



FREE AND CONFIDENTIAL LEGAL ADVICE FACE TO FACE OR OVER THE PHONE

THE JOBKEEPER PAYMENT FACTSHEET

What is the JobKeeper payment?

The JobKeeper payment scheme is made under the *Coronavirus Economic Response (Payments and Benefits) Rules 2020*. Payments are available in fortnight periods between 30 March 2020 and 27 September 2020.

If your employer is eligible for the scheme, they will be reimbursed a fixed amount of \$1,500 per fortnight per eligible employee. It means that your employer must pay their employees first, and then get reimbursed from the government.

Is your employer eligible for the JobKeeper payment?

Employers are eligible for the JobKeeper payment if all of the following apply:

- 1) On 1 March 2020, they carried on a business in Australia, or were either
 - a not-for-profit organisation that pursued their objectives principally in Australia, or
 - deductible gift recipient endorsed either, as a public fund or for a public fund they operated, under the Overseas Aid Gift Deductibility Scheme or for developed country relief
- 2) They employed at least one eligible employee on 1 March 2020.
- 3) Their eligible employees are currently employed by their business for the fortnights they claim for (including those who are stood down or re-hired).
- 4) Their business has faced either a
 - 30% fall in turnover (for an aggregated turnover of \$1 billion or less)
 - 50% fall in turnover (for an aggregated turnover of more than \$1 billion)
 - 15% fall in turnover (for ACNC-registered charities other than universities and schools)

However, some employers are not entitled to the payment, for instance;

- 5) Banks (or entities within consolidated groups of banks) liable to pay a levy under the Major Banks Levy Act 2017 in any quarter ending before 1 March 2020
- 6) Australian government agencies (and entities wholly owned by them)
- 7) Local governing bodies (and entities wholly owned by them)
- 8) Sovereign entities
- 9) Companies where a liquidator or provisional liquidator has been appointed in relation to the company
- 10) Individuals where a trustee in bankruptcy has been appointed to the individual's property.

North and North West Community Legal Service

Phone: (02) 6772 8100 or 1800 687 687

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As an employee, are you eligible for the JobKeeper payment?

You are an eligible employee if you:

- 11) are currently employed by the eligible employer (including if you were stood down or re-hired)
- 12) were for the eligible employer (or another entity in their wholly owned group), either:
 - a full-time, part-time, or fixed-term employee at 1 March 2020 (*If you started to work for your current employer after 1 March 2020, your employer will not be eligible to claim the JobKeeper payment on your behalf.*); or
 - a long-term casual employee (employed on a regular and systematic basis for at least 12 months) as at 1 March 2020 and not a permanent employee of any other employer
- 13) were aged 18 years or older at 1 March 2020 (if you were 16 or 17 you can also qualify for fortnights before 11 May 2020, and continue to qualify after that if you are independent or not undertaking full time study)
- 14) were either:
 - an Australian resident (within the meaning of the *Social Security Act 1991*)
 - an Australian resident for the purpose of the *Income Tax Assessment Act 1936* and the holder of a Subclass 444 (Special Category) visa as at 1 March 2020
- 15) were not in receipt of any of these payments during the JobKeeper fortnight:
 - government parental leave or Dad and partner pay under the *Paid Parental Leave Act 2010*
 - a payment in accordance with Australian worker compensation law for an individual's total incapacity for work
- 16) have given your employer a JobKeeper Employee Nomination Notice in the approved form (and have not given any other employer a JobKeeper Employee Nomination Notice)

During the period you receive the JobKeeper payment, can your employer direct or request you to do things you may not ordinarily expect?

The Coronavirus Economic Response Package Omnibus (Measures No. 2) Act 2020 allows your employer to give you directions and requests as follows:

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Directions

JobKeeper enabling stand down direction

- 17) They can require you NOT work on a day or days on which you would usually work.
- 18) They can require you to work for a lesser period than the period which you would ordinarily work on a particular day or days.
- 19) They can require you to work on a reduced number of hours (compared with your ordinary hours of work).

However, your employer can only give you the stand down direction if you cannot be usefully employed for your normal days or hours because of the COVID-19 pandemic or government initiatives to slow the transmission of COVID-19.

If you are given such direction, you may send your employer a request to engage in “reasonable secondary employment” or a request for training or professional development. Your employer must consider your request and must not unreasonably refuse it.

Duties of work direction

- 20) They can ask you to perform other duties which may not be written in your job description.

Yet your employer needs to ensure that

- the duties are safe
- the duties are within your skill and competency, and you have the relevant licence or qualification to do perform those duties
- the duties are reasonably within the scope of their business operations.
- The direction is necessary to continue the employment of one or more employees.

Location of work direction

- 21) They can ask to work at a place which is different from your normal place of work. It includes your home.

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Nevertheless, the place must be suitable for your duties. If it is not your home, the place does not require you to travel a distance that is unreasonable in all the circumstances, including the ones surrounding the COVID-19 pandemic. Again, the direction must be necessary to continue the employment of one or more employees.

The above directions apply only if they are **REASONABLE**. Your employer must give you a written notice of the intention to give a direction at least 3 days before it is given, or a lesser period if you genuinely agree. You must be consulted as well.

Requests

- 22) Your employer can request you to work on different days and at different times, which do not reduce your number of hours work (compared with your ordinary hours of work).
- 23) Your employer can also ask you to take paid annual leave, as long as it will not result in you having a balance of paid annual leave of fewer than 2 weeks. You and your employer can also agree that you take twice as much paid annual leave, at half pay.

As to your employer's request, you must consider and must not unreasonably refuse it.

What if you are not happy with your employer's directions and requests, and want to raise a dispute

- 24) You may make an application to the Fair Work Commission.
- 25) You need to fill out Form F13A- Application for the Commission to deal with a JobKeeper dispute (coronavirus economic response). Once it is completed, it can be emailed to COVID19Applications@fwc.gov.au.
- 26) The Fair Work Commission may deal with this kind of dispute by
 - mediation or conciliation
 - arbitration
 - making a recommendation or expressing an opinion

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