

Inclement weather is an industrial relations concept that deals with circumstances where an employee is prevented from performing work due to weather or climactic conditions. The general rule in industrial relations is that if an employee is prevented from performing useful work due to circumstances beyond the employer's control, the employee may be [stood down](#) without pay.

Inclement weather is a specific exception to the general stand-down rule. There is no generally applicable law or set of rules covering inclement weather. The specific terms of any applicable award or agreement must be considered. Otherwise, inclement weather is a matter for safety policies.

Inclement Weather Under the Onsite Construction Award

Inclement weather is defined in the [Building and Construction General On-Site Award 2010](#) (the Award) as the existence of rain or abnormal climatic conditions (whether hail, extreme cold, high wind, severe dust storm, extreme high temperature or the like or any combination of these conditions) where it is not reasonable or it is unsafe for employees to continue working in those conditions. Under the award, if an employee considers conditions to be inclement they can request a conference with the employer, which must be held within 60 minutes. If weather is considered inclement at the conference, employees must make themselves available for transfer or otherwise must wait on site to see if conditions clear up. There is no right under the Award for employees to leave site due to hot weather although the employer may elect to release employees from duty especially if the conditions are likely to prevail.

If employees are covered by an enterprise agreement, then unless the agreement specifically incorporates the award provision, the specific term of the agreement must be assessed to determine the rights and obligations. Some enterprise agreements do not contain any inclement weather provisions at all, having traded this condition off for other benefits, such as a higher rate of pay.

Is "35 out of the sun, 37 go home" a rule?

The Award does not prescribe any temperature limit for inclement weather. In South Australia, there is a practice on many commercial sites to use 35 degrees as the marker to be out of the sun, and 37 to go home. This notion stems from the old [BIRST Agreement](#). Under the BIRST Agreement, there was an unregistered 'industry agreement' that was intended to apply in a 30km radial area of the Adelaide GPO, excluding the Adelaide Hills. While many construction companies have EBAs that reflect these provisions or similar, it is not a "rule" that a business is required to follow unless it is reflected in their own enterprise agreement or safety policies.

Importantly, the [Fair Work Commission](#) has held that the BIRST Agreement does not operate to override any enterprise agreement provision, and previous case law has found that 'industry agreements' are not automatically incorporated into other persons' contracts of employment. This means that claims to the effect that "this is a BIRST site" (so employees are entitled to the provisions of the BIRST Agreement) are not accurate.

What if the Builder closes the site?

Situations often arise where a builder chooses to close a site. This is a choice made by the builder as the occupier of the site. If this prevents a subcontractor from working at the site then it does not automatically mean that the subcontractor's employees are entitled to be paid inclement weather. The first step to consider is whether or not the subcontractors' employees qualify for inclement weather under their own terms and conditions. If this is not the case then it is likely that the situation is a 'stand down' situation.

Safety Obligations

Inclement weather is first and foremost a [safety obligation](#). As with any safety matter, the risks associated with working in heat, rain or any other climactic conditions needs to be [assessed and controlled](#) in accordance with the employer's duty of care.

In the case of hot weather, risks such as exposure to sun, heat stroke and dehydration must be considered. However, safety laws do not require work to cease and certainly not at 37 degrees – many sites outside of the Adelaide metropolitan area stay open at higher temperatures. It is important to ensure that adequate controls are put in place, which may include additional breaks, sun protection, hydration etc.

[SafeworkSA](#) and [SafeWork Australia](#) publish a substantial amount of useful guidance materials on managing these issues in the workplace.

Can I force an employee to take annual leave or RDOs in expected hot weather?

Whether or not an employee can be forced to take a day of leave or an accrued RDO on a day of expected inclement weather involves consideration of a variety of factors. In general, annual leave may only be taken [when agreed](#). An enterprise agreement may, within reason, [contain rules](#) about taking leave at short notice. Employers should carefully check their agreement prior to doing this. Otherwise, in general leave cannot be forced. However, employees can be offered the opportunity to take leave instead of being stood down or in preference to attending work for a part-day before conditions become inclement. If the employee agrees to the leave then this is OK. Any such agreement should be recorded in writing.

The accrual and taking of RDOs is derived from the award/agreement or contract of employment. The Award does not provide [much flexibility](#) in terms of the timing of RDOs, although it is possible to either reach agreement with employees in terms of a specific day, or otherwise reach a general agreement with employees about when RDOs may be taken. Any such agreement should be recorded in writing. For employees covered under enterprise agreements, the specific terms of the agreement would need to be considered. Many agreements include a flexibility of this nature and in terms of future enterprise bargaining, this is something that may be considered.

Need more information

If you would like further information about inclement weather or specific advice about work stoppages, please contact the team at Fair Work Lawyers.



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