

Job Keeper Scheme Guidance Manual For Businesses

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Summary of Job Keeper Wage Subsidy Scheme

On 9 April 2020 the Federal Government legislation amending the Fair Work Act 2009 was passed by Parliament and received royal assent to operate the day after that date. The effect of this Scheme is to provide a wage subsidy to employers for their employees for up to a 6 month period.

All businesses need to carefully understand the requirements of the legislation which we have summarised as follows:

- A. A business needs to assess whether they qualify for the Job Keeper Scheme (see Section 1 below) before you elect to participate no later than 20 April 2020 or if you elect to join later at the beginning of each fortnightly pay period thereafter.
- B. A business needs to establish which of their employees are eligible employees (see Section 2 below) each fortnightly period.
- C. It is not compulsory for a business to participate in the Job Keeper Scheme BUT if you want to participate in the Scheme for this calendar month you must notify the Commissioner of Taxation by no later than 26 April 2020. If you elect to participate thereafter you need to do so at the beginning of each fortnightly period within the period of the Scheme (See Schedule 1 – Job Keeper Fortnights).
- D. To enrol in the Job Keeper Wage Subsidy Scheme click on the following link
<https://www.ato.gov.au/general/jobkeeper-payment/employers/enrol-and-apply-for-the-jobkeeper-payment/>
- E. A business is required to notify each eligible Employee of their participation in the Scheme within 7 days of making an application with the Commissioner of Taxation (see attached Job Keeper Nomination Form in Schedule 2) and obtain their agreement to nominate them in the Scheme.
- F. The Job Keeper Scheme operates each fortnight from 30 March 2020 until 27 September 2020 (See Schedule 1). However, the Scheme may be cancelled, revoked, varied or terminated by later legislation.

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Section 1: Business Qualification Requirements

1. When does a business qualify for the Job Keeper Scheme?

A business will qualify for the Scheme if:

- (a) they carried on a business in Australia on 1 March 2020; and
- (b) before the end of each fortnight it satisfied the decline in turnover test.

Note: If your business is in liquidation or a provisional liquidator has been appointed to your company it will not qualify

2. What is the 'Decline in Turnover Test'?

For most businesses it is a 30% reduction in your GST turnover for each calendar month finishing after 30 March 2020 or quarter that starts after 1 April 2020 to the corresponding period in 2019. This means you could compare your GST Turnover for March 2020 against March 2019 and if the March 2020 GST Turnover has reduced 30% or more in comparison to the March 2019 GST Turnover then you have satisfied the turnover test.

Note: Once you have satisfied the test there is no requirement to retest in later months

If you do not qualify for the month of April 2020 you will have to undertake this turnover test at the end of each calendar month or quarter during the period of operation of the Scheme until you qualify for the scheme in a later period.

Note: Larger businesses (with an aggregated GST turnover of 1 billion or more) will need to show a shortfall of 50% or more.

Important Guidance Note – Contrived Arrangements

The legislation indicates that businesses that enter contrived arrangements with the sole or dominant purpose of reducing turnover in order to gain access to the Job Keeper payments will be subject of significant administrative and criminal penalties.

3. Is there an alternative test?

Yes, the Commissioner for Taxation has a discretion under the legislation to determine an alternative test. For example, a start-up business (less than 1 years operation) may be able to use an average of actual GST turnover in all the months prior to the turnover test period or a business that was affected by a drought in 2019 may be able to use a period in 2018 or 2017.

Section 2 - Eligible Employees

1. Who is an eligible Employee?

An eligible Employee is an employee of your business who:

- (a) was employed with your business on or at 1 March 2020 (note this will also cover a situation where a business was sold after 1 March 2020 and the employee has been employed by a different entity after 1 March 2020);
- (b) is 16 years of age or over on 1 March 2020;
- (c) is a full-time/part-time employee or long term casual employee employed on a regular and systematic basis for at least 12 months from 1 March 2020 (note service with a previous owner of the business will be counted);
- (d) is Australian citizen or permanent resident or a NZ citizen.

IMPORTANT GUIDANCE NOTE – TEMPORARY VISA EMPLOYEES

All temporary visa employees (student visa and subclass 457/482 visa employees) are not eligible for the Job Keeper Payment. Note that they will have access to up to \$10,000.00 of their superannuation this and next financial year if they can show they have been stood down or made redundant or working 20% or less hours as a result of the Covid-19 situation. We recommend that you get those employees to establish or go to their myGov account and register for this as soon as possible.

2. Are the eligible Employees required to provide you anything?

Yes. All eligible Employees should provide you with a 'nomination notice' stating that they have satisfied the requirements in Question 1 above and agrees to be nominated by the business as an eligible Employee for the purposes of the Job Keeper Scheme.

IMPORTANT GUIDANCE NOTE – CASUALS AND THE NOMINATION NOTICE

For long term casual employee's their nomination notice needs to state that they are not an employee of another entity.

The legislation indicates that there will be an approved form for this nomination notice, however there is none currently available at the time of drafting this manual, so we recommend that businesses use the one in Schedule 1 to this Manual.

Section 2 - Eligible Employees

3. Who is a long term casual Employee?

A long term casual Employee is an Employee who was employed with you at 1 March 2020 as a casual employee and was employed on a regular and systematic basis during the period of 12 months that ended on 1 March 2020.

IMPORTANT GUIDANCE NOTE – LONG TERM CASUALS

A casual Employee is likely to be employed on a regular and systematic basis where the Employee has a recurring work schedule or a reasonable expectation of ongoing work. Further casuals not employed between 1 March 2019 and 1 March 2020 cannot be eligible Employees.

4. What does the law say as to who is a casual employee?

The law in this area is not yet settled but currently indicate that the essence of casual employment is the “absence of a firm advance commitment as to the duration of the employee’s employment or the days (or hours) the employee will work”. That a casual employee is a person who is under no obligation to work, and in respect of whom the employer has no obligation to give work.

5. What is the meaning of regular and systematic in relation to a long-term casual?

The law in relation to this question is that for a casual to be employed on a “regular and systematic” basis the employee needs to be not simply working regularly, but also with a degree of frequency in accordance with some kind of system, method or plan.

6. Which Employees are excluded from being an eligible Employee?

The following Employees are not eligible Employees in any fortnight over the period of operation of the Scheme:

- (a) Employees who are in receipt of paid parental leave or paid dad or partner pay under the Paid Parental Leave Act 2010; or
- (b) Employees in receipt of worker’s compensation.

Section 2 - Eligible Employees

7. What happens if an Employee's employment was transferred from on the sale of the business or a corporate restructure after 1 March 2020 or in the case of a long term casual Employee at any time before or after 1 March 2020?

If an Employee's employment transferred due to sale of a business or to a corporate restructure (ie is transferred to another entity with a wholly owned group of companies) the Employee will be treated as being employed with the new entity at 1 March 2020 even though they were employed by a previous entity or in the case of a long term casual employee in working out the 12 month period of service you can count the service with the previous entity as part of that 12 month period.

Section 3 - Payment of the Job Keeper Wage Subsidy

1. Who needs to be satisfied for the Job Keeper Payment to be made?

[Please read section 9 (Enrolment)]

The Commissioner for Taxation will need to be satisfied your business qualifies and the employees nominated are eligible before any payments are made by them. The Commissioner will require you to complete and lodge a statement in an approved form indicating that the particular fortnightly period(s), the nominated eligible employees, and the amounts paid in those periods within 7 days of the end of each calendar month for them to assess whether to make the payment to your business.

IMPORTANT GUIDANCE NOTE – FIRST 2 FORTNIGHTLY PERIODS

Note that the first 2 Job Keeper fortnights (for 30 March 2020 until 26 April 2020) will not require this statement if you provide the Commissioner of Taxation an election to participate in the Scheme on or before 26 April 2020.

2. When will the Job Keeper Payments be made?

The Commissioner of Taxation is required to make the payments to your business no later than the later of:

- (a) 14 days after the end of the calendar month in which the fortnight ends; or
- (b) 14 days after the Commissioner of Taxation receives the statement referred to in Question 7 and is satisfied you are entitled to the payments under the Scheme.

IMPORTANT GUIDANCE NOTE – ATO MUST PROVIDE YOU NOTICE THEY ARE NOT SATISFIED YOU ARE ENTITLED TO JOB KEEPER PAYMENTS

If the Commissioner of Taxation is not satisfied your business is entitled to the Job Keeper amounts, then they are required to give you notice in writing as soon as practicable after their decision is made.

3. When does the Eligible Employee need to be paid?

An amount of least \$1,500.00 before tax needs to be paid to the eligible Employee each fortnight. This can be paid as a salary, wages, commission, bonus or allowance.

IMPORTANT GUIDANCE NOTE – MONTHLY OR OTHER PAY PERIODS

The legislation allows for the Job Keeper amount to be paid in a monthly period and for the ATO to assign the amounts to each fortnight within the calendar month. This means you can for April pay \$3,000 to the eligible Employee in the last week of the fortnight and still be in compliance with the rules. Note for the first 2 Job Keeper Fortnights you can pay the \$3,000 by the 30 April 2020.

Section 4 - Job Keeper Subsidy and Leave

1. Can the Job Keeper subsidy be paid as a leave entitlement?

Yes, if you have a written agreement with the eligible Employee you can pay this amount as annual leave, personal leave, compassionate leave or long service leave.

2. Can you require an employee to take annual leave?

If your business qualifies for the Job Keeper payment for an eligible Employee, you can request that employee to take annual leave, as long as the leave would not result in reducing the employee's annual leave balance to less than 2 weeks. The employee cannot unreasonably refuse this request. If the Employee does not agree to your request, you can apply to the Fair Work Commission to settle the dispute.

3. Can an employee take twice as much annual leave at half pay?

Yes. The legislation allows employers to agree with their employees to take twice as much annual leave at half the employee's rate of pay for a period.

4. What happens to Employees on parental leave?

Provided that an employee is not receiving paid parental leave or Dad and Partner pay and was employed as at 1 March 2020, they will be entitled to be nominated for the Scheme and paid the Job Keeper subsidy.

5. Can employee on unpaid leave receive the Job Keeper payment?

Yes.

6. What happens if an employee takes a period of annual leave whilst receiving the Job Keeper payment?

If an eligible Employee takes annual leave when they are receiving the Job Keeper payment can be used to pay for their annual leave entitlement.

What happens if the annual leave payment exceeds \$1,500?

If the payment that the employee is entitled to receive for annual leave exceeds the \$1,500 Job Keeper payment, you will need to pay the employee the full amount that they are entitled to for that period of annual leave. For example, the employee takes 10 days of annual leave and is entitled to be paid \$2,000 for that period of leave. You will need to pay the employee \$2,000, which will include the \$1,500 Job Keeper payment.

Section 4 - Job Keeper Subsidy and Leave

What happens if the annual leave payment is less than \$1,500?

If the payment that the employee is entitled to receive for annual leave is less than the \$1,500 Job Keeper payment, you will need to pay the employee the full \$1,500 Job Keeper payment. For example, the employee takes 2 days of annual leave and is entitled to be paid \$400 for that period of leave. If the employee is stood down for the remainder of the fortnight, you will need to pay the employee \$1,500, which will include the \$400 annual leave payment plus a 'top up' of \$1,100.

If the employee perform works for the remainder of the fortnight, you will need to pay the annual leave payment, plus the wages for those hours worked, plus any 'top up' payment required to ensure the employee receives a minimum of \$1,500 for that fortnight.

7. Does annual leave accrue whilst receiving Job Keeper payments?

All annual leave entitlements will continue to accrue for employees who are receiving Job Keeper payments, even if the employee has been stood down.

8. What if an employee is receiving workers compensation payments?

If an employee is receiving workers compensation payments and they are not working, they are not eligible for the Job Keeper payment. They will continue to receive any applicable workers compensation payments. If an employee is on workers compensation but is performing duties (even if these are light duties or for reduced hours), they are eligible for Job Keeper payments if they are an eligible employee.

Section 5 - Job Keeper Subsidy and Superannuation

1. When is superannuation payable on the Job Keeper Payments?

If an eligible Employee is working a business must pay superannuation for any hours worked by that Employee provided, they qualify for this payment (ie over \$450 per month or if under 18 years they must work more than 30 hours a week).

2. What if a working Employee's wage is less than the \$1,500 Job Keeper subsidy?

If an eligible employee is working and is entitled paid an employee \$1,000.00 for the work performed in a fortnight, but you instead paid them the \$1,500.00 Job Keeper subsidy then you are only required to pay superannuation on the \$1,000.00 and not the remaining \$500.00.

What if a working Employee's wage exceeds \$1,500 Job Keeper subsidy?

If an eligible employee is working and is entitled to be paid \$2,000.00 for their work performed in a fortnight, the Employee is required to pay superannuation on the \$2,000.00 regardless as to whether the employee is paid the \$1,500 Job Keeper subsidy or not.

3. Is superannuation payable if an employee is stood and not working but receiving the Job Keeper payment?

If an eligible Employee is not working (ie is either stood down or on unpaid leave) and is has been nominated by your business and is being paid the Job Keeper subsidy then you do not need to pay superannuation.

Section 6 - Job Keeper Subsidy and Stand Down

1. If an Employee has been stood down by a business are they entitled to the \$1,500 Job Keeper subsidy?

Any eligible Employees who have stood down on or after 1 March 2020 are entitled to the \$1,500 Job Keeper subsidy.

IMPORTANT GUIDANCE NOTE

STOOD DOWN EMPLOYEES WAGES HIGHER THAN JOB KEEPER SUBSIDY

A qualifying business is only required to pay \$1,500 per fortnight, before tax. It is your choice as to whether you want or need to 'top up' an Employee's pay to match their normal pay.

STOOD DOWN EMPLOYEES LOWER THAN THE JOB KEEPER SUBSIDY

A qualifying business must ensure that the stood down Employee receives a minimum of \$1,500.00 per fortnight before tax even if their usual pay was less than the Job Keeper subsidy.

2. What happens with the subsidy if one of my employee's has a second job, or takes up other work after being stood down?

An eligible Employee is only entitled to receive the Job keeper payment from one employer, their primary employer. To avoid any confusion or double payments to the employee, it is important to have every eligible Employee 'opt in' to receive the payment from you. See Schedule 3 – Nomination Form.

Section 7 - Job Keeper Enabling Stand Down Directions

1. What is a “Job Keeper enabling direction”?

If you are a qualifying business and in receipt of the Job Keeper wage subsidy the legislation permits you to unilaterally give eligible employees what is termed a “Job Keeper enabling directions” to vary certain terms of the employee’s employment, such as reducing their hours of work, duties and location of work, without the employee’s consent if the following conditions are met:

- the direction must be responsive to business changes attributable to COVID-19 or government initiatives to slow the transmission (e.g. government shut-downs of businesses)
- you can only give the direction if the employee cannot be usefully employed for their contract or guaranteed hours
- you can only give the direction to an eligible Employee (i.e. one who is receiving a Job Keeper payment)
- you must consult with the employee about the direction
- the direction must be reasonable in the circumstances
- the employee’s rate of pay cannot be reduced
- the Job Keeper payment must continue to be passed onto the employee
- the employee must be provided with at least three days’ notice of the intention to give the direction and
- the direction must be in writing

IMPORTANT GUIDANCE NOTE

REFUSAL TO FOLLOW A JOB KEEPER ENABLING DIRECTION

An eligible employee given an ‘Job Keeper Enabling Direction’ must comply with the direction, unless the direction is not reasonable in the circumstances. If the employee fails to comply with then you can make an application to the Fair Work Commission to deal with this dispute. The Fair Work Commission has the power to approve the direction, set it aside or provide an alternative Job Keeper Enabling Direction. Failure to comply with the Fair Work Commissions direction is a contravention of the Fair Work Act 2009 and the employee may be subject to a pecuniary penalty.

Section 7 - Job Keeper Enabling Stand Down Directions

2. Does an employee accrue entitlements when they are on a “Job Keeper enabling direction”?

Yes. If you have given an employee an enabling direction, they will continue to accrue entitlements (such as annual leave and personal leave). The period they are subject to the direction will also be counted as service for the purposes of termination and redundancy pay.

3. Can you dismissed someone for failing to follow a Job Keeper Enabling Direction?

There is, however, the possibility that the employee’s failure to comply with a lawful direction made under these provisions could be a breach of their contractual duty to comply with a lawful and reasonable direction. As such, even if non-compliance on the grounds of asserted unreasonableness would not have immediate statutory consequences for the employee, it may constitute a breach of the contract of employment potentially entitling the employer to summarily dismiss the employee.

Section 8 - Hourly Rates of Pay

1. Can an employee's hourly rate of pay be reduced?

You cannot reduce the employees pay below their statutory minimum rate in the relevant Award or enterprise agreement. However, you can do so if they are paid a rate above their Award or enterprise agreement provided that any such agreement is in writing and signed by both the employer and the employee.

IMPORTANT GUIDANCE NOTE

AWARD OR AGREEMENT FREE EMPLOYEES

An employer with any eligible employees who are not covered by an Award or enterprise agreement can by a written agreement (a variation agreement) signed by both the employer and the employee reduce that employees hours or rate of pay.

2. If an employee is working what do I need to pay them?

You need to continue to pay employees for any work they perform and if the employee is entitled to be paid more than \$1,500 per fortnight based on their award, enterprise agreement or contract of employment, you must continue to pay them that amount.

Section 9 - Enrolling for the Job Keeper Payment

1. Enrol for the Job Keeper payment (from 20 April onwards)

You or a registered tax professional can enrol for the Job Keeper payment

:

Step 1 – Register your interest at <https://www.ato.gov.au/Job-keeper-payment/>

Step 2 – Check you and your employees meet the eligibility requirements.

Step 3 – Continue to pay at least \$1,500 to each eligible employee per Job Keeper fortnight (the first Job Keeper fortnight is the period from 30 March to 12 April).

Step 4 – Notify your eligible employees that you are intending to claim the Job Keeper payment on their behalf and check they aren't claiming Job Keeper payment through another employer or have nominated through another business.

Step 5 – Send the Job Keeper Nomination Notice (see Schedule 1) to your nominated employees to complete and return to you by the end of April if you plan to claim Job Keeper payment for April. Keep it on file and provide a copy to your registered tax agent if you are using one.

Step 6 – From 20 April 2020, you can enrol with the ATO for the Job Keeper payment using the ATO Business Portal (ATO Business PortalExternal Link) and authenticate with myGovID (to obtain a myGovID download the app on a iPhone). You must do this by the end of April to claim Job Keeper payments for April.

Step 7 – In the online form, provide your bank details and indicate if you are claiming an entitlement based on business participation, for example if you are a sole trader.

Step 8 – Specify the estimated number of employees who will be eligible for the first Job Keeper fortnight (30 March – 12 April) and the second JobKeeper fortnight (13 April – 26 April).

2. Confirmation of eligible employees you will claim Job Keeper Payment for (available from 4 May 2020 onwards)

You or a registered tax agent can apply for the Job Keeper payment for your eligible employees:

Step 1 – Apply to claim the Job Keeper payment by logging in to the ATO Business PortalExternal Link

Step 2 – Ensure you have paid each eligible employee a minimum of \$1,500 per Job Keeper fortnight before tax.

Step 3 – Identify your eligible employees in the application form by:

- o selecting employee details that are prefilled from your STP pay reports if you report payroll information through an STP enabled payroll solution, or
- o manually entering employee details in ATO online services or the Business Portal if you do not use an STP enabled payroll solution, or
- o using a registered tax agent who will submit a report on your behalf through Online services for agents.

Step 4 – Submit the confirmation of your eligible employees online and wait for your confirmation email or SMS showing it has been received.

Section 9 - Enrolling for the Job Keeper Payment

Step 5 – Notify your eligible employees you have nominated them.

Step 6 – We will pay you the Job Keeper payment for all eligible employees after receiving your application.

Step 7 – Each month, you will need to reconfirm that your reported eligible employees have not changed through ATO online services, the Business Portal or via your registered tax agent. This will ensure you will continue to receive the JobKeeper payments from us. You do not need to retest your reported fall in turnover, but you will need to provide some information as to your current and projected turnover. This will be done in your monthly JobKeeper Declaration report.

Step 8 – If your eligible employees change or leave your employment, you will need to notify the ATO through your monthly Job Keeper Declaration report.

If you use the ATO Business Portal, you will need a myGovID linked to your ABN in relationship Authorisation Manager (RAM). You can find out how to set this up at ato.gov.au/mygovid

What do you need to do for your employees

You need to identify which employees you intend to claim the Job Keeper payment for and tell them you intend to claim the Job Keeper payment for them.

You need to provide these employees with the Job Keeper employee nomination notice and ask them to return it to you by the end of April if you want to claim Job Keeper payment for April.

If your employees have multiple employers, they can usually choose which employer they want to nominate through. However, if your employees are long-term casuals and have other permanent employment, they cannot nominate you. They cannot receive the Job Keeper payment from more than one employer.

If an employee is currently receiving an income support payment, they must notify Services Australia External Link of their new income to avoid incurring a debt that they will have to repay.

Schedule 1 - Job Keeper Fortnights

.Job Keeper fortnights are defined in section 6(5) of the Payment Rules. The relevant fortnights, for the purposes of the Job Keeper scheme, are:

Monday 30 March to Sunday 12 April Monday

13 April to Sunday 26 April

Monday 27 April to Sunday 10 May

Monday 11 May to Sunday 24 May

Monday 25 May to Sunday 7 June

Monday 8 June to Sunday 21 June

Monday 22 June to Sunday 5 July

Monday 6 July to Sunday 19 July

Monday 20 July to Sunday 2 August

Monday 3 August to Sunday 16 August

Monday 17 August to Sunday 30 August

Monday 31 August to Sunday 13 September

Monday 14 September to Sunday 27 September

Schedule 2 - Job Keeper Enabling Stand Down Direction

The Direction below should be provided no earlier than 3 days after you have had consultation with the Employee about the nature of the Direction. It is recommended that the Direction should have the following notice sent and signed by the Employee before formally issuing the Direction:

Notice of Intention to make a Job Keeper Enabling Stand Down Direction

This notice is to confirm that from [date 3 days after this notification] we intend to issue the attached Job Keeper Enabling Stand Down Direction (the Direction) to reduce your ordinary hours of work and duties [and change your location of work]. This will mean that your current Stand Down will cease and be replaced by the Direction.

We would ask that you call or email us to discuss any concerns you may have in relation to the attached Direction which is intended to take effect on [insert date of operation of Direction].

Additionally, we ask that you sign the acknowledgement below to confirm receipt of this notification and the Direction and that we have consulted you about the same.

Kind Regards

.....
Director

Confirmation of Receipt and Consultation

I of confirm that I have received this Notification and Direction and that I have been consulted about the Direction at least 3 days before its commencement.

.....
Employee Signature

Date:

JOB KEEPER ENABLING STAND DOWN DIRECTION

Date: [3 days after issue of Notice of Intention]

Employee: [Employee Name]

Employer: [Company name, ACN, and Trading Name]

A. Employer Requirements

The Employer confirms that they:

1. qualify for the Job Keeper Scheme as set out under the Coronavirus Economic Response Package (Payments and Benefits) Rules 2020;
2. cannot usefully employ the Employee for their normal days or hours during the Job Keeper Enabling Stand Down Period (**the Period**) because of changes to its business attributable to either the COVID-19 pandemic or government initiatives to slow the transmission of the COVID-19; and
3. consider that Job Keeper Enabling Stand Down Direction (**the Direction**) is safe having regard to (without limitation) the nature and spread of COVID-19.

B. The Job Keeper Enabling Stand Down Direction

1. The Employer directs the Employee to:

- (a) work [insert number of hours/days] per [week/fortnight] during the Period.

This direction is authorised in accordance with section 789GDC of the Fair Work Act 2009 (**the Act**);

- (b) perform the following duties during the Period: [Insert Duties]

Note: That duties must be within the Employee's skill and competency and safe having regard to the nature and spread of the Covid-19 and are reasonably within the scope of the Employer's business operations.

This direction is authorised in accordance with section 789 GE of the Act; and

- (c) perform duties during the Period at [Insert location of work]

Note: If the location is different from the Employee's normal place of work then that the place needs to be suitable for the Employee's duties, safe and does not require the Employee to travel a distance that is unreasonable in all the circumstances

This direction is authorised in accordance with section 789 GF of the Act.

C. Duration

This Direction continues until it is withdrawn or revoked by the Employer or it is replaced by a new direction given by the Employer to the Employee or it ceases to have effect at the start of 28 September 2020 (**the Period**).

Schedule 3 - Employee Nomination Form

Attached

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