 months.

## JobKeeper – if you are still working in your usual job

If you have not been stood down and are still working:

- you will continue to get your usual pay if you earn more than \$1,500 per fortnight;
- your employer needs to pay you at least \$1,500 per fortnight if you earn less than \$1,500 usually and they are eligible and have registered for the JobKeeper subsidy.

**If you are still working your employer cannot reduce your hourly rate of pay.**

## ‘JobKeeper enabling directions’

Your employer can give you a ‘JobKeeper enabling direction’. This means your employer may stand you down, **reduce your hours of work, change where you work and what you do, as long as certain conditions are met. Your employer can also reach an agreement with you about changing the day and times of your work. Any directions from your employer must also be reasonable. All JobKeeper enabling directions must be given to employees in writing and will stop on 28 September 2020.**

If you are stood down under JobKeeper and are not working at all, then you will be paid at least \$1,500 per fortnight.

**Your employer must consult with you before giving the direction and give you at least three days’ notice in writing.**

If your employer does not meet the rules for the JobKeeper subsidy, then you are generally not entitled to be paid during a stand down unless your employment contract or enterprise agreement says something different. You can ask for alternatives, like whether there is other alternative work or whether you can leave, but your employer does not have to agree.

## **WHAT SHOULD I DO IF I DISAGREE WITH MY EMPLOYER ABOUT BEING STOOD DOWN?**

You can get free legal advice about your situation.

You have the right to go to the Fair Work Commission if you don't agree with decisions your employer has made about a stand down. This includes whether you should have been stood down, any proposed changes to your duties, hours or work location, a direction for you to take paid annual leave or for you to do additional training.

If you think that you should not have been stood down, get legal advice quickly. If it turns out that you have been dismissed, you may only have 21 days to make a claim from the date your dismissal became effective.

If your employer stands you down without pay when they should not have, you may be able to recover unpaid wages.

## **WHAT SHOULD I DO? TOP TIPS!**

1. If you think your employer hasn't followed the rules, get free legal advice.
2. If you are stood down, make sure you have the direction in writing and it says what date you will be stood down, whether you will be paid and how your entitlements will be affected. Make sure your employer says you can work elsewhere without it affecting your entitlements if you are not on JobKeeper.
3. If your employer hasn't put the direction in writing, write to them confirming what you understand the direction is so that you have a record.
4. Make sure any other agreement you make with your employer is in writing.
5. If your employer has not applied for JobKeeper and you think they might be eligible, ask them why.
6. When making arrangements and being stood down it is important that you stay in touch with your employer so that they know what is happening for you and so that you know what the employer's business is doing.
7. Contact Centrelink or a free legal service about social security payments. If your employer is not eligible for the JobKeeper payment, you may be able to get another type of payment.

***The information provided in this factsheet is for information only. It must not be relied on as legal advice. The information provided is correct at 28 April 2020. Information may change. You should seek legal advice about your own situation.***