

JobKeeper Payment – Final legislation

The government passed the JobKeeper Payment legislation on 8 April 2020.

ELIGIBLE EMPLOYERS

Employer Types that can apply for the subsidy are:

- Businesses (including companies, trusts, partnerships, sole traders)
- Not for Profits (including charities)
- Self-employed individuals
- A Sole trader, partnership, trust or company with one or more individuals actively engaged in the entity's business (but not as an employee) may be eligible in respect of **one** such person

Eligible employer's **GST turnover** for a **turnover test period** of at least a month must fall short of the entity's GST turnover for the corresponding period in 2019 by:

- 15% for certain charities
- 50% (if the aggregated turnover for the current year is likely to exceed \$1 billion, or exceeded \$1 billion for the previous income year)
- 30% for all other cases

GST turnover is limited to the employer entity's expected or actual turnover for GST purposes. GST grouping is disregarded.

Turnover test period refers to a calendar month that ends from March 2020 to September 2020 or a quarter that starts on 1 April 2020 or 1 July 2020. Businesses who believe that the comparison to a month or tax period a year ago is not a true measure of the turnover reduction caused by COVID-19, will need to rely on the Commissioner's discretion.

The entity must carry on business in Australia or be a non-profit body that pursued its objectives principally in Australia as of 1 March 2020.

ELIGIBLE EMPLOYEES

The person is employed by the employer at any time in the fortnight, and on 1 March 2020

- was at least 16 years old,
- an Australian resident for social security purposes or a tax resident subclass 444 visa holder, and
- was employed full time, part-time, or casually (a casual must have been with the employer for at least 12 months on a regular basis) and
- gives the employer the required notice (confirming their consent to be included).

Employees will not be eligible for a fortnight if the person receives:

- Parental pay from the government for a pay period that overlaps the fortnight
- Dad and partner pay in the fortnight, or
- Certain workers compensation payments in a period overlapping with the fortnight.

HOW WILL IT WORK?

- Employers **MUST** pay their eligible employees at least \$1,500 pre-tax for each JobKeeper fortnight for which it makes a claim (or equivalent for a monthly cycle)
- Where employees usually earn more than \$1,500 per fortnight, then the employer is expected to make up the gap.
- Employees who usually earn less than \$1,500 per fortnight still get the full amount.
- If you have stood down employees after 1 March 2020 and are no longer paying them, you must pay them \$1,500 by 12 April in order to receive the JobKeeper payment for them.
- The first JobKeeper fortnight ends on 12 April 2020 and this would be the first payment due date for some employers.
- **The government will pay the subsidy in arrears backdated to 30 March 2020** starting in May 2020 (only if employers have paid the eligible employees \$1,500 in the relevant fortnight).
- Employers should contact their banks if they need short term financial assistance to make these payments. If no payment is made in April (and subsequent months) to their eligible employees, no subsidy will be paid by the government to the employer.

HOW TO CLAIM AND WHEN

Employers are required to:

- **Register interest** in the JobKeeper payment on ATO website <https://www.ato.gov.au/general/gen/JobKeeper-payment/>
- **Notify the Commissioner** that it wants to participate (in the approved form) by **26 April 2020** if it wants to participate from the commencement of the scheme on 30 March 2020. Otherwise it must notify its participation before the end of the first JobKeeper fortnight for which it wants to participate.
- **Obtain a notification from each employee**, confirming the employee's consent to being included in the employer's JobKeeper application.
- **Provide details of eligible employees** for each fortnight to the ATO in the approved form. The ATO will use Single Touch payroll data to assist in this process by pre-population
- **Notify eligible employees** within 7 days of each fortnightly claim for the subsidy.
- **Report monthly** to the Commissioner **by the 7th of each month** on its GST turnover for the previous month, and its projected GST turnover for the coming month.

Tax Treatment of the payment

- Taxable income for the employee
- Employer must withhold PAYG withholding tax based on a gross fortnightly pay of \$1,500
- Super contributions are not required on the amount by which the JobKeeper payment exceeds the employee's actual wages for working in that fortnight. E.g. usual fortnightly wage is \$1,700 you must pay super on \$1,700. Usual fortnightly wage is \$800, you only pay super on \$800, not \$1,500

- States and Territories are yet to finalise their individual positions on the extent to which JobKeeper is taken into account for payroll tax and workers compensation insurance

Amendments to the Fair Work Act 2009

In summary, a number of different rights and obligations will apply if an employer qualifies for the JobKeeper scheme and receives JobKeeper payments in relation to an employee. This will allow more flexibility over the next 6 months, such that employees may stay on the books and qualify for JobKeeper, rather than being retrenched.