

JobKeeper 2.0

Employer Guide Addendum

An addendum to ACCI's JobKeeper Payment Employer Guide following the announcement of phase two of the Federal Government's JobKeeper wage subsidy

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JobKeeper is the Federal Government's wage subsidy payment which enables eligible employers to access a subsidy to continue paying their employees. It is currently being utilised by almost a million businesses, supporting 3.5 million Australians.

The following addendum intends to answer some common employer questions around the Federal Government JobKeeper extension announcement made on 21 July 2020. Please note that legislation giving effect to this announcement has not yet passed. For further detail around current JobKeeper eligibility and payment requirements we recommend reading [ACCI's JobKeeper Payment Guide](#).

Employers should at all times be conscious of their particular legal obligations applicable under the Fair Work Act 2009, their respective State and Territory WHS legislation and workers compensation legislation, as well as enterprise agreements, awards, contracts and policies and should seek further advice where necessary.

The content of this publication has been prepared based on material available to date (21 July 2020). The material in this guide is of a general nature and should not be regarded as legal advice or relied on for assistance in any particular circumstance or situation. In any important matter, you should seek appropriate independent professional advice in relation to your own circumstances. The Australian Chamber of Commerce and Industry and accepts no responsibility or liability for any damage, loss or expense incurred as a result of the reliance on information contained in this guide.

JobKeeper 2.0

1. Introduction

1.1 What changes were announced on 21 July 2020 in relation to JobKeeper Phase 2?

JobKeeper was originally due to end on 27 September 2020. Following [Treasury's review](#) of the scheme, the Government on 21 July 2020 announced it is extending the JobKeeper Payment by a further six months to March 2021.

The second phase of JobKeeper, to begin from 28 September 2020 targets support to businesses and not-for-profits that continue to be significantly impacted by COVID-19. JobKeeper will now continue to be available to eligible businesses (including the self-employed) and not-for profits until 28 March 2021, albeit with a lower payment rate.

1.2 Do the changes affect businesses currently using JobKeeper?

If your business currently utilises JobKeeper, the current arrangements remain in place until 27 September 2020. In order to continue receiving JobKeeper Payments beyond 27 September 2020 both an employer and employee (or business participant) must qualify and meet the eligibility criteria (set out below).

2. Employer Eligibility Criteria

2.1 I am already currently receiving JobKeeper will my business need to requalify for Phase 2?

Yes. To be eligible post 27 September businesses will need to requalify. Businesses and not-for-profits seeking to claim the JobKeeper Payment will be required to demonstrate that they have suffered an ongoing significant decline in turnover using actual GST turnover (rather than projected GST turnover) in the June and September quarters 2020 to be eligible for the December quarter. Businesses will again need to reassess their eligibility for the March quarter.

2.2 Which employers are eligible for JobKeeper 2.0?

Eligible employers are businesses carrying on business in Australia (including companies, partnerships, trusts, sole traders, partnerships, unincorporated associations and individuals) and not for profits:

- with an aggregated turnover of less than \$1 billion (for income tax purposes) whose ongoing decline in turnover has fallen by more than 30% (in the relevant quarters); OR
- with an aggregated turnover of \$1 billion or more (for income tax purposes) whose ongoing decline in turnover has fallen by more than 50% (in the relevant quarters).

Registered charities with the Australian Charities and Not-for-profit Commission (excluding universities and schools) are eligible employers if:

- their ongoing decline in turnover has fallen by more than 15% (in the relevant quarter).

Aggregated turnover is an entity's annual turnover from carrying on a business plus the annual turnover from carrying on a business of any business or individual connected with or affiliated with the entity (whether based in Australia or overseas).

2.3 How does an employer establish the % ongoing decline in turnover (30%, 50% or 15%) for Phase 2?

In the second phase of JobKeeper there will be two periods during which an employer will need to be able to prove that their turnover has declined by the relevant % in order to be eligible to continue to receive JobKeeper.

First requalification period: From 28 September 2020, businesses and not-for-profits will be required to reassess their eligibility with reference to their actual GST turnover in the June and September quarters 2020. They will need to demonstrate that they have met the relevant decline in turnover test in both of those quarters to be eligible for the JobKeeper Payment from 28 September 2020 to 3 January 2021.

Second requalification period: From 4 January 2021, businesses and not-for-profits will need to further reassess their turnover to be eligible for the JobKeeper Payment. They will need to demonstrate that they have met the relevant decline in turnover test (see out above at 2.2) with reference to their actual GST turnover in each of the June, September and December quarters 2020 to remain eligible for the JobKeeper Payment from 4 January 2021 to 28 March 2021

2.4 Will JobKeeper Phase 2 be open to new recipients or is it only for those already using JobKeeper?

During Phase 2 of JobKeeper, payments will continue to remain open to new recipients, provided both employers and employees meet the eligibility requirements and the decline in turnover tests during the extension period.

Other eligibility rules for businesses and not-for-profits and their employees remain unchanged - see [ACCI's JobKeeper Payment Employer Guide](#) for more information on eligibility.

2.5 What if there are circumstances making it difficult to compare actual turnover?

The Commissioner of Taxation will have discretion to set out alternative tests in specific circumstances where it is not appropriate to compare actual turnover in a quarter in 2020 with actual turnover in a quarter in 2019.

2.6 My business has met the current decline in turnover test. Will the new requirements for Phase 2 affect my business prior to 28 September?

No. If a business or not-for-profit does not meet the additional turnover tests for the extension period, this does not affect their eligibility prior to 28 September 2020.

2.7 My BAS statement for the September quarter is due to be lodged in late October. Do I have to assess eligibility and pay my employees before the BAS deadline?

Treasury has advised that as the deadline to lodge a Business Activity Statement (BAS) for the September quarter is late October, and the December quarter (or month) BAS deadline is in late January for monthly lodgers or late February for quarterly lodgers, business will need to assess their eligibility in advance of the BAS deadline in order to meet the wage condition. The 'wage condition' requires employers to pay their eligible employees in advance of receiving the JobKeeper payment in arrears from the ATO.

The Commissioner of Taxation will have discretion to extend the time a business has to pay their employees in order to meet the wage condition, so that they first have time to confirm their eligibility for the JobKeeper Payment.

My business has met the current decline in turnover test. Will the new requirements for Phase 2 affect my business prior to 28 September?

No. If a business or not-for-profit does not meet the additional turnover tests for the extension period, this does not affect their eligibility prior to 28 September 2020.



CASE EXAMPLE – RETESTING TURNOVER UNDER JOBKEEPER PHASE 2

Dean owns and runs a wedding photography business, Happy Smiles. Dean started claiming the JobKeeper Payment for his eligible staff and himself as a business participant when the JobKeeper scheme commenced on 30 March 2020.

At the time, Dean estimated that the projected GST turnover for Happy Smiles would be 65% below its actual GST turnover in April 2019. To be eligible for the JobKeeper payment from 30 March 2020 to 27 September 2020, Dean needed to show the turnover for his business was estimated to decline by at least 30%.

As a monthly BAS lodger, Dean submitted his BAS in April, May and June. His actual turnover declined 71% for the June quarter. From July to September, actual turnover improved, with turnover declining 32% for the September quarter.

As the actual turnover decline for both the June and September 2020 quarters was still greater than 30%, Happy Smiles was eligible for the JobKeeper Payment for the period of 28 September 2020 to 3 January 2021.

With restrictions easing, business continued to improve for Happy Smiles, and actual turnover for the December 2020 quarter was 20% less than the December quarter 2019, so Happy Smiles was no longer eligible to claim JobKeeper for the second extension period starting from 4 January 2021.

3. Employee Eligibility

3.1 Will the eligibility rules for employees change for Phase 2 of JobKeeper?

The eligibility rules for employees remain unchanged for JobKeeper Phase 2. This means employees are eligible if:

- they were employed by the employer at 1 March 2020;
- are currently employed by an eligible employer (including those stood down or re-hired);
- are full-time or part-time (including fixed term), long-term casuals (casual employees who have been with their employer on a regular and systematic basis for at least the previous 12 months as at 1 March 2020 and not a permanent employee of any other employer) or a sole trader;
- are at least 18 years of age on 1 March 2020;
- are an Australian citizen, the holder of a permanent visa, a protected special category visa, a non-protected special category visa who has been residing continually in Australia for 10 years or more, or a New Zealander on a special category (subclass 444) visa (all other temporary visa holders are not currently eligible);
- were an Australian resident for tax purposes on 1 March 2020 AND
- are not in receipt of a JobKeeper Payment from another employer.

Employees will continue to receive the JobKeeper Payment through employers during the period of the extension provided both they and the employer are eligible and the employer is claiming the JobKeeper Payment. However, the amount of the JobKeeper Payment will change during Phase 2 (see section 4).



4. JobKeeper Payment Rate

4.1 What changes will be made to the JobKeeper payment rates in the second phase?

The current \$1,500 per fortnight JobKeeper payment will be reduced over two periods.

From 28 September 2020 - 3 January 2021, the two payment rates will be:

- \$1,200 per fortnight for all eligible employees who, in the four weeks of pay periods before 1 March 2020, were working for 20 hours or more a week on average, and for eligible business participants who were actively engaged in the business for 20 hours or more per week on average in the month of February 2020; and
- \$750 per fortnight for other eligible employees and business participants (e.g. employees who were working less than 20 hours or less a week on average throughout February).

From 4 January 2021 to 28 March 2021 the two payment rates will be:

- \$1,000 per fortnight for all eligible employees who, in the four weeks of pay periods before 1 March 2020, were working for 20 hours or more a week on average and for business participants who were actively engaged in the business for 20 hours or more per week on average in the month of February 2020; and
- \$650 per fortnight for other eligible employees and business participants (e.g. employees who were working less than 20 hours or less a week on average throughout February).

4.2 Are employers required to nominate the pay rate?

Yes. Businesses will be required to nominate which payment rate they are claiming for each of their eligible employees (or business participants).

4.3 What if the employee or business participant's hours were not usual during February 2020?

The Commissioner of Taxation will have discretion to set out alternative tests where an employee's or business participant's hours were not usual during the February 2020 reference period.

For example, this will include where the employee was on leave, volunteering during the bushfires, or not employed for all or part of February 2020. Guidance will be provided by the ATO where the employee was paid in non-weekly or non-fortnightly pay periods and in other circumstances the general rules do not cover.

4.4 Are there any changes to how the JobKeeper payment is paid?

The JobKeeper Payment will continue to be made by the ATO to employers in arrears.

Employers are still required to make payments to employees equal to, or greater than, the amount of the JobKeeper Payment (before tax), based on the payment rate that applies to each employee.

CASE EXAMPLE – CALCULATING THE JOBKEEPER PAYMENT RATE

Rita owns and runs the Tasty Restaurant. After retesting her turnover, she has calculated that she will remain eligible for JobKeeper for the period of 28 September 2020 to 3 January 2021. She now needs to work out how much to claim for each of her staff, and for herself as a business participant.

Rita was working full-time at her restaurant during February 2020, so she is entitled to claim \$1,200 per fortnight from 28 September 2020 to 3 January 2021, as an eligible business participant.

She has five full-time employees who all worked 38 hours per week throughout February 2020, so are each eligible to be paid \$1,200 per fortnight.

She has two part-time employees who worked on average 22 hours per week throughout February 2020. These employees are also eligible to be paid \$1,200 per fortnight, given that it is over the required average of 20 hours or more per week threshold.

Rita's employee Bob ordinarily works part time with different hours every second week: 13 hours one week; and 22 hours the next week. During the two pay fortnights prior to 1 March 2020, Bob worked for 35 hours in each fortnight. On average, Bob worked less than 20 hours per week for Tasty Restaurant. Rita is eligible to claim \$750 for per fortnight for Bob for the period 28 September 2020 to 3 January 2021.

Peter is an eligible employee who worked on a long-term casual basis during February 2020. To determine what rate to claim for Peter, Rita looks at pay records for the two fortnightly pay periods before 1 March 2020. They reveal that Peter was employed on average less than 20 hours per week, so Rita claims \$750 per fortnight for Peter.

Rita also started employing Amelia on 15 May 2020 to assist with pivoting her business in response to the COVID-19 restrictions. As Amelia was not employed at Tasty Restaurant on 1 March 2020, Rita cannot claim the JobKeeper payment for Amelia.



5. Fair Work Act Changes

5.1 Will I still be able to use the JobKeeper Directions (e.g. reduction in hours, changing a worker's duties)?

While there has been no formal announcement, the Prime Minister has recently said the Government will seek to extend the temporary changes to the Fair Work Act under JobKeeper phase 2. These currently include:

- Enabling businesses to issue a JobKeeper Enabling Direction (e.g. to reduce days/hours, perform alternative duties and perform work at an alternative location)
- Allowing employers to make requests of employees (e.g. to work different days/times, take annual leave)
- Taking double annual leave at half pay (by agreement).

The Prime Minister said these provisions should be available to both those who remain eligible for JobKeeper post-September, and those which were on the first JobKeeper package but will not qualify for the second ('legacy businesses').

Labor has indicated it would support an extension to the changes for employers who remain or become eligible for the JobKeeper scheme post-September. It would consider supporting an extension for 'legacy businesses' if further detail and justification was put forward.

6. Where and who to contact for further information and assistance?

Have a question or situation that isn't covered by this guide? The Australian Chamber of Commerce and Industry is here to help and answer any questions you might have on (03) 9668 9950

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A list of ACCI member organisations in each state and territory and representing major industries can also be accessed [here](#), or you can call ACCI on (03) 9668 9950 to be referred to our members.

