



## **FREQUENTLY ASKED QUESTIONS: JOBKEEPER**

Information current as at 14 April 2020

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## A. JOBKEEPER PAYMENT

### 1. What is the JobKeeper Payment?

The JobKeeper Payment is a wage subsidy available to businesses impacted by COVID-19.

In effect, eligible businesses will be provided with financial support to assist with the payment of wages to their employees.

Eligible businesses will receive \$1,500 per fortnight for each employee who was employed on 1 March 2020. The \$1,500 payment must be put towards employees' wages, providing the employee is still employed by the business (including employees who have been stood down).

It does not matter if the employee earns more or less than \$1,500 per fortnight. The payment is the same for every employee, and must be passed on, in full, to every eligible employee.

### 2. What impact does the JobKeeper Payment have on workplace entitlements and obligations?

The JobKeeper Payment does not affect an employee's usual terms and conditions of employment.

Employers must continue to comply with their obligations under an enterprise agreement, modern award, contract of employment and the National Employment Standards in the *Fair Work Act 2009 (FW Act)*

The Australian Government has made changes to workplace laws to assist employers during the COVID-19 pandemic. For further information about changes to workplace laws and amendments made to the FW Act, please refer to questions 29 to 43 below.

### 3. For what period of time will employers receive the JobKeeper Payment?

30 March 2020 to 27 September 2020.

### 4. When will employers receive the payment?

The first week of May 2020.

### 5. Is the JobKeeper Payment back paid to 1 March 2020?

No. The payments are back paid to 30 March 2020.

### 6. How often will employers receive the JobKeeper Payment?

The JobKeeper Payment will reimburse employers for wages already paid to employees.

Employers will need to pay employees their wages prior to receiving the JobKeeper Payment.

The JobKeeper Payment must be paid to an employer no later than:

- 14 days after the end of the calendar month in which the fortnight ends; or
- 14 days after the Australian Taxation Office (ATO) determines the employer is eligible.

## 7. What can an employer do if they do not have the money to pay employees until the JobKeeper Payments commence in May 2020?

For employers that have cash flow problems, the Australian Government recommends that those employers speak with their bank. The banks have indicated that they may offer credit to employers in order to pay their employees until the first JobKeeper Payments are made.

## 8. How can an employer apply for the JobKeeper Payment?

### ENROL FOR THE JOBKEEPER PAYMENT (from 20 April onwards)

**Step 1:** [A business must register interest with the ATO](#) to receive the JobKeeper Payments. (Following registration employers will receive updates from the ATO, and a business will be able to make an online application and nominate its eligible employees).

**Step 2:** Check you and your employees meet the eligibility requirements.

**Step 3:** Continue to pay at least \$1,500 to each eligible employee per JobKeeper fortnight (the first JobKeeper fortnight is the period from 30 March 2020 to 12 April 2020)

**Step 4:** Notify eligible employees that you are intending to claim the JobKeeper payment on their behalf and check they aren't claiming JobKeeper payment through another employer or have nominated through another business.

**Step 5:** Send the JobKeeper [employee nomination notice](#) to your nominated employees to complete and return to you by the end of April if you plan to claim the JobKeeper payment for April. Keep it on file and provide a copy to your registered tax agent if you are using one.

**Step 6:** From 20 April 2020, you can enrol with the ATO for the JobKeeper payment using the Business Portal and authenticate with your myGovID. You must do this by the end of April to claim JobKeeper payments for April.

**Step 7:** In the online form, provide your bank details and indicate if you are claiming an entitlement based on business participation, for example if you are a sole trader.

**Step 8:** Specify the estimated number of employees who will be eligible for the first JobKeeper fortnight (30 March – 12 April) and the second JobKeeper fortnight (13 April – 26 April).

### CONFIRMATION OF ELIGIBLE EMPLOYEES YOU WILL CLAIM JOBKEEPER PAYMENT FOR (AVAILABLE FROM 4 MAY 2020)

**Step 1:** Apply to claim the JobKeeper payment by logging in to the [ATO Business Portal](#)

**Step 2:** Ensure you have paid each eligible employee a minimum of \$1,500 per JobKeeper fortnight before tax.

**Step 3:** Identify your eligible employees in the application form by selecting employee details that are prefilled from your Single Touch Payroll (STP) pay reports if you report payroll information through an STP enabled payroll solution, or manually entering employee details in ATO online services or the Business Portal if you do not use an STP enabled payroll solution, or using a registered tax agent who will submit a report on your behalf through Online services for agents.

**Step 4:** Submit the confirmation of your eligible employees online and wait for your confirmation email or SMS showing it has been received.

**Step 5:** Notify your eligible employees you have nominated them

**Step 6:** The ATO will pay you the JobKeeper payment for all eligible employees after receiving your application.

**Step 7:** Each month, you will need to reconfirm that your reported eligible employees have not changed through ATO online services, the Business Portal or via your registered tax agent. This will ensure you will continue to receive the JobKeeper payments from us. You do not need to retest your reported fall in turnover, but you will need to provide some information as to your current and projected turnover. This will be done in your monthly JobKeeper Declaration report.

**Step 8:** If your eligible employees change or leave your employment, you will need to notify us through your monthly JobKeeper Declaration report.

If you use the ATO Business Portal, you will need a myGovID linked to your ABN in Relationship Authorisation Manager (RAM). This can be set up [here](#).

## 9. How do employers know if they are an 'eligible employer'?

A business is assessed based on the expected or actual turnover for GST purposes occurring in the turnover period of at least one month. A business is assessed as eligible if it falls short of the GST turnover for the corresponding period in 2019 by:

- 15% for a charity; or
- 50% for a business where the annual turnover for the current year is likely to exceed \$1billion; or
- 30% for all other cases.

## 10. Are government owned entities such as art centres, local government run venues, regional venues 'eligible employers'?

Arts centres and local government run venues, and regional venues run by the state or local governments, are not eligible for the JobKeeper Payment.

While most business types, including not-for profits, are 'eligible employers', some exceptions apply. Those excluded from receiving the JobKeeper Payment are the Australian Government and its agencies, State and Territory governments and their agencies, foreign governments and their agencies, local governments and wholly-owned corporations of these bodies.

## 11. How can a charity or business establish that it has faced a 15, 30 or 50 percent fall in its turnover?

Most businesses would have to demonstrate that their turnover has fallen as follows:

- in the relevant month (this can be any month from March 2020 to September 2020 depending on which month a business applied for the JobKeeper Payment); or
- a quarter that starts on 1 April 2020, or 1 July 2020;

depending on the activity statement reporting period for that business relative to the same period a year earlier.

**12. How can a business which did not exist one year earlier (or have did not have any turnover one year ago), or where the previous year's turnover was not representative of its usual or average turnover, show a fall in its turnover?**

The ATO will have discretion to consider additional information that the business can provide to establish that they have been significantly affected by the impacts of COVID-19.

This is likely to be relevant for employers such as:

- a newly established company;
- a commercial producer of a musical which would not have generated any income until the production commenced, and therefore may not have had any income one year ago; and
- small to medium theatres companies who have a typically highly variable turnover.

**13. What if turnover has not yet decreased, but a charity or business estimates a future fall in turnover greater than 15, 30 or 50 percent?**

Employers can apply for the JobKeeper Payment if they reasonably expect that their turnover will fall by the required 15, 30 or 50 percent relative to their turnover in the corresponding period a year earlier.

Employers should contact the ATO for guidance about self-assessment of actual and anticipated fall in turnover.

**14. If an employer's turnover is not likely to decrease now, can an employer apply for the JobKeeper Payment if their turnover decreases later?**

Yes. If a business does not meet the turnover requirement at 30 March 2020, the business can apply for, and start to receive the JobKeeper Payment later. The payment will not be backdated.

**15. Which employees are eligible to receive the JobKeeper Payment?**

An employee is eligible if on **1 March 2020** they:

- were at least 16 years old;
- are an Australian Citizen, the holder of a permanent visa, Protected Special Category Visa holder, a non-protected Special Category Visa Holder who has been residing continually in Australia for 10 years or more, or a Special Category (Subclass 444) Visa Holder;
- were employed on 1 March 2020, and continue to be employed (including an employee who was stood down or re-hired);
- were employed full-time, part-time, or a casual employed on a 'regular and systematic basis' for longer than 12 months as at 1 March 2020;
- were a resident of Australia for tax purposes;
- give the employer the required notice; and
- are not receiving the JobKeeper payment from another employer.

An employee is **not** eligible if they receive:

- Government paid parental leave pay for a period;
- dad and partner pay; or
- certain workers compensation payments.

## **16. How does an employer determine if a casual employee has been engaged on a 'regular and systematic basis' for longer than 12 months?**

The ATO and the JobKeeper legislation has not provided guidance as to what constitutes casual employment on a 'regular and systematic basis'.

However, in general, the following should be considered when determining whether a casual employee has been engaged on a 'regular and systematic basis' for the purposes of the JobKeeper Payment:

- the employment must be on a regular and systematic basis, not the hours worked;
- 'regular' refers to a pattern of work that is repetitive but does not have to be frequent, often, uniform or consistent;
- 'systematic' requires the engagement to be 'something that could be fairly called a system, method or plan'.

Where there is no clear pattern or roster, regular and systematic employment can be established where:

- the employer offered suitable work when it was available at times that the employee had generally made themselves available; and
- work was offered and accepted regularly enough that it was not considered occasional or irregular.

## **17. Many casual employees are employed for periods longer than 12 months, but work in blocks of time rather than continuous regular shifts (often independent artists). Are they considered 'eligible employees' for the purposes of JobKeeper?**

Employers will need to assess each casual employee on a case by case basis to determine their eligibility, based on the factors set out in question 16 above.

## **18. Are employees on fixed term contracts considered 'eligible employees'?**

Yes – providing they were employed on 1 March 2020 and meet the eligibility criteria set out in question 15 above.

## **19. Are employees who have signed a contract but not scheduled to commence work until after 1 March 2020, considered 'eligible employees'?**

No. The employment must have commenced on or prior to 1 March 2020.

## **20. Are employees of productions who have multiple contracts (for example, a tour of the same production), with short breaks between contracts, 'eligible employees' for the period between contracts?**

The employee must have been employed on 1 March 2020. If an employee was engaged to commence employment after 1 March 2020, the employee is not eligible to receive the JobKeeper Payment.

However, the employer and employee may agree to continue the employment relationship between contracts. Therefore, the employee would remain employed (whether they have been stood down or not) and the JobKeeper Payment would continue to apply.

### **21. If an employee works multiple jobs, how is the primary employer determined for access to the JobKeeper Payment?**

In general, the employer from which the employee claims the tax-free threshold will be the primary employer.

### **22. Does an eligible employer claim, and then pay, the JobKeeper Payment to sole traders, self-employed and independent contractors?**

No. Workers engaged as sole traders or independent contractors must apply for the JobKeeper Payment on their own behalf, and can register their interest to apply on the [ATO website](#).

Sole traders and independent contractors will need to have had an ABN by 12 March 2020 in order to receive the JobKeeper Payment.

### **23. If a fixed-term contract was coming up to its end date and going to be extended, can it be extended now, in order to keep an employer and employee eligible for the JobKeeper Payment? Or At the time a fixed-term contract ends, if the employee has been receiving the JobKeeper Payment, would they then move to the JobSeeker Payment?**

Yes. A contract of employment could be extended. This fits with the purpose of JobKeeper scheme, which is to keep people in employment.

If an employee's employment is terminated, they will no longer be considered an 'eligible employee' for the purpose of the JobKeeper Payment.

### **24. Is PAYG tax applicable to the JobKeeper Payments?**

Yes. The JobKeeper Payment is taxable income for the employee and the employer must withhold PAYG income tax.

### **25. Does an employer have to pay superannuation for an employee to whom the JobKeeper wage subsidy applies?**

Yes and No.

Yes – if an employer receives the JobKeeper Payment for an employee and the payment made to that employee meets the usual requirement for paying superannuation, the employer must pay superannuation in addition to the employee's wage.

However, if the employee's usual fortnightly income is less than \$1,500, an employer would only have to pay superannuation on their usual fortnightly wage.

*For example: the employee is usually paid \$1,000 per fortnight. With JobKeeper, they can now be paid \$1,500 per fortnight. An employer must pay the employee the full \$1,500 but is only obliged to pay superannuation on the \$1,000 the employee would usually be paid. It is up to the employer to decide whether to pay superannuation on the additional \$500.*

No – an employer will not be required to make superannuation contributions for an employee who is stood down. This is because employers have no obligation to pay stood down employees. If an employer pays a stood down employee \$1,500 to satisfy the wage condition for receiving the JobKeeper payment, then the entire amount will be disregarded for superannuation guarantee purposes.

**26. If the number of days or hours of work an employee works are reduced does the \$1,500 per fortnight JobKeeper Payment continue to apply?**

Yes. The payment of \$1,500 applies to all employees regardless of their reduced hours/days of work. However, eligible employees cannot be paid less than \$1,500 per fortnight.

**27. What if an employee earns less than \$1,500 per fortnight? How much does an employer pay to that employee?**

\$1,500. Eligible employees who ordinarily receive less than \$1,500 per fortnight will receive this amount, whereas eligible employees who receive more than this amount will continue to receive their normal pay (unless they have been stood down or have had their hours of work otherwise altered).

**28. Is there an expectation that employees who receive the JobKeeper Payment will continue employment with the employer when the scheme ceases, or the business returns to its usual turnover, or re-opens?**

No.

The purpose of the JobKeeper scheme is to prevent an employer from having to terminate an employee's employment now.

If it turns out that it is not feasible for an employer to keep a certain role or certain employee at any time, then an employer can take the usual steps to terminate an employee's employment (with regard to the employee's contract of employment, and any relevant Award or Agreement).

Employers will need to consider whether the particular employee is entitled to redundancy payments and notice of termination of employment.



## B. JobKeeper Amendments to the Fair Work Act

### JOB KEEPER ENABLING DIRECTIONS

As part of the JobKeeper legislation, if an employer qualifies for the JobKeeper scheme and receives the JobKeeper Payment for an employee, a number of different rights and obligations will apply. This allows an employer to unilaterally change certain working arrangements of employees subject to the JobKeeper Payment.

All JobKeeper directions will override any existing rights and obligations that deal with the direction, including under a modern award, enterprise agreement or employment contract.

Employers can only issue a JobKeeper direction if the following requirements are met:

- the direction is reasonable in the circumstances;
- the employer reasonably believes that it is necessary to ensure continuing employment;
- the employer both consults and provides 3 days' written notice, to the employee prior to the commencement of the direction.

The directions will apply until **28 September 2020**, unless withdrawn or replaced by the employer or varied by the Fair Work Commission.

### JobKeeper enabling stand down (s 789GDC of the FW Act)

#### 29. What is the JobKeeper enabling stand down direction?

A 'JobKeeper enabling stand down direction' allows employers to give a direction to an employee to:

- not work on days on which the employee would usually work;
- work fewer hours on days that the employee would usually work; or
- work overall a reduced number of hours (including not work at all).

#### 30. When can an employer issue a JobKeeper enabling stand down direction?

A 'JobKeeper enabling stand down direction' can be given to an employee if an employee cannot be usefully employed for their normal days or hours of work because of:

- changes to business attributable to the COVID-19 pandemic; or
- Government directions regarding COVID-19.

#### 31. What does an employer have to pay an employee who has been stood down under a JobKeeper enabling stand down direction?

If an employee's hours have been reduced, at least the same hourly rate as the employee is usually paid, on a pro-rata basis.

If the employee's reduced hours result in the employee's fortnightly pay being less than \$1,500 per fortnight – the employer must still pay the employee a total amount of \$1,500.

### **32. How does leave accrue for employees who have been stood down under a JobKeeper enabling stand down direction?**

Annual leave accrues as if the direction had not been given. The employee continues to accrue leave based on their usual hours of work, before they were stood down.

### **33. How are redundancy and termination pay applied to an employee who has been stood down under a JobKeeper enabling stand down direction?**

An employee would be paid redundancy pay and termination pay in lieu of notice as if the JobKeeper stand down direction had not been given. The employee is entitled to redundancy pay and termination pay in lieu of notice based on the usual hours of work before they were stood down.

#### **Duties of Work (section 789GE of the Fair Work Act)**

### **34. What changes can an employer make to an employee's regular duties of work?**

An employer can direct an employee to perform:

- any duties that are within the employee's skill and competency; and
- duties at a different location than the employee's normal place of work (including the employee's home).

### **35. When can an employer change an employee's regular duties of work?**

An employee's regular duties of work can be changed when:

- the duties are safe to perform;
- the employee has the necessary licence or qualification to perform the duties; and
- the duties are within the scope of the employer's business operations.

Employers should take care when directing employees to perform alternate duties, it does not alter the employee's modern award, or enterprise agreement coverage. Any duties performed above the employee's usual classification will need to be paid at the higher hourly rate.

#### **Location of Work (section 789GF)**

### **36. When can an employer change the employee's location of work?**

When the place of work is safe and suitable for the duties, and any travel is not unreasonable.

#### **JOBKEEPER ENABLING REQUESTS**

Employers and employees have the right to request, and agree to, certain changes to an employee's employment arrangements, including in relation to days or times of work and taking annual leave.

An employee must consider any request made by an employer and must not unreasonably refuse the request.

The rights to request are not conditional on the same requirements as the JobKeeper directions. However, any request by an employer to change days or times of work must be safe and reasonable within the scope of the employer's business operations.

An employer must consider any request made by an employee to undertake secondary employment or receive training or professional development and must not unreasonably refuse the request

Any right to request, and any agreement reached in respect of any request, will override any existing rights and obligations that deal with the direction, including under a modern award, enterprise agreement or employment contract.

### Days and time of Work (Section 789GG)

#### **37. Can an employer change an employee's days or hours of work?**

An employer can request that an employee perform their work on different days or at different times to their usual days/times.

The following requirements must be met to alter the employee's days or times of work:

- the employer and employee must agree in writing to the changes;
- the performance of work on those days and at those times must be safe and within the scope of the employer's business operations; and
- the agreement does not reduce the employee's overall number of work hours.

### Request for secondary employment and training (Section 789GU)

#### **38. Is an employee allowed to get another job?**

If an employee is subject to a JobKeeper enabling stand down direction (see question 29 above), the employee has the right to request that they engage in reasonable secondary employment.

An employer must consider and not unreasonably refuse the request.

#### **39. If an employee asks for additional training or professional development, do employers have to provide it?**

If an employee is subject to a JobKeeper enabling stand down direction (see question 29 above), the employee has the right to request training or professional development.

An employer must consider and not unreasonably refuse the request.

### Annual Leave (Section 789 GJ)

#### **40. Can an employer direct an employee to take annual leave?**

An employer can request, but not direct, that an employee take paid annual leave, as long as taking the leave does not result in the employee having an annual leave balance of less than two weeks.

The employee must consider and not unreasonably refuse the request.

#### **41. What changes have been made to the payment of annual leave?**

Employers and employees can agree that an employee takes their leave at half pay.

Therefore, an employee can take twice the amount of their accrued leave, and be paid half their usual rate of pay.

## DISPUTES UNDER THE JOBKEEPER ENABLING LEGISLATION (Section 789GV)

### **42. What if an employer and employee disagree with a direction or refusal of a request?**

An employer or employee, union or employer organisation may make an application to the Fair Work Commission (**FWC**) to deal with the dispute.

### **43. What powers does the FWC have to deal with a dispute under the JobKeeper Enabling legislation?**

The FWC has wide-ranging powers to deal with disputes including making orders to vary, revoke or enforce a JobKeeper direction.

The Australian Government has prepared comprehensive FAQ documents and Fact Sheets which can be accessed [here](#).

The FAQs set out above address some general questions and specific questions which may be helpful to LPA members. If you have any further questions about the JobKeeper Payment or amendments to the FW Act please contact [David Hamilton](#) or [Shay Minster](#).