



JobKeeper: The Rules are here

Webinar Friday 17 April 2020

A. Simplified Outline

The Jobkeeper payment is intended to assist businesses affected by the Coronavirus to cover the costs of wages of their employees. Will also apply to Sole Traders, Partnerships and Trusts.

A business that has suffered a substantial decline in turnover can be entitled to a Jobkeeper payment.

B. Entitlement based on paid employees

An employer is entitled to a Jobkeeper payment for an individual for a fortnight if they meet all of the following conditions:

- (1) The fortnight is a **Jobkeeper fortnight**, and
- (2) The employer **qualifies** for the Jobkeeper scheme at or before the end of the fortnight,
- (3) The payment is for a person, who is an **eligible employee** of the employer,
- (4) Has satisfied the **wage conditions** by making payments to the eligible employee, and
- (5) The employer has **notified** the Australian Taxation Office (ATO) of a range of matters.

(AJV – as you will see, each of those five conditions have many, many more conditions attached).

B(1) Meaning of a Jobkeeper fortnight

A JobKeeper fortnight is the fortnight beginning on 30 March 2020 and each subsequent fortnight ending with the fortnight ending on 27 September 2020. It's a temporary measure for up to 26 weeks, ie 13 fortnights.

Your current pay cycles are not relevant. The ATO will reimburse employers based on the above fortnights, details later in the paper.

B(2) How does an employer qualify for the JobKeeper scheme?

An employer will qualify for the scheme for a particular fortnight if:

- (a) On 1 March 2020 it **carried on a business** in Australia or was a non-profit body pursuing its objectives principally in Australia, and
- (b) Before the end of the fortnight, it met the **decline in turnover test**, and
- (c) None of the following entities – banks, government body of a particular kind, or a wholly owned entity of such a body or in liquidation or bankrupt.

B(2a) Carrying on a Business

There are some integrity rules that outline the employer must satisfy **all** of the following:

- (i) Must have been running a business on 1 March 2020, and
- (ii) Must have had an Australian Business Number (ABN), and
- (iii) Must have lodged their June 2019 income tax return before 12 March 2020 OR
Lodged a post 01 July **2018** Business Activity Statement (BAS) before 12 March 2020 OR
Made a taxable supply between 01 July 2018 and 12 March 2020 (this applies for newly established businesses, or for those not registered for the Goods and Services Tax (GST).

(AJV – statement of fact, no backdating!).

*****EDIT – during the webinar I said this date as 01 July 2019, it should be 01 July 2018.**

B(2b) Decline in Turnover Test

There are two tests, a basic test and an alternative test.

An employer satisfies the basic decline in turnover test if the entity's actual or projected GST turnover falls short of the GST turnover for a relevant comparison period (the comparison turnover), and the shortfall expressed as a percentage equals or exceeds the specified percentage.

The specified percentages are:

- (i) Charities - 15%
- (ii) Employers with a turnover of greater than \$1bn per annum – 50%, or
- (ii) All others – 30%.

The comparison turnover periods are:

Compare turnover in this period:	To the turnover in this period:
March 2020	March 2019
April 2020	April 2019
May 2020	May 2019
June 2020	June 2019
July 2020	July 2019
August 2020	August 2019
September 2020 OR April to June 2020	September 2019 OR April to June 2019
July to September 2020	July to September 2019

You can use this table **regardless** of if you lodge your BAS's monthly or quarterly.

If your pay cycle fell between 30 March 2020 to 13 April 2020, ie the first fortnight, you could have used an estimate of the turnover of the month of April. In all other circumstances, you will need to use actuals.

Example from the Rules (edited): Patrick Enterprises assesses its eligibility for Jobkeeper payments on 6 April 2020 based on a projected GST turnover for April 2020 of \$6 million. It considers that the comparable period is the month of April 2019 for which it had a current GST turnover of \$10 million. The April 2020 turnover falls short of the April 2019 turnover by \$4 million, which is 40% of the April 2019 turnover. This exceeds the specified percentage, so the decline in turnover test is satisfied.

The decline in turnover test needs to be satisfied **once** in the above table to be eligible for the JobKeeper payment. **Once this occurs, there is no requirement to retest in later months.** If an entity does not qualify in one month because its turnover has not been sufficiently affected, it can test in later months to determine if the test is met. This allows entities that only become affected part way through the six-month period of operation of the JobKeeper scheme to continue to monitor for any decline in turnover until they qualify for the scheme in a later period.

The Grouping requirements only assess the specified percentages above. Once you register, it's per entity, ie per ABN. In addition, if you say run three separate businesses under the one ABN, you need to aggregate turnover for that one ABN.

Finally, the ATO have warned against contrived arrangements to 'forcibly' reduce turnover to achieve the reduction needed to qualify for the Jobkeeper payment.

Some examples:

1. An employer has a drop in turnover in April 2020 compared to April 2019. Assuming all other criteria is met, that employer will receive Jobkeeper from the fortnight beginning 30 March 2020 for the full 26 weeks even if turnover returns to normal in May through to September 2020.
2. An employer has a drop in turnover in July 2020 compared to July 2019. Assuming all other criteria is met, that employer will receive Jobkeeper from July 2020 to September 2020.

The alternative decline in turnover test applies if there is **not an appropriate relevant comparison** period in 2019. This might be the case for the following:

- (i) A new business, started for example in January 2020 or
- (ii) A business that made a major business acquisition in 2020.
- (iii) A business that may have suffered a drought 12 months earlier, etc.

In the above examples, the basic test may not accurately reflect the downturn in activity that the business has suffered.

Where the Commissioner is satisfied that there is no such period in 2019 or it is not an appropriate relevant comparison period, the Commissioner may, by legislative instrument, determine an alternative decline in turnover test applies to a class of entities.

(AJV – what is a legislative instrument? A private ruling determination?)

***** BREAKING NEWS – On Friday Afternoon, the ATO confirmed you can choose Cash or Accrual. This is a sensible outcome for many small businesses who have been lodging BAS's on a Cash basis. *****

B(3) Who is an eligible employee?

An employee is an eligible employee if on 1 March 2020:

- (i) The person was aged 16 years or over, and
- (ii) The person was an employee including a long-term casual employee of the employer (A long-term casual employee is defined as a person who has been employed by the employer on a regular and systematic basis during the previous 12 months, ie April 2019 to March 2020. Employees also include employees that have been stood down but not terminated, and include employees who were terminated, but reemployed to receive the Jobkeeper payment), and
- (iii) The person was an Australian resident or the holder of a Subclass 444 (Special Category) visa.
- (iv) The person is not excluded from being an eligible employee.

The exclusions relate to recipients of the government's parental leave pay and dad and partner pay, recipients of workers' compensation and short term casual employees of the employer, ie less than 12 months. .

Note that if an employee comes off paid parental leave, they qualify as do employees on workers compensation that have some capacity to work.

<Break for questions on material covered so far>

B(4) Satisfying the Wage Condition

The wage condition requires that an employer pay each participating employee **at least \$1,500** for each JobKeeper fortnight. This means the JobKeeper payment **is essentially a reimbursement** to an employer of \$1,500 where the employer has paid a participating employee at least that amount.

(AJV – massive cash flow trap for employers, pay now, get reimbursed later!).

The component amounts that together must equal or exceed \$1,500 are:

- (i) The employee's gross wage before tax,
- (ii) Agreed amounts of salary sacrifice arrangements.

Where the salary sacrificed amounts are superannuation, these are usually paid within 28 days after the end of the month but now **must be paid within the fortnight**.

The requirement that the component amounts be **at least \$1,500** per fortnight applies regardless of whether the employee ordinarily receives more or less than that amount.

For example, Mark operates a café and employs Tasmin who earns \$1,600 per fortnight and Peter who earns \$1,000 per fortnight. Assuming all other criteria is met, Mark will need to pay:

Tasmin - \$1,600 for the fortnight, then wait to be reimbursed \$1,500 from the ATO, and
Peter - \$1,500 for the fortnight, then wait to be reimbursed \$1,500 from the ATO.

We will come back to this example later on how to deal with the extra \$500 for Peter.

Finally, the usual amounts are required to be withheld from gross pay in respect of PAYG W and any applicable Higher Education Loan Program (HELP), Student Start-up Loan (SSL), Trade Support Loan (TSL), Student Financial Supplement Scheme (SFSS), etc.

B(5) Notifying the Commissioner

The employer will be required to notify the ATO of the range of matters. These include:

(a) Intention to register for Jobkeeper. Most employers have already done this.

(b) Enrol - The enrolment process will commence from Monday 20 April 2020.

To register, employers will need a MyGov ID (which is different to MyGov) and have access to their own Business Portal. Alternatively, we will need to do this for you.

(c) Notify all employees - Another key element of the scheme is that qualifying employers that decide to participate in the JobKeeper scheme must, as a condition of entitlement, notify all employees in writing that they have elected to participate in the scheme and that their eligible employees **will all be covered** by the scheme. **The employer cannot select which** eligible employees will participate in the scheme. This 'one in, all in' rule is a key feature of the scheme. The nomination form has been released by the ATO:

<https://www.ato.gov.au/assets/0/104/300/387/d1aab7f2-fbe8-44b8-9ec1-4885ded1088e.pdf>

(d) Employee's Acknowledgements - There is also a requirement that eligible employees have provided a notice to their employer agreeing to be nominated by the employer. They will also need to confirm they have not agreed to be nominated by another employer and that they do not have permanent employment with another employer if they are employed as a casual employee with this employer.

It is on the same form above and must be returned by the employee by 30 April 2020 for the month of April 2020. In addition, the employee will need to notify Services Australia of their enrolment in Jobkeeper so that they will not be paid any Jobseeker.

(e) Report the Actual Pays - The employer will be required to regularly report details of each pay. The ATO's preference is Single Touch Payroll (STP) or ATO Online Services or File Upload.

(f) Report Monthly Turnover – The employer will be required to report its current GST turnover for the reporting month and its projected GST turnover for the following month.

The reporting month is a month in which there is a fortnight for which the entity is entitled to a JobKeeper payment. The report must be made to the Commissioner in the approved form, and must be made within **seven (7) days** of the end of the reporting month (!).

For example by 7 May 2020, you will need to report your actual GST turnover for April 2020 and a best guess estimate for May 2020.

The ATO are developing a Jobkeeper Declaration Report to report these amounts and they will use the projected turnover to assess the ongoing impact of Covid-19 on the economy.

C. Other Business Owners

The Jobkeeper payment will also apply to Sole Traders, Partnerships and Trusts recognising the various tax structures in Australia. An individual is **an eligible business participant** where the individual:

- (a) Is not employed by the business, because the individual is the owner of the business
- (b) Satisfies the **business participation requirements** at any time in the fortnight,
- (c) Satisfies the 1 March 2020 requirements, and
- (d) Satisfies the **nomination the requirements**.

The business participation requirements are that, at any time in the fortnight, the individual is **actively engaged in the business carried on by the entity**. Further, depending on the type of entity the business is, the individual must have a particular role within the business.

In the case of an entity that is a:

- Sole trader - the individual must be the entity;
- Partnership - the individual must be a partner in the partnership;
- Trust - the individual must be an adult beneficiary of the trust; and
- Company - either a director or shareholder in the company.

The nomination requirements are that the individual has agreed to be nominated by the entity as an eligible business participant and has not agreed to be nominated by another entity. This reflects the intention that an individual can only entitle one business to receive the JobKeeper payment as a business participant. This individual must make this notification in the approved form.

Further, the individual must not have given a nomination notice to any other entity including in the individual's capacity as an employee of an employer seeking to obtain the JobKeeper payment for employers.

This means only **one person** will receive the Jobkeeper payment in each case.

(AJV – problems with Unit Trusts and a partnership of trusts and can a Sole Trader with staff register for themselves as well as for their employees).

D. Amounts to be paid

As outlined earlier the amount of Jobkeeper, is \$1,500 per fortnight per employee. The ATO initially indicated that if it receives the GST turnover information by the 7th of the following month, they should be able to pay the Jobkeeper by the 14th of the following month. However, that period was never realistic, so expect delays in being reimbursed.

Payment Date	Amount per Employee
May	\$3,000 (for fortnights starting 30 March and 13 April)
June	\$3,000 (for fortnights starting 27 April and 11 May)
July	\$3,000 (for fortnights starting 25 May and 8 June)
August	\$3,000 (for fortnights starting 22 June 6 July)
September	\$4,500 (for fortnights starting 20 July, 3 August and 17 August)
October	\$3,000 (for fortnights starting 31 August and 14 September)

Monday 04 May 2020 will be the first "Claim Day". From this date, the ATO will begin to accept claim by employers, again through the Business Portal or alternatively we will do this on your behalf.

Apparently, there will be an application form with data already prefilled from the employers STP data.

Otherwise, you will need to enter the data manually or we will submit a report through our online services.

E. Payroll Categories

Revisiting the earlier example where Mark operates a café and employs Tasmin who earns \$1,600 per fortnight and Peter who earns \$1,000 per fortnight. Assuming today 17 April 2020 is payday and all other criteria is met, Mark will need to pay:

Tasmin - \$1,600 for the fortnight, then wait to be reimbursed \$1,500 from the ATO, and
Peter - \$1,500 for the fortnight, then wait to be reimbursed \$1,500 from the ATO.
How do you deal with the extra \$500 paid to Peter?

The ATO have released a guidance paper called “Jobkeeper Payment For Digital Service Providers”. This process will include setting up new payroll categories within your accounting software to cater for the top up payments. As we are in the second fortnight of Jobkeeper:

(a) Tasmin’s pay slip will show an Allowance called JOBKEEPER-START-FN02 with Nil entered, and
(b) Peter’s pay slip will show an Allowance called JOBKEEPER–TOPUP with \$500 entered and JOBKEEPER-START-FN02 with Nil entered.

Also, note that:

(c) No superannuation is payable on the top up payment (optional), and
(d) No Workers compensation is payable on the top up payment, and
(e) No Payroll tax is payable on the top up payment.

Say the pay for the following fortnight ie 01 May 2020 is Tasmin \$1,700 and Peter \$900 then:

(a) Tasmin’s pay slip will show her normal gross pay, and
(b) Peter’s pay slip will show an Allowance called JOBKEEPER–TOPUP with \$600 entered.

The numbers FN02, FN03 are fortnight counters all the way to FN13. The ATO have said **any deviation from these exact formats will delay the Jobkeeper payment. No spaces!**

Finally, if it is an employee’s final pay, you enter an Allowance called JOBKEEPER-FINISH-FN02, or 03 or whatever fortnight number you are up to.

F. Other Matters

Goods and services tax does not apply in relation to JobKeeper payments made to employers because the payments are not consideration for supplies made by employers to the Government.

The Jobkeeper amounts are assessable income to the entity receiving the money.

In addition, the scheme ends on 21 September 2021, giving all employers a full year to sort out their eligibility and claims.

<More questions>

G. Glossary of Terms

ABN - Australian Business Number

ATO - Australian Taxation Office

BAS - Business Activity Statement

GST - Goods and Services Tax

HELP - Higher Education Loan Program

PAYG W - Pay As You Go Withholding

SFSS - Student Financial Supplement Scheme

SSL - Student Start-up Loan

STP - Single Touch Payroll

TSL - Trade Support Loan