



# Extension of the JobKeeper Payment

The Government is extending the JobKeeper Payment by a further six months to March 2021. Support will be targeted to businesses and not-for-profits that continue to be significantly impacted by the Coronavirus. The payment rate will be reduced and a lower payment rate will be introduced for those who work fewer hours. Other eligibility rules remain unchanged.

## Summary

The JobKeeper Payment, which was originally due to run until 27 September 2020, will now continue to be available to **eligible businesses (including the self-employed)** and not-for-profits until 28 March 2021.

The payment rate of \$1,500 per fortnight for eligible employees and business participants will be reduced to **\$1,200 per fortnight from 28 September 2020** and to **\$1,000 per fortnight from 4 January 2021**. From 28 September 2020, **lower payment rates** will apply for employees and business participants that **worked fewer than 20 hours per week**.

From 28 September 2020, businesses and not-for-profits seeking to claim the JobKeeper Payment will be required to demonstrate that they have suffered an ongoing significant decline in **turnover using actual GST turnover (rather than projected GST turnover)**.

From 28 September 2020, businesses and not-for-profits will be required to reassess their eligibility with **reference to their actual GST turnover in the June and September quarters 2020**. They will need to demonstrate that they have met the relevant decline in turnover test in **both of those quarters to be eligible** for the JobKeeper Payment from 28 September 2020 to 3 January 2021.

From **4 January 2021**, businesses and not-for-profits will need to further reassess their turnover to be eligible for the JobKeeper Payment. They will need to demonstrate that they have met the relevant decline in turnover test with reference to their **actual GST turnover in each of the June, September and December quarters 2020** to remain eligible for the JobKeeper Payment from 4 January 2021 to 28 March 2021.

To be eligible for JobKeeper Payments under the extension, businesses and not-for-profits will still need to demonstrate that they have experienced a decline in turnover of:

- 50 per cent for those with an aggregated turnover of more than \$1 billion;
- **30 per cent for those with an aggregated turnover of \$1 billion or less; or**

- 15 per cent for Australian Charities and Not for profits Commission-registered charities (excluding schools and universities).

If a business or not-for-profit does not meet the additional turnover tests for the extension period, this **does not affect their eligibility prior to 28 September 2020**.

The JobKeeper Payment will continue to **remain open to new recipients**, provided they meet the existing eligibility requirements and the additional turnover tests during the extension period.

Other eligibility rules for businesses and not-for-profits and their employees remain unchanged. Further information on those rules is at: [www.ato.gov.au/General/JobKeeper-Payment/](http://www.ato.gov.au/General/JobKeeper-Payment/).

## The JobKeeper Payment rate

From **28 September 2020 to 3 January 2021**, the JobKeeper Payment rates will be:

- **\$1,200 per fortnight** for all eligible employees who, in the four weeks of pay periods before 1 March 2020, were working in the business or not-for-profit **for 20 hours or more** a week on average, and for eligible business participants who were actively engaged in the business for 20 hours or more per week on average in the month of February 2020; and
- **\$750 per fortnight for other eligible employees** and business participants.

From 4 January 2021 to 28 March 2021, the JobKeeper Payment rates will be:

- **\$1,000 per fortnight** for all eligible employees who, in the four weeks of pay periods before 1 March 2020, were working in the business or not-for-profit **for 20 hours** or more a week on average and for business participants who were actively engaged in the business for 20 hours or more per week on average in the month of February 2020; and
- **\$650 per fortnight** for other eligible employees and business participants.

Businesses and not-for-profits will be required to nominate which payment rate they are claiming for each of their eligible employees (or business participants).

The Commissioner of Taxation will have discretion to set out alternative tests where an employee's or business participant's hours were not usual during the February 2020 reference period. For example, this will include where the employee was on leave, volunteering during the bushfires, or not employed for all or part of February 2020.

Guidance will be provided by the ATO where the employee was paid in non-weekly or non-fortnightly pay periods and in other circumstances the general rules do not cover.

The JobKeeper Payment will continue to be made by the ATO **to employers in arrears**. Employers will continue to be required to make payments to employees equal to, or greater than, the amount of the JobKeeper Payment (before tax), based on the payment rate that applies to each employee. This is called the wage condition.

## Additional turnover tests

In order to be eligible for the JobKeeper Payment **after 27 September 2020**, businesses and not-for-profits will have to meet a further decline in turnover test for each of the two periods of

extension, as well as meeting the other existing eligibility requirements for the JobKeeper Payment.

In order to be eligible for the first JobKeeper Payment extension period of 28 September 2020 to 3 January 2021, businesses and not-for-profits will need to demonstrate that their actual GST turnover has significantly fallen in the both the June quarter 2020 (April, May and June) and the September quarter 2020 (July, August, September) relative to comparable periods (generally the corresponding quarters in 2019).

In order to be eligible for the second JobKeeper Payment extension period of 4 January 2021 to 28 March 2021, businesses and not-for-profits will again need to demonstrate that their actual GST turnover has significantly fallen in each of the June, September and December 2020 quarters relative to comparable periods (generally the corresponding quarters in 2019).

The Commissioner of Taxation will have discretion to set out alternative tests that would establish eligibility in specific circumstances where it is not appropriate to compare actual turnover in a quarter in 2020 with actual turnover in a quarter in 2019, in line with the Commissioner's existing discretion. Information about the existing discretion is at <https://www.ato.gov.au/General/JobKeeper-Payment/In-detail/JobKeeper-tests/Applying-the-turnover-test/?anchor=Alternativetest#Alternativetest>.

Businesses and not-for-profits will generally be able to assess eligibility based on details reported in the Business Activity Statement (BAS). Alternative arrangements will be put in place for businesses and not-for-profits that are not required to lodge a BAS (for example, if the entity is a member of a GST group).

As the deadline to lodge a BAS for the September quarter or month is in late October, and the December quarter (or month) BAS deadline is in late January for monthly lodgers or late February for quarterly lodgers, businesses and not-for-profits will need to assess their eligibility for JobKeeper in advance of the BAS deadline in order to meet the wage condition (which requires them to pay their eligible employees in advance of receiving the JobKeeper payment in arrears from the ATO). The Commissioner of Taxation will have discretion to extend the time an entity has to pay employees in order to meet the wage condition, so that entities have time to first confirm their eligibility for the JobKeeper Payment.

To be eligible for JobKeeper Payments under the extension, businesses and not-for-profits will need to demonstrate that they have experienced the following decline in turnover (which remains the same as existing rules):

- 50 per cent for those with an aggregated turnover of more than \$1 billion;
- 30 per cent for those with an aggregated turnover of \$1 billion or less; or
- 15 per cent for Australian Charities and Not-for-profits Commission-registered charities (excluding schools and universities).

Registered religious institutions responsible for religious practitioners will continue to be eligible to receive the JobKeeper Payment provided they meet existing eligibility requirements and the additional turnover tests during the extension period.

Further information for employers is at: [www.ato.gov.au/General/JobKeeper-Payment/Employers/](https://www.ato.gov.au/General/JobKeeper-Payment/Employers/).

## Employees

The **eligibility rules for employees remain unchanged**. This means you are eligible if you:

- are currently employed by an eligible employer (including if you were stood down or re-hired)
- 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; 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.
- 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).
- were either:
  - an Australian resident (within the meaning of the *Social Security Act 1991*); or
  - 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.
- 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*; or
  - a payment in accordance with Australian worker compensation law for an individual's total incapacity for work.

Only one employer can claim the JobKeeper Payment in respect of an employee.

**The self-employed will be eligible to receive the JobKeeper Payment where they meet the relevant turnover test, and are not a permanent employee of another employer.**

Employees will continue to receive the JobKeeper Payment through their employer during the period of the extension if they and their employer are eligible and their employer is claiming the JobKeeper Payment. However, the amount of the JobKeeper Payment will change at the rates set out above.

Further information for employees is at: [www.ato.gov.au/General/JobKeeper-Payment/Employees/](http://www.ato.gov.au/General/JobKeeper-Payment/Employees/).

## Retesting turnover under the JobKeeper extension

Carmen owns and runs the City Café. Carmen started claiming the JobKeeper Payment for her eligible staff and herself as a business participant when the JobKeeper Payment commenced on 30 March 2020. At the time, Carmen estimated that the projected GST turnover for City Café in April 2020 would be 70 per cent below its actual GST turnover in April 2019. To be eligible for the JobKeeper Payment from 30 March 2020 to 27 September 2020, Carmen needed to show the turnover for the City Café was estimated to decline by at least 30 per cent.

As a monthly BAS lodger, Carmen submitted her BAS for the City Café in April, May and June. For each of these, her actual turnover was as follows:

	2020	2019
April	20,000	200,000
May	50,000	200,000
June	<u>100,000</u>	<u>200,000</u>
Total for June quarter	170,000	600,000

**Decline for June quarter: 72 per cent**

From July to September, actual turnover improved as follows:

	2020	2019
July	110,000	200,000
August	140,000	200,000
September	<u>150,000</u>	<u>200,000</u>
Total for September quarter	400,000	600,000

**Decline for September quarter: 33 per cent**

The actual turnover decline for both the June and September 2020 quarters was still greater than 30 per cent, so City Café was eligible for the Jobkeeper Payment for the period of 28 September 2020 to 3 January 2021.

Business continued to improve for the City Café, and actual turnover for the December 2020 quarter was 20 per cent less than the December quarter 2019, so the City Cafe was no longer eligible to claim the JobKeeper for the second extension period starting from 4 January 2021.

## Working out the JobKeeper Payment rate to be claimed

In the scenario above, Carmen also needs to calculate how much to claim for each of her staff, and for herself as a business participant.

As Carmen was working full-time at the café herself throughout February 2020, she is entitled to claim \$1,200 per fortnight from 28 September 2020 to 3 January 2021, as an eligible business participant.

She has three full-time employees who are also eligible to be paid \$1,200 per fortnight because they each worked 20 hours or more per week throughout February 2020.

Carmen has an employee, Chris, who works part-time with different hours every other week: 14 hours one week; and 22 hours the next week. During the two pay fortnights prior to 1 March 2020, Chris was employed for 36 hours in each fortnight. On average, Chris worked less than 20 hours per week for City Café. Carmen is eligible to claim \$750 per fortnight for Chris, from 28 September 2020 to 3 January 2021.

Cathy is an eligible employee who worked on a long-term casual basis during February 2020. To determine what rate of JobKeeper Payment to claim for Cathy, Carmen looks at pay records for the two fortnightly pay periods before 1 March 2020. She sees that Cathy was employed on average less than 20 hours per week, so Carmen claims \$750 per fortnight for Cathy, from 28 September 2020 to 3 January 2021.

Carmen also started employing Charles from September 2020. Because Charles was not employed at City Café on 1 March 2020, Carmen cannot claim the JobKeeper Payment for Charles.

## Further Information

Further information about how the JobKeeper Payment works is available at [www.ato.gov.au/general/JobKeeper-Payment](http://www.ato.gov.au/general/JobKeeper-Payment).



# JobKeeper Payment

The Government has introduced a wage subsidy program to support employees and businesses. The JobKeeper Payment is designed to help businesses affected by the Coronavirus to cover the costs of their employees' wages, so that more employees can retain their job and continue to earn an income.

Keeping Australians in work and businesses in business will lay the foundations for a stronger economic recovery once the Coronavirus crisis passes.

On 21 July 2020, the Government announced that the JobKeeper Payment would be extended until 28 March 2021 with some changes to the eligibility criteria and payment amounts. Information about the extension is available in the 'Extension of the JobKeeper Payment' fact sheet on the [Treasury website](#). Further information about the JobKeeper Payment is also available at: <https://www.ato.gov.au/general/JobKeeper-Payment/>.

## JOBKEEPER PAYMENT

### Summary

The economic impacts of the Coronavirus pose significant challenges for many businesses — many of which are struggling to retain their employees.

Under the JobKeeper Payment, businesses and not-for-profits significantly impacted by the Coronavirus outbreak are able to access a wage subsidy from the Government to continue paying their employees. This assistance is helping businesses to keep people in their jobs and re-start when the crisis is over. For employees, this means they can keep their job and earn an income.

The JobKeeper Payment is a temporary scheme open to businesses impacted by the Coronavirus. The JobKeeper Payment will also be available to the self-employed.

The Government will provide \$1,500 per fortnight per employee until 27 September 2020.

The JobKeeper Payment will support employers to maintain their connection to their employees. These connections will enable business to reactivate their operations quickly — without having to rehire staff — when the crisis is over.

### Eligibility

Employers (including not-for-profits) are eligible for the subsidy if, at the time of applying:

- their business has an aggregated turnover of \$1 billion or less (for income tax purposes<sup>1</sup>) and they estimate their turnover has fallen or will likely fall by 30 per cent or more; or
- their business has an annual turnover of more than \$1 billion (for income tax purposes) and they estimate their turnover has fallen or will likely fall by 50 per cent or more; and
- their business is not subject to the Major Bank Levy.

**Self-employed individuals are eligible to receive the JobKeeper Payment where they meet the relevant turnover test outlined above, and are not a permanent employee of another employer.** Registered religious organisations, that meet the turnover test, will be able to receive the JobKeeper Payment for each eligible

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1 Aggregated turnover is an entity's annual turnover from carrying on a business plus the annual turnover from carrying on a business of any business or individual connected with or affiliated with the entity.

religious practitioner (with the exception of those that are students only) for which they are responsible under the tax law.

For charities registered with the Australian Charities and Not-for-profits Commission (ACNC), they are eligible for the subsidy if they estimate their turnover has or will likely fall by 15 per cent or more relative to a comparable period. This lower turnover decline test does not apply to universities and non-government schools that are registered charities, who will remain subject to the turnover decline tests set out above for other not-for-profits and businesses.

The Australian Government and its agencies, State and Territory governments and their agencies, foreign governments and their agencies, local governments and wholly-owned corporations of these bodies are not eligible for the JobKeeper payment.

To establish that a business or not-for-profit has faced or is likely to face the relevant fall in turnover, most would be expected to establish that their turnover has or will likely fall in the relevant month or quarter (depending on their Business Activity Statement reporting period) relative to their turnover in a corresponding period a year earlier. Table A universities will need to meet the turnover decline test by comparing their projected turnover for the six month period of January to June 2020 with turnover for January to June 2019.

Turnover is calculated as it is for GST purposes, and is reported on Business Activity Statements. It includes all taxable supplies and all GST free supplies but not input taxed supplies. For registered charities, they may also include donations they have received or are likely to receive in their turnover for the purpose of determining if they have been adversely affected. Charities other than schools and universities can also elect to exclude government revenue from the turnover test. The core Commonwealth Government financial assistance provided to universities must be included in the turnover test for these entities.

Where a business or not-for-profit was not in operation a year earlier, or where their turnover a year earlier was not representative of their usual or average turnover (for example, because there was a large interim acquisition, they were newly established, were scaling up, or their turnover is typically highly variable), the Tax Commissioner will have discretion to consider additional information that the business or not-for-profit can provide to establish that they have been adversely affected by the impacts of the Coronavirus. Businesses that are in liquidation are not eligible for this payment.

The Tax Commissioner will also have discretion to set out alternative tests that would establish eligibility in specific circumstances (for example, eligibility may be established as soon as a business ceases or significantly curtails its operations). There will be some tolerance where employers, in good faith, estimate a 30 per cent or more or 50 per cent or more fall in turnover but actually experience a slightly smaller fall.

If a business has an aggregated turnover of more than \$1 billion (for income tax purposes), the 50 per cent or more GST turnover test will apply to each business connected with or affiliated with that business. If the business has an aggregated turnover of \$1 billion or less, the 30 per cent or more GST turnover test is applied to each business connected with or affiliated with that business. Individual businesses within a corporate group may be eligible for the JobKeeper Payment while other businesses in the group may not be eligible.

An alternate decline in turnover test will apply to special purpose employment entities. In circumstances where an employment entity is utilised within a group of companies, and that employment entity is unable to demonstrate a decline in its own turnover because, for example, it has had its full year of staffing fees paid in advance, the employment entity will be able to refer to the decline in turnover of the operating entities it services. This will provide for eligibility of special purpose service entities that provide employee labour to group members and that have not met the basic test for decline in turnover.

Employers must elect to participate in the scheme. They will need to make an application to the Australian Taxation Office (ATO) and provide supporting information demonstrating a downturn in their business.

Eligible employers will receive the payment for each eligible employee that was on their books on 1 March 2020 and continues to be engaged by that employer — including full-time, part-time, long-term casuals and stood down employees. Casual employees eligible for the JobKeeper Payment are those

employees who have been with their employer on a regular and systematic basis for at least the previous 12 months as at 1 March 2020. To be eligible, an employee must be an Australian citizen, the holder of a permanent visa, or a Special Category (Subclass 444) Visa Holder as at 1 March 2020. The employee must also be a resident for Australian tax purposes on 1 March 2020. Employees must be a permanent employee of the employer or, if a long-term casual employee, not a permanent employee of any other employer.

Employees receiving Parental Leave Pay from Services Australia are not eligible for the JobKeeper Payment. However, employees on parental leave from their employer will be eligible. Employees receiving workers compensation will be eligible for the JobKeeper Payment if they are working, for example on reduced hours, but will generally not be eligible if they are not working. Employees 18 years or older at 1 March 2020 are eligible for the JobKeeper Payment. 16 and 17 years olds may also qualify for fortnights before 11 May 2020 and may continue to qualify if they are not undertaking full time study or are independent. From 20 July 2020, employees of a Child Care Subsidy approved service under Family Assistance Law and sole traders operating a child care service will not be eligible for the JobKeeper payment. In addition, for organisations providing child care and other services, an employee whose duties relate principally to the delivery of Child Care Subsidy supported child care will not be eligible for the JobKeeper Payment from that date. From 13 July 2020, the Child Care Subsidy will resume to support families to access affordable child care and the Government will pay child care services an additional Transition Payment of \$708 million to replace the JobKeeper Payment.

Where a charity has employees that are fully funded from government revenue and the charity meets the turnover decline test by excluding that revenue, the charity may choose not to nominate those employees.

Eligible employers who have stood down their employees before the commencement of this scheme will be able to participate. Employees that are re-engaged by a business that was their employer on 1 March 2020 will be eligible.

Where an employee is accessing support through Services Australia and the employer will be eligible for the JobKeeper Payment, the employee should advise Services Australia of their change in circumstances online at [my.gov.au](https://my.gov.au) or by telephone to avoid incurring a debt that will be required to be repaid.

### Payment process

Eligible employers will be paid \$1,500 per fortnight per eligible employee. Eligible employees will receive, at a minimum, \$1,500 per fortnight, before tax, and employers are able to top-up the payment.

Where employers participate in the scheme, their employees will receive this payment as follows.

- If an employee receives \$1,500 or more in income per fortnight before tax, they will continue to receive their regular income according to their prevailing workplace arrangements. The JobKeeper Payment will assist their employer to continue operating by subsidising all or part of the income of their employee.
- If an employee would otherwise receive less than \$1,500 in income per fortnight before tax, their employer must pay their employee, at a minimum, \$1,500 per fortnight before tax.
- If an employee has been stood down, their employer must pay their employee, at a minimum, \$1,500 per fortnight before tax.

No superannuation guarantee payments are required to be paid on any additional payment made because of the JobKeeper Payment.

Payments will be made to the employer monthly in arrears by the ATO.

### Timing

The subsidy started on 30 March 2020, with the first payments received by employers in the first week of May.

### **Self-employed**

Melissa is a sole trader running a florist. She does not have employees. Melissa's business has been in operation for several years. The Coronavirus has adversely affected Melissa's business, and she expects that her business turnover will fall by more than 30 per cent compared to a typical month in 2019.

Melissa will be able to apply for the JobKeeper Payment and is able to receive \$1,500 per fortnight before tax, paid on a monthly basis.

### **Worker with multiple jobs**

Michelle currently works two permanent part-time jobs, earning \$1,000 a fortnight at an art gallery during weekdays, and \$1,000 a fortnight at the local café on the weekend. The gallery has recently closed and Michelle has been stood down without pay under the Fair Work Act. Michelle continues to work at the café delivering take-away orders.

Michelle can only receive the JobKeeper Payment from the employer she nominates as her primary employer. As Michelle only claims the tax free threshold from her job at the art gallery, this will be treated as her nomination of the art gallery as her primary employer.

The art gallery is eligible for the JobKeeper Payment. The art gallery will pass the JobKeeper Payment on to Michelle, so she will receive \$1,500 per fortnight before tax. During the application process, the art gallery will notify the ATO that Michelle receives the payment from them. The art gallery is also required to advise Michelle that she has been nominated to the ATO as an eligible employee to receive the payment.

The café is not eligible to receive the JobKeeper Payment for Michelle. The \$1,000 a fortnight that Michelle receives from her job at the café does not change her entitlement to the JobKeeper Payment she receives from the art gallery.

### **Employee made redundant after 1 March and later rehired by same business**

Miles worked as a permanent part-time personal trainer at a gym for six months earning \$1,200 a fortnight and was made redundant on 20 March 2020.

In response to the announcement of the JobKeeper Payment, the gym re-engages Miles so they are well placed to resume their operations once the Coronavirus restrictions are lifted.

Under the JobKeeper Payment he will receive \$1,500 a fortnight before tax. Miles will need to advise Services Australia of his income so that he does not incur a debt that he will then need to repay. He is no longer eligible for the JobSeeker Payment and the Coronavirus Supplement from Services Australia as a result of receiving the JobKeeper Payment.

### **Employer with 5 employees who all currently get paid more than \$1,500 per fortnight**

Sara runs a landscaping company, and employs five full-time gardeners. Sara is paying her employees \$1,700 per fortnight before tax. She expects that her turnover will decline by more than 30 per cent over the coming months and that she will either need to lay staff off, or reduce their hours significantly.

As a result of the JobKeeper Payment, Sara is able to keep employing every gardener at \$1,700 per fortnight, with the JobKeeper Payment subsidising these wage costs by \$1,500 per fortnight.



# JobKeeper Payment: Changes to the Fair Work Act

The Government has amended the Fair Work Act to enable employers who qualify for, and are entitled to, the JobKeeper Payment to temporarily vary work arrangements for eligible employees in order to keep people employed.

On 21 July 2020, the Government announced that the JobKeeper Payment would be extended until 28 March 2021 with some changes to the eligibility criteria and payment amounts. Information about the extension is available in the 'Extension of the JobKeeper Payment' fact sheet on the [Treasury website](#). Further information about the JobKeeper Payment is also available at: <https://www.ato.gov.au/general/JobKeeper-Payment/>.

## OVERVIEW

The Government has amended the Fair Work Act to enable employers who are entitled to receive the JobKeeper payment to temporarily vary working arrangements for eligible employees in order to keep people employed. The amendments to the Fair Work Act will only apply to national system employers who receive JobKeeper payments and can only be used for employees to whom those payments relate. There are strong protections for employees from employer misuse of these provisions. These amendments cease entirely on 28 September 2020.

## VARIATION TO WORK ARRANGEMENTS

### JobKeeper Enabling Directions

#### *Jobkeeper Enabling Stand Down Direction*

If an employee cannot be usefully employed for their normal days or hours because of changes to business attributable to Coronavirus (and associated government initiatives), an employer may make a JobKeeper Enabling Stand Down Direction (Stand Down JED) which directs an employee to:

- not work on particular days they would ordinarily work; or
- work for a lesser period than they would ordinarily work on particular days; or
- work a reduced number of hours (including nil hours).

Employees do not have to comply with a Stand Down JED if it is unreasonable in all the circumstances.

Employees subject to a Stand Down JED may ask to engage in reasonable secondary employment, training or professional development. Employers must consider and must not unreasonably refuse these requests.

#### *Other Jobkeeper Enabling Direction*

If an employer reasonably believes it is necessary to continue the employment of one or more employees, the employer can also give a JobKeeper Enabling Direction (JED) which directs an employee to:

- perform any duties within their skill and competency (provided that the duties are safe, reasonably within the scope of the employer's business operations and the employee is competent and licenced to perform those duties); or
- work somewhere other than their usual place of work (including their home) (provided that the location is suitable for the employee's duties, does not require the employee to travel an unreasonable distance and performance of the employees' duties at the place is both safe and reasonably within the scope of the employer's business operations).

Employees do not have to comply with either of these types of JED if it is unreasonable in all the circumstances.

### Obligations on Employers

An employer must:

- not misuse a JED;
- consult employees at least 3 days' prior to the JED being given (unless a shorter period is genuinely agreed to by the employees); and
- provide the JED in writing.

### Timing and Effect on Service

An authorised JED will remain in effect until revoked or replaced by the employer, or until the provisions cease completely on 28 September 2020.

A period to which a JED applies counts as service for all purposes, including where a Stand Down JED has reduced an employee's hours to zero.

### Agreements to vary days of work and annual leave

Employers receiving the JobKeeper Payment can also request that an eligible employee:

- work on different days and times to their ordinary days or hours of work (provided performance of the employees' duties on those days or at those times is safe and reasonably within the scope of the employer's business operations); or
- take annual leave at full pay (provided the employee will have at least 2 weeks of annual leave remaining).

An employee must consider such requests from their employer, and must not unreasonably refuse the request. This means that an employee cannot be forced to take annual leave or work on different days or at different times.

Employers and employees may also agree to the employee taking annual leave at half pay for twice the time.

### Rates of pay

Employers receiving the JobKeeper Payment must ensure that employees receive at least that amount per fortnight (before tax). An employee's hourly rate of pay cannot be reduced by a JED. If an employee has been given a JED changing their duties of work, and the new duties would ordinarily attract a higher rate of pay, the employee must be paid that higher rate of pay. Employees must also continue to be paid any applicable penalty rate or other allowance that applies to the hours they work.

If an employee worked enough so that they are entitled to more than the JobKeeper Payment per fortnight (before tax), including any applicable penalty rates, allowances, loadings or leave payments, the employer must pay them the full amount.

## DISPUTES

An employee, an employer, an employee organisation or an employer organisation can make an application to the Fair Work Commission (FWC) in relation to a dispute about these new provisions. The FWC may mediate, conciliate or arbitrate the dispute, and can make any order it considers appropriate, including upholding, setting aside, or varying a JED, or making any other order it considers appropriate.

## EMPLOYEE PROTECTIONS

The temporary changes to the Fair Work Act do not remove or diminish existing protections under the Fair Work Act from unfair dismissal or discrimination, and maintains the full operation of the general protections and employees' right to be represented by a union in the workplace.

While a JED or agreement under the new provisions can temporarily override an award, enterprise agreement or contract of employment, it is limited to the content of the JED or agreement, and all other requirements under awards, agreements or contracts continue to apply unaffected. When a JED or agreement ceases, the employee's terms of employment revert back to being entirely set by the relevant award, agreement or contract in the same way it was before the JED was given or agreement made.

## PENALTIES

Serious penalties of up to 600 penalty units for an individual (\$126,000) and 3,000 for a body corporate (\$630,000) will apply to employers who seek to misuse the temporary amendments to the Fair Work Act. Serious penalties of up to the same amount can also apply to employers who:

- fail to pass on the JobKeeper payment to an employee who is entitled to the payment; or
- fail to pay an employee whatever the employee is entitled to receive for work actually performed; or
- request an employee spend or pay a portion of their JobKeeper payment in an unreasonable way (such as giving the payment, or a portion of it, to the employer).

The Minister also has the power to exclude employers from using the provisions – meaning that employers found to be misusing the system could be prevented from making any JEDs.

## MORE INFORMATION

To find out more about the temporary changes to the Fair Work Act, you can visit the FWO's website at [www.fairwork.gov.au](http://www.fairwork.gov.au) or call on 13 13 94. To find out more about the FWC's dispute resolution powers, you can visit [www.fwc.gov.au](http://www.fwc.gov.au), or call the FWC on 1300 799 675.