

9 April 2020

# Guide to the JobKeeper Scheme

Well it's official – the Federal Government's \$130 billion JobKeeper package has passed through parliament providing a much-needed lifeline for many businesses to subsidise the wages of approximately 6 million employees.

To enable the delivery of the JobKeeper wage subsidy and to provide increased employment flexibility in response to the devastating impacts of COVID-19, the Government has introduced temporary amendments to the *Fair Work Act 2009* (Cth) (**Act**).

The burning question for employers and employees alike is “am I eligible for the JobKeeper wage subsidy” and “how does it all work?” To assist your queries, Blue Rock has compiled this FAQ guide.

## I've been living under a rock – what is the JobKeeper payment?

The Jobkeeper wage subsidy scheme provides for a payment of \$1,500 per fortnight per eligible employee made to an eligible employer affected by the impacts of COVID-19 to help sustain the viability of Australian businesses and support them in retaining employees.

## Eligibility Criteria

### What businesses are eligible for the Jobkeeper payment?

Employers will be eligible if:

- They have a turnover of less than \$1 billion and estimate their turnover has fallen or will likely fall by 30 per cent or more; or
- They have a turnover of \$1 billion or more and estimate their turnover has fallen or will likely fall by 50 per cent or more; or

For charities registered with the Australian Charities and Not-for-profits Commission, they will be eligible for the subsidy if they estimate their turnover has fallen or will likely fall by 15 per cent or more relative to a comparable period.

Employers subject to the Major Bank levy and public entities are not eligible for the JobKeeper scheme.

### Which employees are eligible for the Jobkeeper payment?

Employees will be eligible if:

- their employer is eligible;
- they were employed on 1 March 2020 with that employer and continue to be employed whilst claiming the JobKeeper payment (including those stood down or re-hired);

- they are a full-time or part-time employee, or a casual employee employed on a regular and systematic basis for longer than 12 months prior to 1 March 2020;
- they are 16 years or older as at 1 March 2020;
- they are an Australian citizen, the holder of a permanent visa, or a Special Category (Subclass 444) Visa Holder at 1 March 2020;
- they were a resident for Australian tax purposes on 1 March 2020; and
- they are not in receipt of a JobKeeper payment from another employer.

#### **Which employees are not captured for the Jobkeeper payment?**

Employees that are not eligible include:

- any person who is under 16 years as at 1 March 2020;
- any visa holder that is not the holder of a permanent visa or Special Category (Subclass 444) visa (which unfortunately means those holding temporary student visas or temporary working visas);
- any casual employee who has not worked for their employer more than 12 months prior to 1 March 2020;
- those employees who have been terminated by reason of redundancy and have not been re-hired by the same employer;
- those employees who, during any given payment periods, are totally incapacitated to work and an amount is payable to them under workers' compensation laws;
- those employees who, during any given payment periods, are in receipt of parental leave pay under the *Paid Parental Leave Act 2010 (Cth)* (this does not include paid parental leave from an employer pursuant to an enterprise agreement, contract of employer or other similar instrument).

#### **What happens if an employee is eligible for the JobKeeper payment from two or more employers?**

An eligible employee may only receive the JobKeeper payment from one eligible employer only, being their primary employer.

The employee can continue to receive non-JobKeeper supported income from their non-primary employer.

#### **Are self-employed individuals eligible for the Jobkeeper payment?**

Yes. However, there is still eligibility criteria that must be met. At the time of application, a self-employed individual must demonstrate:

- they are actively engaged in the business;
- they are not in receipt of a JobKeeper payment from another employer or not eligible for the JobKeeper payment from another employer;

- they are 16 years or older as at 1 March 2020;
- they are an Australian citizen, the holder of a permanent visa, or a Special Category (Subclass 444) Visa Holder at 1 March 2020;
- their turnover has fallen or will likely fall by 30 per cent or more;
- they were registered with an ABN on or before 12 March 2020 and:
  - either had an amount included in its assessable income for the 2018-19 year and it was included in their income tax return lodged on or before 12 March 2020 (or such later time as allowed by the Commissioner), or
  - made a supply during the period 1 July 2018 to 12 March 2020 and provided this information to the Commissioner on or before 12 March 2020 (or such later time as allowed by the Commissioner).

**Are partnerships eligible for the Jobkeeper payment?**

Yes, if the eligibility criteria set out earlier is met.

However, only one partner can be nominated to receive the JobKeeper Payment.

All eligible employees of the partnership will also be entitled to the JobKeeper payment if they meet the criteria set out earlier, noting a partner cannot be an employee.

**Are company directors that receive director fees eligible for the Jobkeeper payment?**

Yes, if the eligibility criteria set out earlier is met.

However, only one director can be nominated to receive the JobKeeper Payment and that individual may not receive the payment as an employee.

All eligible employees of the company will also be entitled to the JobKeeper payment if they meet the criteria set out earlier.

**Can a trust receive the JobKeeper payment?**

Yes, but only on behalf of eligible employees.

If a beneficiary to a trust only receive distributions, rather than receive a paid salary or wages for work done, then only one individual beneficiary (natural person) can be nominated to receive the JobKeeper payment. A corporate beneficiary cannot be nominated.

**Can a shareholder receive the Jobkeeper payment?**

Yes, if the eligibility criteria set out earlier is met.

However, only one shareholder that provides labour and receives payment in the form of a dividend can be nominated to receive the JobKeeper payment.

**What does an employer need to do for the Jobkeeper wage subsidy scheme?**

An employer must:

1. Determine whether their business is eligible based on turnover reduction.
2. Determine which employees in their workforce are eligible in accordance with the eligibility criteria.
3. Register for the JobKeeper Payment through the ATO website and complete a self-declaration (as of writing the function had not yet been made available on the ATO website).
4. Ensure all eligible employees receive payments with each fortnight period to which the employer is eligible (including for periods prior to the reimbursement).

## The Turnover Test

### What is the definition of turnover?

Turnover for this purpose is the same as that calculated for GST purposes and reported on Business Activity Statements (**BAS**). It includes all taxable supplies and all GST free supplies but excludes input taxed supplies. Only Australian based turnover is relevant for these purposes.

### How does an employer show turnover has fallen if their business only recently began or has irregular income?

The standard test will be to compare your turnover to a corresponding period a year earlier based on the relevant month or quarter (depending on BAS reporting periods).

The Commissioner does have discretion to consider additional information where a business is in its first year or their turnover in the comparison period was not representative of their usual or average turnover. They also have the discretion to set out alternative tests where required. Employers will need to provide additional information establishing how they've been adversely affected by the impacts of the Coronavirus.

They have also advised that where a business estimates, in good faith their revenue to reduce by 30% or more (or 50% or more where applicable) but actually experiences a slightly smaller reduction there will be some tolerance.

### What happens if an employer's turnover has not decreased by the required amount in this current month, but an employer believes it will for the next month. Is the employer eligible?

An employer may apply where they reasonably expect that their turnover will fall by 30% or more (or 50% or more where applicable) comparable to their turnover in the corresponding period a year earlier.

### Can an employer opt into the JobKeeper wage subsidy scheme at any time?

Yes. Employers are eligible to receive the JobKeeper payments on behalf of their employees up to 27 September 2020.

The employer will need to demonstrate that it meets the turnover test at the time it opts in.

However, if an employer opts in at any time after the 30 March 2020 to 12 April 2020 fortnightly period, the payments will not be backdated to the commencement of the scheme on 30 March 2020.

## Payments to employees before JobKeeper reimbursement to employer

### When will the first payment be received?

The first payments will be received by employers in the first week of May and are made monthly in arrears.

### What are the eligible payment periods for reimbursement?

There are 13 eligible fortnightly payment periods starting on 30 March 2020 and ending 27 September 2020.

The first eligible period starts Monday 30 March 2020 and ends on Sunday 12 April 2020. The payment must be made to the eligible employee during that period in order for the employer to receive the subsidy. It is important to remember the payments are a reimbursement, therefore the payment must be initially paid.

The employer must continue to make payments of a minimum of \$1,500 per fortnight in the scheme payment periods.

Where an employer pays their staff monthly, the ATO will be able to reallocate payments between periods. However, overall an employee must have received the equivalent of \$1,500 per fortnight.

### When will payments commence for an employee?

This will depend on an employer, when they become eligible and when they can financially afford to pay the JobKeeper payment.

For those employers that are presently eligible, the Government is urging businesses to pay their employees the minimum \$1,500 per fortnight now and claim the money back as a reimbursement in May.

However, if an employer is not in a financial position now to pay their employees the minimum \$1,500 per fortnight, an employee may have to wait. This unfortunately means they will not be entitled to be back paid to 30 March 2020 as the payment is a reimbursement.

### What happens if an employer does not have cash flow to pay eligible employees in advance of receiving the subsidy?

Many businesses are struggling with cash flow as they may have had to close their doors or are experiencing reduced patronage. However, the payments are a reimbursement, therefore the payment must be initially paid to the eligible employee. This means, some employers may be forced to turn to loans or to extend overdraft facilities until the JobKeeper payments during the subsidy period.

An employer is required to pay its eligible employees prior to receiving the reimbursement from the ATO. If payments are not made in the relevant period, the employer will not be entitled to the JobKeeper reimbursement.

## JobKeeper Employer Temporary Powers

### What does the JobKeeper scheme allow employers to do?

Put simply, quite a lot.

This is completely new terrain that operates in addition to existing powers available to employers (such as, the stand down provisions under s. 524 of the Act or powers to direct employees to take excessive annual leave under the Act, an enterprise agreement or modern award – as detailed in our previous articles).

The new Part 6-4C inserted into the Act now gives employers temporary powers to issue:

- ‘Jobkeeper enabling directions’; and
- Jobkeeper requests for employees to:
  - work reduced days or alternative hours of work;
  - take accrued annual leave and agreements to take annual leave at half pay.

## JobKeeper Enabling Directions

### What is a “Jobkeeper enabling direction”?

A “Jobkeeper enabling direction” can only be given by an eligible employer to an eligible employee, where both qualify for the JobKeeper scheme.

A “Jobkeeper enabling direction” temporarily authorises an employer to:

- give a stand down direction to an employee to work fewer days or hours (including nil) where the employee cannot be usefully employed for their ordinary days or hours because of a business change attributable to the COVID-19 pandemic or Government initiatives to slow down COVID-19 transmission; and
- give directions to employees to change their work duties (where the duties are within their skill and competency) or to perform duties at a place different from their normal place of work (including the employee’s home).

The effect of the “Jobkeeper enabling direction” allow for a temporary variation to the employee’s terms of employment on a unilateral basis. This is a significant change where, in many circumstances, an employer has had no capacity to vary an employee’s employment agreement without their genuine consent.

### Do the “Jobkeeper enabling direction” apply retrospectively?

No. A “Jobkeeper enabling direction” will not apply retrospectively before the legislation was passed.

## Stand Down Directions

### What is a ‘JobKeeper enabling stand down direction’?

A ‘JobKeeper enabling stand down direction’ enables an employer to direct an employee:

- not to work on particular days;
- to work for a lesser period; or

- not to work certain hours (including a direction to work no hours).

This means an employer can reduce an employee's ordinary days or ordinary hours to fewer or nil days or hours.

#### **When can a 'JobKeeper enabling stand down direction' be implemented?**

An employer may give an employee a 'JobKeeper enabling stand down direction' where:

- the employee cannot be usefully employed for their ordinary days or ordinary hours of work because of changes to the employer's business attributed to the COVID-19 pandemic or Government incentives to slow COVID-19 transmissions; and
- it can be implemented safely, having regard to (without limitation) the nature and spread of COVID-19.

Examples of these changes to the employer's business attributed to the COVID-19 pandemic or Government incentives to slow COVID-19 transmissions may include a reduction of patronage for the business or the closure of the business (including some or all of its locations).

However, the employer must:

- give an employee at least 3 days written notice of its intention to give a 'JobKeeper enabling stand down direction' or a lesser notice period if genuinely agreed between the employer and the employee; and
- consult with the employee or their representative about the a 'JobKeeper enabling stand down direction'; and
- keep a written record of the consultation.

An employer does not have to give written notice of its intention to give a 'JobKeeper enabling stand down direction' where it has previously provided such notice of the direction and considered the view of the employee in that context.

#### **Does an employee have to comply with a 'JobKeeper enabling stand down direction'?**

An employee given a 'JobKeeper enabling stand down direction' must comply with that direction unless it is unreasonable in all the circumstances.

#### **When does a 'JobKeeper enabling stand down direction' not apply?**

A JobKeeper enabling stand down direction does not apply:

- while the employee is on paid or unpaid leave, or where the employee is otherwise authorised to be absent from work (for example, on a public holiday); or
- to an employer that is not eligible for the JobKeeper scheme; or
- to an employee that is not eligible for the JobKeeper scheme; or
- where the JobKeeper payment is not made to the employee by the employer for the relevant period to which the 'JobKeeper enabling stand down direction' applies.

**When does a 'JobKeeper enabling stand down direction' cease to have effect on employees?**

The 'JobKeeper enabling stand down direction' ceases to have effect on employees when:

- it is withdrawn or revoked by the employer; or
- it is replaced by a new direction given by the employer to the employee; or
- on 28 September 2020.

**Does an employee have to work to get the JobKeeper payment?**

No, not if there is no useful work for that employee to do, including any change of duties.

**How much does an employer have to pay an employee under a 'JobKeeper enabling stand down direction'?**

If the employee's ordinary days or hours have been reduced to nil under a 'JobKeeper enabling stand down direction', the employer must pay the employee \$1,500 per fortnight before tax.

If the employee's ordinary days or hours have been reduced under a 'JobKeeper enabling stand down direction', the employer must pay the employee an amount equivalent to those reduced hours or days worked in the fortnight by the employee. If:

- the reduced hours or days equate to less than \$1,500 per fortnight before tax, the employer must pay the employee \$1,500 per fortnight before tax; or
- the reduced hours or days equate to more than \$1,500 per fortnight before tax, the employer must 'top up' the payment to the employee for anything above \$1,500. This means an employer must pay an employee in full for work undertaken in that fortnight and cannot simply pay \$1,500 before tax.

**Can an employer reduce an employee's wage under a 'JobKeeper enabling stand down direction'?**

No. The employee's hourly base rate of pay must not be less than the hourly base rate of pay that would have applied to the employee if the 'JobKeeper enabling stand down direction' had not been given.

If the employer directs an employee to perform other duties within their skill and competency and the hourly base rate of pay for those duties attracts a higher base rate, the employee is entitled to that higher hourly base rate.

**What happens if an employer pays an annual salary and not an hourly rate?**

If an employee is paid an annual salary but an applicable workplace instrument (such as a modern award) applies to the employee, the employee's base rate of pay is:

- the amount specified in that workplace instrument; or
- the amount calculated using any method set out in that workplace instrument to work out the employee's base rate of pay.



**How does a 'JobKeeper enabling stand down direction' effect the employee's existing rights under the Act, a fair work instrument, contract of employment or transitional instrument?**

An employee's terms and conditions of employment continue to apply, except to the extent they are modified by the JobKeeper enabling stand down directive.

**What happens if an employee wants to work another job whilst under a 'JobKeeper enabling stand down direction'?**

Employees are entitled to request permission from their employer to engage in secondary employment. An employer must consider such request and must not unreasonably refuse that request.

**What happens if an employee wants training or professional development whilst under a 'JobKeeper enabling stand down direction'?**

Employees are entitled to request permission from their employer to engage in training or professional development. An employer must consider such request and must not unreasonably refuse that request.

**How does an employee accrue leave under a 'JobKeeper enabling stand down direction'?**

An employee under a 'JobKeeper enabling stand down direction' continues to accrue leave entitlements as if the direction had never been given. This means an employee still accrues leave based on their ordinary hours of work prior to the 'JobKeeper enabling stand down direction' and consistent with the terms and conditions of the Act, a fair work instrument, contract of employment or transitional instrument (as applicable).

**What happens if an employer wishes to terminate an employee by reason of redundancy whilst a 'JobKeeper enabling stand down direction' is in effect?**

An employee under a 'JobKeeper enabling stand down direction' remains entitled to any redundancy pay and payment in lieu of notice of termination calculated as if the direction had never been given. This means that payment in lieu of notice of termination and redundancy pay must be paid based on the employee's ordinary hours of work prior to the 'JobKeeper enabling stand down direction' and consistent with the terms and conditions of the Act, a fair work instrument, contract of employment or transitional instrument (as applicable).

## Examples of Stand Down Directions

The Coronavirus Economic Response Package (Payments and Benefits) Bill 2020 Coronavirus Economic Response Package Omnibus (Measures No.2) Bill 2020 Explanatory Memorandum (**Explanatory Memorandum**) provides the following examples of the 'JobKeeper enabling stand down direction':

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**Example 1**

Jo is employed as a waiter in Anna's restaurant. Anna's restaurant has reduced operations to takeaway only because of Coronavirus restrictions. Anna qualifies for the JobKeeper scheme in relation to Jo and gives Jo a JobKeeper enabling stand down direction not to attend work for 4 weeks, compared to her usual roster of 40 hours per week.

Anna is required to ensure Jo is paid the appropriate value of JobKeeper payments (\$3,000) during the four week JobKeeper enabling stand down period.

### Example 2

Rachel works as an administrator for a manufacturing business whose retail operations have moved online as a result of significantly reduced shopfront demand and a 30 per cent reduction in turnover, following the Coronavirus outbreak. Rachel's employer qualifies for the JobKeeper scheme in relation to Rachel and gives her a JobKeeper enabling stand down direction that reduces her ordinary hours of work from 38 to 32 hours per week.

Rachel's contractual base pay rate is \$30 per hour, which cannot be reduced for her hours of work, regardless of how many hours she is directed to work.

As a result of the JobKeeper enabling stand down direction reducing her hours, Rachel's fortnightly pay has reduced from \$2,280 (\$30/hr multiplied by 76 hours worked in a fortnight) to \$1,920 (\$30/hr multiplied by 64 hours worked in a fortnight).

Rachel must be paid for hours she worked, and as her reduced fortnightly pay is still higher than the value of the fortnightly JobKeeper payment (\$1,500) she must be paid that higher amount.

However, under the JobKeeper scheme, Rachel's employer can apply the value of the JobKeeper payment towards her fortnightly pay.

## Requirements for Directions about Work Duties

### Can an employer direct an employee to perform duties in substitution to their usual duties?

Yes. An eligible employer that qualifies under the JobKeeper scheme may direct an eligible employee to perform any duties within their skill and competency.

### When can an employer direct an employee to perform duties in substitution to their usual duties?

An employer can direct an employee to change duties of work where:

- both the employer and employee qualify for the JobKeeper scheme;
- the JobKeeper payment is made to the employee by the employer for the relevant period to which the direction applies;
- the employer reasonably believes this is necessary for the continued employment of one or more employee of the employer (and in this context it is immaterial that the employer could have given a similar direction to another employee);
- the duties are safe (having regard, without limitation, to the nature and spread of COVID-19);
- the employee is licensed and qualified to perform the duties (if a licence or qualification is necessary);
- the duties are reasonably within the scope of the employer's business operations; and

- the duties of work are reasonable in all the circumstances.

However, the employer must:

- give an employee at least 3 days written notice of its intention to give direction on duties or a lesser notice period if genuinely agreed between the employer and the employee; and
- consult with the employee or their representative about the direction on duties; and
- keep a written record of the consultation.

An employer does not have to give written notice of its intention to give a change of directions duties where it has previously provided such notice of the direction and considered the view of the employee in that context.

#### **Does an employee have to comply with a direction about work duties?**

An employee given a direction to change duties of work must comply with that direction unless it is unreasonable in all the circumstances.

#### **When does a direction about work duties cease to have effect on employees?**

The change of duties direction ceases to have effect on employees when:

- it is withdrawn or revoked by the employer; or
- it is replaced by a new direction given by the employer to the employee; or
- on 28 September 2020.

#### **Can an employer reduce an employee's wage under a direction about work duties?**

No. The employee's hourly base rate of pay must not be less than the hourly base rate of pay that would have applied to the employee if the direction about work duties had not been given.

If the employer directs an employee to perform other duties within their skill and competency and the hourly base rate of pay for those duties attracts a higher base rate, the employee is entitled to that higher hourly base rate.

#### **What happens is an employer pays an annual salary and not an hourly rate?**

If an employee is paid an annual salary but an applicable workplace instrument (such as a modern award) applies to the employee, the employee's base rate of pay is:

- the amount specified in that workplace instrument; or
- the amount calculated using any method set out in that workplace instrument to work out the employee's base rate of pay.

#### **How does a direction about work duties effect the employee's existing rights under the Act, a fair work instrument, contract of employment or transitional instrument?**

An employee's terms and conditions of employment continue to apply, except to the extent they are modified by the direction about work duties.

## Example of change of duties direction

Ameisa operates a warehouse in NSW. The Storage Services and Wholesale Award 2010 applies to the employees of the warehouse, including Meera. As a store worker grade 4, Meera generally acts in a leading hand capacity, coordinating the work of other store workers, performs liaison duties including with customers, and controlling inventory.

Ameisa's business is affected by the Coronavirus pandemic and qualifies for the JobKeeper scheme. Given the downturn in Ameisa's business operations, Meera is not required to perform her usual duties in respect of customer liaison. In order to keep Meera connected to employment during the pandemic, rather than reducing Meera's hours, Ameisa gives Meera a JobKeeper enabling direction that changes Meera's usual duties and enables her to be retain her regularly rostered hours, albeit in other duties.

Ameisa wants Meera to drive a forklift in the warehouse. Because the duties can be performed with appropriate social distancing and in a way that is safe with respect to the nature and spread of Coronavirus, reasonably within the scope of Ameisa's business operations, and Meera holds a current high risk work licence to operate a forklift (class LO), Ameisa is able to give a JobKeeper enabling direction to drive the forklift.

While Meera's duties have been modified by the JobKeeper enabling direction, the other terms and conditions relating to her employment, such as the days and hours she works, are unchanged.

## Requirements for Directions to change Location of Work

### Can an employer direct an employee to work from a different location?

Yes. An eligible employer that qualifies under the JobKeeper scheme may direct an eligible employee to perform any duties within their skill and competency from a different location to their normal workplace (including the employee's home).

### When can an employer direct an employee to work from a different location?

An employer can direct an employee to work from a different location where:

- both the employer and employee qualify for the JobKeeper scheme;
- the JobKeeper payment is made to the employee by the employer for the relevant period to which the direction applies;
- the employer reasonably believes this is necessary for the continued employment of one or more employee of the employer (and in this context it is immaterial that the employer could have given a similar direction to another employee);
- the new location is suitable for the employee's duties;
- if the new location is not the employee's home, it does not require the employee to travel a distance that is unreasonable in all the circumstances (including those surrounding the COVID-19 pandemic); and
- performance of the employee's duties at the new location is safe having regard (without limitation) to the nature and spread of COVID-19, and it is reasonably within the scope of the employer's business operations.

However, the employer must:

- give an employee at least 3 days written notice of its intention to give direction on duties or a lesser notice period if genuinely agreed between the employer and the employee; and
- consult with the employee or their representative about the direction on duties; and
- keep a written record of the consultation.

An employer does not have to give written notice of its intention to give a change of directions duties where it has previously provided such notice of the direction and considered the view of the employee in that context.

#### **Does an employee have to comply with a direction to work from a different location?**

An employee given a direction to work from a different location must comply with that direction unless it is unreasonable in all the circumstances, including where it impacts of caring responsibilities of the employee.

#### **When does a direction about working from a different location cease to have effect on employees?**

The change of duties direction ceases to have effect on employees when:

- it is withdrawn or revoked by the employer; or
- it is replaced by a new direction given by the employer to the employee; or
- on 28 September 2020.

#### **Can an employer reduce an employee's wage under a direction to work from a different location?**

No. The employee's hourly base rate of pay must not be less than the hourly base rate of pay that would have applied to the employee if the direction about working from a different location had not been given.

If the employer directs an employee to perform other duties within their skill and competency at a different location and the hourly base rate of pay for those duties attracts a higher base rate, the employee is entitled to that higher hourly base rate.

#### **What happens is an employer pays an annual salary and not an hourly rate?**

If an employee is paid an annual salary but an applicable workplace instrument (such as a modern award) applies to the employee, the employee's base rate of pay is:

- the amount specified in that workplace instrument; or
- the amount calculated using any method set out in that workplace instrument to work out the employee's base rate of pay.

**How does a direction about working from a different location effect the employee's existing rights under the Act, a fair work instrument, contract of employment or transitional instrument?**

An employee's terms and conditions of employment continue to apply, except to the extent they are modified by the direction about work location.

## JobKeeper Enabling Requests

### Can an employer request an employee change days or hours of work?

Yes. An eligible employer may request an employee change their days or hours of work from their ordinary days or hours of work where:

- performance of the duties on different days or a different time is safe, having regard (without limitation) to the nature and spread of COVID-19 and is reasonably within the scope of the employer's business operations; and
- the agreement does not reduce the employee's number of hours of work compared with the employee's ordinary hours of work.

This is separate to a Jobkeeper enabling direction that can direct an employee to reduce their hours.

### Does an employee have to accede to a request to change days or hours of work?

Although an agreement to work different days or times would need to be agreed to by the employee, the employee must not unreasonably refuse an employer's request for such a changed arrangement.

The Explanatory Memorandum states that the circumstances of a particular workplace will inform what is reasonable. For example, an employee who usually works weekends could reasonably be required to work on weekdays in circumstances where the employer's business can no longer trade on weekends as a result of the COVID-19 pandemic.

### Can an employer request an employee take paid annual leave?

Yes. An eligible employer may request that an employee take paid annual leave and can request the employee to take annual leave at half pay.

### Does an employee have to accede to a request to take paid annual leave?

An employee must not unreasonably refuse an employer's request to take annual leave, provided the leave arrangement does not result in reducing the employee's leave balance to less than 2 weeks.

The employer and employee can also agree to take annual leave at half pay.

## Dealing with disputes

### What happens if an employee does not want to comply with a JobKeeper enabling direction or a request?

The Fair Work Commission has the power to deal with a dispute raised by an employer, an employee or their representative in respect of a JobKeeper enabling direction or request.

## Protections

**What happens if an employer gives a JobKeeper enabling direction when they are not authorised and know they are not authorised?**

An employer is prohibited from giving a JobKeeper enabling direction if the direction is not authorised by Part 6-4C of the Act and the employer is aware of this.

It is a contravention of a civil remedy provision and is enforceable like other contraventions under the Act. The maximum penalties are up to \$63,000 per contravention for a company and up to \$12,600 per contravention for an individual.

Civil penalties also apply where an employer:

- fails to comply with a Fair Work Commission order dealing with a dispute;
- fails to pay an employee a wage that is greater than the amount of the JobKeeper payment payable to the employer for the employee per fortnight, or the amount that is payable to the employee in relation to the performance of the work during that fortnight;
- reduces the hourly base rate of pay of an employee who is working reduced hours as a result of a JobKeeper enabling direction; or
- fails or consider or unreasonable refuses a request from an employee who is working reduced hours for secondary employment or training.

## Leave Arrangements

**If an employer is on paid leave, can the JobKeeper payment be used towards that leave entitlement?**

Yes. An employer must pass on, at a minimum, the \$1,500 per fortnight before tax.

If an employee ordinary earns less than \$1,500 per fortnight before tax, an employer must pass on the full amount of \$1,500 per fortnight to the employee.

Where an employee's prevailing working arrangements mean they are entitled to more than \$1,500 per fortnight, an employer must 'top up' that amount.

## Taxation

**Is an employer required to withhold tax from the JobKeeper payment?**

Yes. The JobKeeper \$1,500 fortnight payment is before tax. Ordinary PAYG withholding requirements will apply.

## Superannuation

**Does an employer have to pay superannuation on the JobKeeper payment if the employee has been stood down without pay?**

No. Employees that have been stood down do not have to be paid superannuation on the \$1,500. This is because the payment is not paid as ordinary time earnings for work that has been undertaken.

**Does an employer have to pay superannuation on the full \$1,500 if the employee's usual wage is less than \$1,500 a fortnight?**

No. Employers are only required to pay an employee superannuation on the component of the \$1,500 that covers the employee's usual wage. Superannuation is not payable on the additional earnings an employee obtains by benefit of the JobKeeper payment.

**Does an employer have to pay superannuation where an employee usually earns more than \$1,500 a fortnight?**

Yes. Where an employee is paid more than \$1,500 per fortnight, the employer's superannuation obligations do not change.

If you would like assistance in understanding your rights and obligations, get in touch with Blue Rock to speak with our accounting or legal experts.



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