

Your workplace rights during a disaster

Information for private sector employees in NSW



Who is this information for?

This fact sheet applies to all private sector employees in NSW.

Different entitlements may apply for employees of the NSW Government and local councils. If you are one of these employees you can contact your union or human resources unit for more information.

Your leave entitlements

During a disaster or emergency, you may need to take time off work because you are sick or injured, to care for your family, or to assist with disaster relief activities. This is a summary of the different types of leave you may be entitled to take during a disaster or emergency.

Remember to check any award or enterprise agreement that applies to you as it may change your leave entitlements¹.

Annual leave

You are entitled to paid annual leave. You will accrue four weeks of annual leave per year. If you are a shift worker you will accrue five weeks of annual leave per year. Annual leave is cumulative from year to year, that means if you do not take all of your leave in one year, the untaken leave is added to your entitlements in the next year, and so on.

Your employer can require you to take annual leave at a particular time, if the requirement is reasonable. It may be reasonable for your employer to direct you to take annual leave during a disaster or an emergency if you are not able to work and you do not ask to take some other form of leave.

Casual employees do not get annual leave.

Paid personal/carer's leave

You can take paid personal/carer's leave:

- when you are not fit for work because of sickness or injury; or
- when you are providing care or support for a family or household member who is sick or injured or who is affected by an emergency. The family member must be part of your immediate family.

You are entitled to 10 days of paid personal/carer's leave every year, and the balance is cumulative from year to year.

Casual employees do not get paid personal/carer's leave. However, casuals can still take unpaid time off from work when they are sick or caring for a family or household member.

Unpaid carer's leave

You can take unpaid carer's leave to provide care or support for a family or household member who is sick or injured, or affected by an emergency. The family member must be part of your immediate family.

You can take up to two days off for each occasion.

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Awards are made by the Fair Work Commission and set out minimum pay and conditions. Enterprise Agreements set out the minimum pay and conditions for the employees of a particular employer and must be approved by the Fair Work Commission. You can find out if an Award or Enterprise Agreement applies to you by calling the Fair Work Ombudsman on 13 13 94 or go to www.fairwork.gov.au

You must first take any paid carer's leave you have accumulated before taking unpaid carer's leave.

This entitlement applies to casual employees as well.

Compassionate leave

You can take paid compassionate leave when a member of your immediate family or a member of your household has a life threatening illness or injury, or dies. You can take up to two days off for each occasion.

Casual employees do not get paid compassionate leave. However casual employees can take unpaid time off from work for compassionate reasons.

Community service leave

You are entitled to take unpaid leave to engage in voluntary emergency management activities. For this form of leave to apply all of the following must be happening:

- your activity must involve dealing with an emergency or disaster, you must be a volunteer²;
- you must be a member of a recognised emergency management organisation (or have a similar type of association with that organisation); and
- the organisation must have somehow requested you to engage in the activity. This includes where it is reasonable to expect that you would have received the request if circumstances permitted. For example, there was not enough time to make the formal request but you responded to the emergency anyway.

The period of unpaid leave you can take includes the following times:

- the time you are engaged in the emergency management activity;
- reasonable travel time; and
- reasonable rest time immediately after the activity.

Long service leave

All employees are entitled to paid long service leave after working for the same employer or the same business for 10 years. Employees are entitled to one month of long service leave for each five years of service.

Some questions and answers

My home is affected by a disaster, such as flooding or a bush fire, can I take leave from work?

You could take paid or unpaid carer's leave if you live with someone else. This leave is available to provide care and support where a member of your family or household is affected by an unexpected emergency such as a disaster.

If you live alone, you could discuss with your employer taking annual leave, unpaid leave or long service leave.

My child's school is closed because of a disaster, can I take leave from work?

Yes, you could take paid or unpaid carer's leave.

I am injured as a result of a natural disaster, can I take leave?

You can take paid personal leave. If you are a casual employee you can take unpaid leave.

Can I take leave to help my community during a disaster?

You may be able to take community service leave to take part in emergency management activities. You can check if you are eligible for community service leave by reading the information on page 2 of this factsheet.

If you are not eligible for community service leave, you could discuss with your employer taking annual leave, unpaid leave or long service leave.

I can't get to work because a natural disaster or emergency is blocking the roads, do I still get paid?

Generally your employer does not have to pay you if you don't attend work in these circumstances. However, you could discuss with your employer taking annual leave or long service leave. If a family or household member is also affected by the emergency then you can take paid or unpaid carers leave if you are also caring for them.

What happens if my workplace is affected by a disaster or emergency and work has to stop?

Under the *Fair Work Act* your employer can stand you down without pay if you cannot usefully work because there is:

- a breakdown of machinery; or
- work stops.

However, this can only apply where 'your employer cannot reasonably be held responsible' for the situation. For example, your employer closes the workplace because of a fire nearby or flood waters.

A stand down without pay cannot occur just because there are no customers or business is 'slow'. If you are sent home in these circumstances you are still entitled to be paid.

If you are stood down from work without pay, you can take annual leave, or discuss with your employer whether you can take some other form of leave. If it will be a long period of leave without pay then long service leave may be an option for you.

Your employer can require you to take annual leave at a particular time, if the requirement is reasonable.

If an award or enterprise agreement that applies to you includes a provision about stand down, your employer can only stand you down in accordance with that provision.

If you are a casual employee and you are not called into work then your employer does not have to pay you.

If you are stood down without pay, you can contact Centrelink on **13 28 50** to find out if you are eligible for any financial assistance. Centrelink may have representatives that you can talk to at a disaster recovery centre.

Can my employer direct me to help with clean-up activities at my workplace?

Yes, if the work your employer requests you to do is lawful and reasonable. Whether or not the request is reasonable will depend on factors including your skills, experience, health and any disabilities. Some tasks may also require specific safety training, equipment and procedures. While you are at work, your employer is required to ensure your health and safety. You cannot be directed to perform work that is unsafe or where you do not have the necessary safety equipment and safety procedures in place.

My workplace is closed due to a disaster or emergency, can my employer direct me to work at another location or from home?

Yes, if the direction is reasonable. If your employer directs you to attend a different work location which takes longer or is more expensive for you to travel to, you may be eligible for additional pay for travel time or reimbursement for your travel expenses.

If I work additional hours because of a disaster or emergency, do I get paid overtime?

In general, if you work additional hours you should get paid for them, at the rate in the award or enterprise agreement that applies to you. You may also be entitled to other payments if you are working overtime, such as meal allowances.

You can find out your overtime rates and any other payments you are entitled to by checking your award or enterprise agreement. If you have a written contract of employment, you should also check it for any relevant provisions.

If you are an employee who earns a salary you may not be entitled to overtime and allowances.

Am I a casual employee?

You are a casual employee if you accept an offer for a job and your employer makes no promise that you will get ongoing work with regular shifts or hours of work.

You should usually be paid a casual loading. This is set out in an award, enterprise agreement or your contract of employment. Working out whether you are a casual employee or a permanent employee can be complicated. If you need advice about your situation you should talk to a lawyer or contact the Fair Work Ombudsman.

Contacts

Disaster Response Legal Service NSW

If you've been affected by a bushfire, storm or flood, we can help you with everyday legal problems including insurance claims and disputes, financial hardship, tenancy and Centrelink issues.

1800 801 529

www.disasterhelp.legalaid.nsw.gov.au

Fair Work Ombudsman

13 13 94

www.fairwork.gov.au

Australian Government Disaster Assist

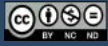
www.disasterassist.gov.au

Resilience NSW

www.nsw.gov.au/resilience-nsw

This brochure is a general guide to the law. You should not rely on it as legal advice, and we recommend that you talk to a lawyer about your situation.

The information is correct at the time of printing, however it may change. For more information contact LawAccess NSW on **1300 888 529**.



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Do you need help to contact us?



If you need an interpreter, call the Translating and Interpreting Service (TIS National) on **131 450** (9am – 5pm) and ask for LawAccess NSW.

Do you find it hard to hear or speak?



If you find it hard to hear or speak, call us through the National Relay Service (NRS) on **133 677** and ask for LawAccess NSW or visit: www.relayservice.gov.au