

JobKeeper payments & your rights

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The information below is based on the temporary provisions added to the Fair Work Act on 9 April 2020. These provisions allow employers to issue directions and requests to employees eligible for JobKeeper. These provisions will cease on 28 September 2020. Any directions or agreement made under these temporary provisions will also end on 28 September 2020. Employees terms and conditions will revert back to what they were without the directions or agreements in place.

The information below should not be relied upon as legal advice. If you would like more information or legal advice, please call us on (02) 6257 4377.

What is the JobKeeper payment?

JobKeeper payments are administered by the Australian Taxation Office (ATO) to businesses who have suffered a decline in turnover, to help these businesses retain their employees during the pandemic. Some not-for-profits, partnerships, self-employed individuals and sole traders are also eligible for the payment

Eligible businesses can choose to opt into the scheme and receive \$1,500 per fortnight per eligible employee from 30 March 2020 until 27 September 2020. Businesses need to pass on the full \$1,500 (less tax) to each eligible employee.

As an employee, you do not apply for JobKeeper. Your employer applies to the ATO for JobKeeper payments and employers must provide each eligible employee with an employee nomination notice.

Which businesses are eligible?

To be eligible, businesses have to show a 30% decline in turnover (this is 50% for businesses of more than 1 billion dollars for tax purposes, 30% for sole traders and 15% for charities). Sole traders need to have had an ABN as at 12 March 2020 and meet additional rules about reporting to the ATO.

Can my employer choose which employees to pass on the JobKeeper payment to?

No. Once a business opts into the scheme, they must apply for the payment for every eligible employee. Employers cannot choose which employees to give Jobkeeper payments to.

Am I eligible for the JobKeeper payment?

To be an eligible employee, you must be:

- A full-time or part-time employee or a long-term casual employee (a casual employed on a regular and systemic basis for at least 12 months as at 1 March). This includes employees who have been stood down, and employees who were made redundant after 1 March but have since been reemployed;
- an Australian citizen, permanent visa holder, protected special category visa holder or subclass 444 visa holder who is also a resident for tax purposes;
- At least 16 years of age on 1 March. If you are a fulltime student and not financial independent, you must be at least 18 years of age.
- not receiving the government parental leave pay, dad and partner pay, or payment under workers compensation for total incapacity; and
- not receiving the Jobkeeper payment from another employer.

How much do eligible employees receive?

- Your employer must pass on the full \$1,500 less tax to you, even if you usually earn less than this in a fortnight, and even if you have been stood down without pay.
- If you are still working, and usually earn more than \$1,500, your employer must pay you your full wage. For example, if you are working 30 hours and normally get paid \$30 per hour, you should be paid \$1,800 less tax per fortnight (your employer passes on to you the \$1,500 JobKeeper payment and they must also pay you the \$300 difference).
- Your employer must pay you super on your normal wage unless you have been stood down or if you are on unpaid leave.
- You should continue to accrue leave, receive redundancy payments, and payments in lieu of notice of termination as you usually would.

Can my employer reduce my hours, change where I work, or even change my duties?

If you are receiving JobKeeper payments, your employer can give you three new kinds of directions:

1. **Stand down direction:** If you cannot be employed as usual because of COVID-19 or because of government initiatives to slow transmission, your employer can stand you down completely or direct you to work for a lesser period on a day or reduce your number of hours overall.
2. **Alternative duties direction:** Your employer can direct you to perform other duties if necessary to keep you or another employee employed. These other duties must be within your skills and competency and must be reasonably without the scope of your employer's business operations.

- 3. Alternative place of work direction:** Your employer can direct you to work at a difference place if necessary to keep you or another employee employed. If the place is not your home, you should not have to travel an unreasonable distance.

Directions must be reasonable and safe, and your employer must consult with you first and must give you at least three days written notice (or a lesser period if you agree to a lesser period of notice).

You should continue to accrue leave as you usually would (as though the Jobkeeper direction had not been given).

What requests can my employer make of me if I am receiving Jobkeeper?

If you are receiving Jobkeeper payments, your employer can also make requests of you which you cannot unreasonably refuse. Your employer can request you work on days or times that are different to your normal days or times, but which do not reduce your number of hours of work. Your employer can also request you to take annual leave provided you are not left with fewer than two weeks annual leave (and you can agree to take twice as long at half pay).

My employer has said I can only get JobKeeper if I increase my hours – is this allowed?

No. If you are an eligible employee, your employer must pass on the \$1,500 less tax to you, even if you usually only work a few hours per week.

However, your employer can request that you increase your hours and you cannot unreasonably refuse. If you have other work, study or caring commitments, it may be reasonable for you to refuse. If the only reason for a request to work additional hours is to 'match' the amount of \$1,500 before tax JobKeeper payment, this is not likely to be reasonable.

My hours have been reduced, is it okay for me to take on another job?

If you are receiving JobKeeper, you can request permission from your employer to take on second job or do training or professional development. Your employer is obliged to consider your request and cannot unreasonably refuse your request.

I'm on unpaid maternity leave, should I be getting JobKeeper?

As long as you and your employer meet all the eligibility requirements for JobKeeper (listed above), including that you are not currently receiving government parental leave pay, you should be receiving \$1,500 less tax from your employer.

What if I have a dispute with my employer about Jobkeeper directions or requests?

If you and your employer disagree about the reasonableness of a direction or whether it is reasonable to refuse a request, you can apply to have the dispute dealt with by the Fair Work Commission. This includes disputes about a direction about the location of your work, the hours of work, a change in duties or a request to take annual leave or your request to take on another job.

However, the Fair Work Commission cannot deal with disputes about whether an employer is eligible or where an employer refuses to opt in to the JobKeeper scheme.

You can apply to the Fair Work Commission online, using a new Form F13A. There is no application fee.

For more information or advice, call us on (02) 6257 4377, 9am – 5pm Monday – Friday or email us at admin@womenslegalact.org

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