

JOBKEEPER ALERT



JobKeeper 2.0 Second Extension

Key dates and actions for employers

With the end of the year fast approaching, employers must take urgent action to ensure your business can take advantage of the second JobKeeper extension period from 4 January to 28 March 2021 and maximise your JobKeeper entitlements.

Employers coming off JobKeeper from 4 January 2021 may also wish to consider their eligibility to continue to access the JobKeeper Fair Work Flexibilities as a “legacy employers”. Legacy employers can continue to give JobKeeper-enabling directions subject to a range of criteria.

Employers seeking to utilise JobKeeper from 4 January 2021 need to action the following as a matter of urgency:

- **Re-assess business eligibility:** Determine whether you have met the decline in turnover test by assessing whether your actual GST turnover has declined by the required amount (15%, 30% or 50%) in the December 2020 quarter relevant to a comparable period (generally the corresponding quarter in 2019).
- **Submit the decline in turnover form to the ATO:** This will be available from 4 January 2021 and must be completed before you can complete your business monthly declaration from 1 February 2021.
- **Pay eligible employees at least the applicable JobKeeper amount:** The payment rates that apply from 4 January 2021 are \$1,000 for tier 1 or \$650 for tier 2, depending on the hours worked by the employee during the reference period. The ATO is allowing employers until Sunday, 31 January 2021 to ensure employees are paid the correct amount (i.e. meet the JobKeeper wage condition).
- **Notify employees which payment rate applies to them:** This must be done within seven days of notifying the ATO of the payment rate that applies to each employee.
- **Consider whether any JobKeeper enabling directions need to be extended:** Employers should review the notice they provided to employees on issuing a JobKeeper enabling direction/request such as working reduced hours, undertaking alternative duties, etc to ensure it can automatically roll over.

What else do employers need to know?

The ATO has advised that it will allow additional time to meet certain obligations under the current iteration of JobKeeper due to the Christmas period, and has also provided information on how it will treat payments brought forward due to the holiday season. See the [ATO's website](#) for further information.

For further detail around eligibility, decline in turnover tests, JobKeeper payment rates, reporting obligations and JobKeeper enabling directions we recommend reading ACCI's [JobKeeper 2.0 Employer Guide](#).

Employers coming off JobKeeper 2.0 who wish to utilise the JobKeeper-enabling directions (stand-down, location or duties) as a “legacy employer”, need to action the following as a matter of urgency:

Employers who currently have JobKeeper directions/requests in place but do not qualify for JobKeeper 2.0 will have any existing direction/request automatically cease on 4 January 2021. They may instead qualify as a “legacy employer” from 4 January 2021. In order to re-issue the direction/request employers will need to make sure that they meet the legacy employer requirements for the direction/request and comply with the notification and consultation requirements.

- **Assess business eligibility:** Employers who wish to continue to access the JobKeeper-enabling direction as a “legacy employer” will need to meet a 10% decline in turnover test (turnover test). To meet the turnover test, a legacy employer needs to demonstrate at least a 10% decline in actual GST turnover for the relevant quarter in 2020, when compared to the same quarter in 2019. For directions issued during January 2021 the relevant quarter is the September 2020 quarter.
- **Hold a certificate (or statutory declaration):** To demonstrate employers meet the decline in turnover test, they need to either get a certificate from an eligible financial service provider confirming the decline in turnover test is satisfied, or make a statutory declaration if the employer is a small business employer (less than 15 employees), for the relevant quarter.
- **Provide written notice to employees before giving a JobKeeper enabling direction:** Legacy employers can issue stand down, location or duties directions (subject to a number of conditions and requirements) but must give employees at least 7 days written notice (this can be by electronic means) before issuing the direction (unless the employee genuinely agrees to a shorter timeframe).
- **Consult with any employees before issuing a JobKeeper enabling direction:** Legacy employers must consult with an employee (and any representative they appoint) about a direction during the 7-day notice period. Consultation includes:
 - providing information about the direction, including when it will take effect and the expected effects of the direction of the employee
 - asking for the employee’s views on the impact of the direction (for example, the impact on their family or caring responsibilities).

Employers are not required to disclose confidential or commercially sensitive information to the employee or any representatives.

Employers must promptly and genuinely consider the employee’s views before issuing the direction within the 7-day notice period.

- **Keep records:** Employers must keep a written record of the consultation.
- **Notify:** Employers need to notify an employee of their decision following consultation.

What else do employers need to know?

For further detail around eligibility, the 10% decline in turnover tests, conditions and requirements around directions, notification and consultation checklists and template letters we recommend reading ACCI’s Fair Work Flexibilities – Legacy Employer Guide.