
CIRCULAR: GEN/141/NAT/141/21
DATE: 27 May 2021
SUBJECT: Victorian Restrictions – Clarification on Current Stand Down Laws
ATTENTION: Chief Executive Officer

Further to our earlier update today, we confirm that Victoria will move to circuit breaker restrictions for seven days as of 11.59pm on 27 May 2021. These restrictions will remain in place until at least **11.59pm on 3 June 2021**.

Stage 4 restrictions will have a significant impact on most workplaces and may require workforce stand downs.

1) JobKeeper scheme has ended

With the end of the JobKeeper scheme on 29 March 2021, JobKeeper enabling stand down directions and other measures are no longer available to employers.

2) Fair Work Act stand down measures

Where a business is affected by:

a stoppage of work for any cause for which the employer cannot reasonably be held responsible

an employer can rely on the stand down provisions in the Fair Work Act 2009 (Cth) (**FW Act**) (s.524).

The current Victorian restrictions allow only authorised workers to attend workplaces, otherwise employees must work from home.

If your workplace is unable to operate at all or in part during the Stage 4 restrictions, then it will follow that your workforce (or a significant portion of it) will fall under the scope of the section 524 stand down provision. That is, there is a stoppage of work *caused by* the Government health directives.

If a business is required to *temporarily* cease all or part of its operations ***due to a government directive***, the employer ***generally*** has a right to stand down affected employees that cannot usefully be employed as a result without pay:

- where the stoppage of work is outside the control of the employer, refer s.524(1)(c) of the FW Act; BUT
- subject to any shut down provisions contained in an applicable enterprise agreement or contract of employment.

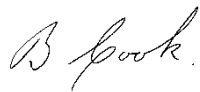
An obligation to redeploy staff to other useful duties - including remote working – in lieu of standing

them down (if duties are available and it is safe to do so) remains. We note that workplace health and safety obligations continue to apply to remote work. Useful resources are available online at worksafe.vic.gov.au.

An employee who is stood down is still employed and will continue to accrue leave entitlements during the period (even where they are not paid for work). Where an employee has applied for leave (or is on leave) prior to the stand down taking effect they are still entitled to that leave.

Employers and employees may agree for full and part-time employees to access accrued annual leave (and in certain circumstances long service leave) to cover their absence. After a stand down takes effect employers do not have to approve leave requests but it is good practice to allow employees to take their paid leave accruals by agreement.

If you have any questions or if you require further information, please contact the SIAG National Advisory Service on 03 9644 1400 or 1300 (SIAG HR) / 1300 742 447.



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