

# Worker rights under the JobKeeper Scheme

## What is JobKeeper?

The Federal Government's JobKeeper Scheme gives qualifying employers fortnightly payments per eligible employee, on the condition that they pass the payment on to each eligible employee. JobKeeper was scheduled to finish on 28 September 2020 but has now been extended to 28 March 2021. The payments differ depending on the hours worked by the employee and decrease over time. The payments are outlined in the table below.

Hours worked on average per week in February 2020	Current	From 28 September 2020	From 4 January 2021	From 28 March 2021
20+	\$1,500	\$1,200	\$1,000	\$0
Less than 20	\$1,500	\$750	\$650	\$0

It is designed to help employers deal with the economic impact of COVID-19 and to keep workers employed.

## Which employers qualify?

Most employers will qualify where they can show a:

- 30% fall in turnover (for businesses with turnover of \$1 billion or less)
- 50% fall in turnover (for businesses with turnover of more than \$1 billion), or
- 15% fall in turnover (for ACNC-registered charities other than universities and schools)

Banks, state, federal and local governments (and government-owned corporations) are not eligible for JobKeeper.

## When will an employer be entitled to JobKeeper payments?

To be eligible for JobKeeper payments in a relevant fortnight, your employer must:

- qualify for the scheme
- have eligible employees
- have satisfied the 'wage condition' for the fortnight i.e. paid you at least the full JobKeeper payment upfront for that fortnight (or more depending on your pay). For example, before 28 September 2020, the full \$1,500.
- have notified the government they intend to participate

among other things.

## Which employees are eligible?

To be eligible for a JobKeeper payment, an employee must be:

- employed as at 1 July 2020 (does not apply to people who have been sacked or made redundant and have not been re-employed)
- over 16 (except for full time students who are 17 years or younger who are not financially independent)
- not a casual employee, unless they have been employed for over 12 months on a regular and systematic basis
- an Australian resident within the meaning of the *Social Security Act 1991* or hold certain limited types of visa

among other things.

## How much of the JobKeeper payment will I receive?

If your employer qualifies for JobKeeper and is entitled to payments, your employer should pass on the full payment to you.

If you are still working and are owed a greater amount for the work you have done, you are entitled to the payment and should be 'topped-up' by your employer the other money that is owed.

For example, if you normally earn \$2,500 a fortnight, your employer qualifies for and is entitled to JobKeeper, you are eligible and you continue to perform your normal hours of work, you should receive the \$1,500 plus a 'top-up' of \$1,000 for work done before 28 September 2020.

For further information, contact us today:

 **1800 810 812**  
 **mauriceblackburn.com.au**

Maurice  
Blackburn  
Lawyers  
Since 1919

**WE  
FIGHT  
FOR  
FAIR®**

**CFMEU**  
VICTORIA

## ‘JobKeeper Enabling Directions’

Temporary changes have been made to the *Fair Work Act 2009* (Cth) (FW Act), that allow employers who qualify for the JobKeeper scheme and who are (or within the relevant fortnight, become) entitled to payments, to:

- direct you to stand down (i.e. not work)
- direct you to change duties
- direct you to change the location of your work (for example, to work at home).

Any of these directions must be:

- reasonable in all the circumstances
- your employer must comply with any requirements to provide notice or consult, and
- the direction must be in writing.

If you are issued with such direction, call your union.

## ‘Flexibility Agreements’

The changes to the FW Act, also allow an employer and employee, where the employer qualifies for the JobKeeper scheme and who is (or within the relevant fortnight, becomes) entitled to payments, to enter into ‘flexibility agreements’:

- changing the days or times when the employee is to perform work, or
- allowing an employee to take annual leave at half pay.

Employees must consider and not unreasonably refuse a flexibility agreement to change days or times BUT always speak to your union first before agreeing to such an arrangement.

## Requests to take annual leave

The changes to the FW Act provide that an employer who qualifies for JobKeeper and is entitled to payments may ask an employee to take annual leave provided that complying would not reduce your leave balance to less than 2 weeks’ paid annual leave.

You are required to consider and not unreasonably refuse such a request.

## All Employees Covered

If an employer elects to participate in the scheme and their eligible employees have agreed to be nominated, the employer must ensure all eligible employees are covered by their participation in the scheme. The employer cannot pick and choose who can participate.

## Can I dispute a JobKeeper enabling direction?

Yes, you can bring a dispute in the Fair Work Commission if you are told to stand down, change duties or change your location of work under these laws. You may also have other legal options.

## If I was recently sacked or made redundant, can I be rehired and get JobKeeper?

Yes. Employers can re-hire employees who have already been sacked and these employees may be eligible for JobKeeper payments, if they were previously employed as at 1 March 2020.

## If my employer stands me down or I agree to take a period of annual leave under these laws will I still accrue leave and my service continue?

Yes. You will continue to accrue leave entitlements and your service recognised as though the direction had not been given or the agreement had not been made.

## If my employer gives a stand-down direction will I still receive the JobKeeper payment?

Yes. The payment must be passed onto the employee.

## Are there any limits on the alternative duties I can be asked to perform?

Yes, a change in duties must be:

- within your skill and competency
- safe, having regard to the nature and spread of COVID-19
- where the duty requires you to have a license or qualification you should have the relevant license or qualification, and
- reasonably within the scope of your employers business.

Your employer must also hold a reasonable belief that the direction is necessary for your continued employment or the continued employment of other employees.

For further information, contact us today:

 **1800 810 812**  
 **mauriceblackburn.com.au**

Maurice  
Blackburn  
Lawyers  
Since 1919

**WE  
FIGHT  
FOR  
FAIR®**

**CFMEU**  
VICTORIA

## Workplace laws still apply

Unfair dismissal, general protections and anti-discrimination laws all continue to apply.

So your employer cannot, for example, select who receives a JobKeeper payment on a discriminatory basis i.e. on the basis of age or disability.

## Are there limits on where I can be told to work from?

Yes. Your employer should ensure that the location is suitable to perform your duties. If the place is not your home, it must:

- not require you to travel a distance that is unreasonable in all the circumstances, including the circumstances surrounding the COVID-19 pandemic;
- be safe having regard to the nature and spread of COVID-19; and
- the performance of the duties must reasonably be within the scope of your employers business operation.

## Can I still take paid annual leave or sick leave with my employer's agreement, rather than being stood down under these laws?

Yes. A JobKeeper stand down won't apply while you are on paid or unpaid leave authorised by your employer.

## If I earn less than the JobKeeper payment a fortnight, do I still get the full payment?

Yes. You are entitled to the full payment. For example, before 28 September 2020, even if you do not earn \$1,500 a fortnight your employer should pay you \$1,500 a fortnight.

**Remember - your union should be your first call if there is an issue at work.**



Information correct as at August 2020

For further information, contact us today:

 **1800 810 812**

 **[mauriceblackburn.com.au](http://mauriceblackburn.com.au)**

Maurice  
Blackburn  
Lawyers  
Since 1919

**WE  
FIGHT  
FOR  
FAIR®**

**CFMEU**  
VICTORIA