

# JOBKEEPER 2.0 – THE EXTENSION

## (including details of the new employment date of 1 July 2020)



### HOSPITALITY EMPLOYMENT Q&A Information Guide

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2 September 2020

The information contained in this Q&A document is provided as general information.

QHA members are encouraged to contact the QHA's Employment Relations team to discuss their own specific workplace situation.

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#### **ABOUT THIS Q&A INFORMATION GUIDE**

This Q&A Information Guide contains new information about:

- Existing JobKeeper Payment Scheme (the 'Original JK Scheme'):
  - New Employment Date of 1 July 2020
- JobKeeper 2.0
  - JobKeeper Explained
  - JobKeeper Enabling Directions:
    - Qualifying Employers (*Directions for those receiving JobKeeper payments*)
    - Legacy Employers (*Directions for those not eligible for JobKeeper payments*)
- Common questions and answers

In addition to this Guide, please also refer to the QHA's JobKeeper Q&A Information Guide dated 15 April 2020 for information on the Original JK Scheme. That Q&A Information Guide contains information about:

- Eligibility to participate in JobKeeper:
- The application process
- Employer eligibility
- Employee eligibility
- Company Directors
- Self-employed eligibility
- A Partnership
- A Trust
- A business that has been trading for less than 12 months
- Shareholders of a business

## **JOBKEEPER PAYMENT SCHEME**

The JobKeeper Payment scheme ('JobKeeper') is a wage subsidy from the Federal Government to eligible businesses and not-for-profits affected by the COVID-19 pandemic to support them in retaining employees.

The JobKeeper payment is applicable for employees that were employed as at 1 March 2020, or, as at 1 July 2020 (as explained below) and who remained employed or were re-hired. This included employees on leave, or stood down from their employment. In addition, those employees also met the other eligibility requirements of JobKeeper

The Original JK Scheme is a payment of \$1,500 per fortnight (before tax) per eligible employee from 30 March 2020 until 27 September 2020. The value of the payment changes in JobKeeper 2.0.

### **CHANGES TO ORIGINAL JK SCHEME**

On 7 August 2020 the Government announced a change to the key employment date for employee eligibility for the Original JK Scheme. Employers that are eligible do not have to re-test for eligibility in relation to the Original JK scheme that is in operation until 28 September 2020 – this change applies with respect to employee eligibility only.

Prior to this announcement, an employee needed to be employed as at 1 March 2020 and meet the other eligibility criteria to be eligible for the Original JK Scheme. As a result of the recent announcement, an employee employed as at 1 July 2020, and who meets the eligibility requirements (which remain the same) will be eligible for the Original JK Scheme.

#### **EMPLOYMENT DATE: CHANGE FROM 1 MARCH TO 1 JULY 2020 FOR EMPLOYEE ELIGIBILITY**

The *Coronavirus Economic Response Package (Payments and Benefits) Rules 2020* ('JobKeeper Rules') have been amended in response to the Government's announcement of 7 August. .

The new employment date for eligibility is **1 July 2020**. This new eligibility date applies to the Original JK Scheme from the JobKeeper fortnight commencing 3 August 2020. This does not affect existing employees that were eligible from the commencement of the Original JK Scheme but may result in employees were that previously ineligible now being eligible.

#### ***Employee Eligibility***

The eligibility test for an employee as set out below does not change – the exception being that:

- 1 July 2020 is the new employment date for eligibility; and
- The 1 March 2020 eligibility date is preserved for employees that were eligible employees at 1 March 2020, whose employment ceased between 1 March 2020 and 1 July 2020 and who were re-employed after 1 July 2020 – See Reemploying a former employee below.

An employee can be eligible from the JobKeeper fortnight commencing 3 August 2020 if the employee, as at 1 July 2020:

- Is employed by an eligible employer (or another entity in their wholly owned group), at 1 July 2020 either as a

- non-casual employee (whether full-time, part-time or fixed-term); or
  - long-term casual employee (employed on a regular and systematic basis during the 12 month period that ended 1 July 2020) and not a permanent employee of any other employer
- Is aged 18 years or older (if 16 or 17 can also qualify if independent or not undertaking full time study on 1 July 2020)
  - Was either
    - an Australian resident (within the meaning of the *Social Security Act 1991*) – see [residence descriptions](#) on the Services Australia website; or
    - an Australian resident for the purpose of the *Income Tax Assessment Act 1936* and the holder of a Subclass 444 (Special Category) visa
  - Did not receive any of these payments during the JobKeeper fortnight
    - government parental leave or Dad and Partner Pay
    - a payment in accordance with Australian workers compensation law for an individual's total incapacity for work

### **JobKeeper Fortnights commencing 3 August and 17 August 2020**

To claim the JobKeeper Payment for newly eligible employees in the fortnights commencing on 3 August 2020 and 17 August 2020, Employers have until 31 August 2020 to:

- complete the nomination process;
- notify the ATO of the information regarding any newly eligible employees; and
- satisfy the wage condition (pay an eligible employee \$1,500 in the fortnight) for any newly eligible employees.

### **Employee Nomination Form**

To claim the JobKeeper payment for a newly eligible employee, the employee must agree to be nominated by the employer. To do this the employee must be provided with an Employee Nomination Notice ('Notice'). An updated Notice for use in relation to employees eligible from the 3 August 2020 fortnight can be accessed [HERE](#).

The Notice does not have to be provided to existing eligible employees, only those that are now eligible as a result of the change in the employment date. This includes those employees that were previously not eligible that may now be eligible, such as 16 or 17 year old employees that turned 18 on or before 1 July 2020 or employees whose Visa status has changed from a temporary visa to permanent.

### **One-In All-In still applies**

The one-in all-in rule still applies. This means that any employees that are newly eligible because of the change in employment date must be provided with the Notice form and if the employee agrees to be nominated, must be paid the correct JobKeeper payment of \$1,500 per JobKeeper fortnight. A newly eligible employee cannot be excluded.

### **Employee renominating with another Employer**

If an employee was previously an eligible employee with another employer, and that employment ceased before 1 July 2020, and the employee is an eligible employer with their current employer using the 1 July 2020 employment date, that employee can nominate with the new employer.

## Re-employing a former employee

If an employee was employed at 1 July 2020 and employment has since ceased, the employee can be re-hired and be eligible. An employee that was not previously eligible (did not meet the 1 March 2020 test) must be given a copy of the new nomination form.

An employee who was an eligible employee (did meet the 1 March 2020 test) and whose employment ceased after 1 July 2020 can be re-hired and can be eligible again, provided that the employee has not nominated another employer.

An employer can claim the JobKeeper payment for an employee that left employment before 1 July 2020 and has been re-hired if the below applies:

- They were an eligible employee using the 1 March 2020 test
- They stopped being employed by an employer on or before 1 July 2020
- They were re-engaged by an employer after 1 July 2020
- The employee has not at any point given an employee Notice nominating another employer.

In this case an employer must ask the employee to (within 7 days of re-employment) complete a Notice stating whether or not they have given an employee nomination notice to another entity.

## Other Employment

If an employee has more than one job and is an eligible employee (the employee has agreed to be nominated, the employer is an eligible employer and the employee meets the eligibility test) with an employer, an employee cannot agree to be nominated by another employer.

If an employee is not an existing eligible employee and has more than one casual job for which the employee will now be eligible, the employee can choose which employer to nominate for. If a casual employee is now an eligible employee but has a permanent role (with another employer) that the employee is also now eligible for, the employee must nominate that permanent employer.

## Casual Employment

Casual employees are only eligible if they have 12 months of regular and systematic employment during the 12 month period that ended 1 July 2020. If a casual employee did not meet that criteria using the previous 1 March 2020 test date, that casual employee might now satisfy the eligibility criteria using the 1 July 2020 test date.

This could include casual employees that were stood down or unable to be offered shifts for a period of time as a result of the COVID-19 pandemic restrictions. Employers should make an assessment on a case by case basis of the reason for any absence during COVID-19 and whether an employee has been likely to work during this period.

## JOBKEEPER 2.0

On 21 July 2020 the Government announced the extension of the JobKeeper payment (“JobKeeper 2.0”).

The last JobKeeper fortnight that is part of the Original JK Scheme finishes on 27 September 2020. JobKeeper 2.0 commences from the fortnight starting 28 September and it will conclude the fortnight ending 28 March 2021.

The legislation to enact JobKeeper 2.0, the *Coronavirus Economic Response Package (JobKeeper Payments) Amendment Bill 2020* (the ‘Amendment Bill’) has been passed by the House of Representatives, and the Senate.

Please note, at the date of this Information Guide, the Bill is awaiting Royal Assent. The JobKeeper Rules that action the payment side of JobKeeper 2.0 have not yet been released either.

In this section of the QHA’s Q&A Information Guide:

- JobKeeper 2.0 Explained
- JobKeeper Enabling Directions from 28 September 2020:
  - For Qualifying Employers (as defined)
  - For Legacy Employers (as defined)

## DEFINITIONS

### Wage Condition

Section 789GD of the *Fair Work Act 2009* (the ‘FW Act’) requires an employer to satisfy a wage condition if:

- (a) An employer qualifies for the JobKeeper scheme; and
- (b) The employer would be entitled to JobKeeper payment for an employee for a fortnight if (among other things) the employer satisfied the wage condition in respect of the employee for the fortnight

In this circumstance, the employer must ensure that the wage condition has been satisfied in respect of the employee by the end of the JobKeeper fortnight. An employer who does not comply with this condition will not be entitled to participate in JobKeeper for that JobKeeper fortnight.

### Minimum payment guarantee

As per section 798GDA, if a JobKeeper payment:

- Is payable to an employer for an employee for a JobKeeper fortnight,
- The employer must ensure that the total amount payable to the employee in respect of the fortnight,
- Is not less than the greater of the following:
  - (a) the amount of JobKeeper payment payable to the employer for the employee for the fortnight;
  - (b) the amounts payable to the employee in relation to the performance of work during the fortnight.

This means that the employer needs to ensure that employee receives the relevant JobKeeper payment per fortnight, or, if they perform work, the wage that is payable for the work performed – if that wage is greater than the relevant JobKeeper payment for that fortnight.

The wages amount includes:

- (a) incentive-based payments and bonuses;
- (b) loadings;
- (c) monetary allowances;
- (d) overtime or penalty rates;
- (e) leave payments.

### **Hourly rate of pay guarantee**

If a JobKeeper enabling direction is given by an employer to an employee, the employer cannot reduce the employee's *hourly* base rate of pay – when compared to the employee's hourly base rate of pay that applied prior to the direction being made.

An employee's hourly base rate of pay does not include allowances, loadings or penalties.

Where an employee is performing different duties as per a JobKeeper Enabling Direction, the hourly base rate of pay is either:

- The hourly rate of pay for the different duties if the duties attract a higher rate of pay (ie higher duties); or
- The employee's hourly rate of pay for their substantive role if the new hourly rate for the different duties is lower.

### **Ordinary Hours as at 1 March 2020**

This refers to the quantum of hours that an employee is contracted to work, as set out in their employment contract, or industrial instrument. It is not the hours that the employee did or did not work on 1 March 2020.

For a casual employee a regulation will be issued to address how the ordinary hours will be calculated.

### **Section 789GDB(4) - Base rate of pay for certain payment arrangements**

If an employee is paid otherwise than:

- (i) on an hourly basis; or
- (ii) by reference to an hourly rate of pay (eg on a salary); and

a workplace instrument (eg Modern Award or Enterprise Agreement) applicable to the employee:

- (i) specifies the employee's base rate of pay for the purposes of the National Employment Standards; or
- (ii) sets out a method for working out the employee's base rate of pay for the purposes of the National Employment Standards;

then, the employee's base rate of pay is:

- the amount specified in the workplace instrument; or
- the amount worked out using the method set out in the workplace instrument.

### **Usefully Employed**

The term usefully employed is not defined in the FW Act, however it is an important consideration for JobKeeper enabling stand down directions, as well as for stand down in accordance with section 524.

Useful work does not have to be the work that the employee ordinarily performs, but it needs to be genuine and productive work that provides a benefit to an employer. Where a stand down is actioned by an employer, they need to be able to demonstrate that the impacts of COVID-19 or the Government's measures to deal with the pandemic have caused an employee to not be able to be usefully employed for the period the employee is stood down.

## **Necessary**

This term is not defined in the FW Act, however, it is best thought of as something more than desirable or preferred.

# **JOBKEEPER 2.0 EXPLAINED**

JobKeeper 2.0 consists of two periods. An employer must qualify for each period to receive JobKeeper payments in respect of an eligible employee.

## **PERIOD 1: 28 SEPTEMBER 2020 – 3 JANUARY 2021**

### ***Employer Eligibility***

Employers will need to requalify to be eligible for JobKeeper 2.0. All of the eligibility requirements of the Original JK Scheme remain in place, with the exception of the decline in turnover test, which changes.

More information of employer eligibility can be found on the ATO's website [HERE](#).

The Government has announced that to be eligible for period 1 of JobKeeper 2.0, an employer will need to demonstrate that they have suffered an ongoing significant decline (30% for those with an aggregated turnover of \$1 billion or less, and 50% for those with more than \$1 billion) in turnover using ACTUAL GST (as opposed to projected GST) for the September 2020 quarter - relative to a comparable period, which may be the September 2019 quarter.

If an employer cannot demonstrate the relevant decline in turnover for the September quarter, they will not be eligible for period 1 of JobKeeper 2.0.

The Commissioner of Taxation has the discretion to set out alternative tests to establish eligibility where it is not possible to provide that comparison. An example of this could be for a newly established business that has traded for less than one year. More information on alternative tests can be found [HERE](#).

### ***Employee Eligibility***

The eligibility test for an employee will not change – the exception being that new employment date for eligibility of **1 July 2020** will be applicable to JobKeeper 2.0.

More information on employee eligibility can be found on the ATO's website [HERE](#).

### ***Payments***

The amount of the payments made in respect of an eligible employee will reduce in period 1 of JobKeeper 2.0. For period 1, they will be:

- For employees who work an average of 20 or more hours per week - \$1,200 gross per fortnight (down from \$1,500); and
- For employees who work an average of less than 20 hours per week - \$750 gross per fortnight (down from \$1,500).

The rate of payment will be determined by assessing the average hours of work in the four-week period immediately prior to 1 March 2020, or prior to 1 July 2020 (if the employee only became eligible for

JobKeeper payments at that time). For employees who were eligible at 1 March 2020, the higher average will be used.

Businesses will be required to nominate which payment rate they are claiming for each of their eligible employees. Where an employee's hours of work were not usual for the assessment period for the average hours of work e.g. the employee was on leave, the Commissioner of Taxation has discretion to set alternative tests. It is not clear at this stage what those will be.

## **PERIOD 2: 4 JANUARY 2021 – 28 MARCH 2021**

### ***Employer Eligibility***

Employers will also need to requalify to be eligible for period 2 of JobKeeper 2.0. As with period 1, all of the eligibility requirements currently in place are unchanged, with the exception of the decline in turnover test requirement.

For period 2, which is the fortnight commencing from 4 January 2021, an employer will need to demonstrate that they have suffered an ongoing significant decline (30% for those with an aggregated turnover of \$1 billion or less and 50% for those with more than \$1 billion) in turnover using ACTUAL GST (as opposed to projected GST) for the December 2020 quarter only - relative to a comparable period, which may be the December 2019 quarter.

As in period 1 of JobKeeper 2.0, the Commissioner of Taxation has the discretion to set out alternative tests to establish eligibility where it is not possible to provide that comparison.

If an employer cannot demonstrate the relevant decline in turnover for the December quarter, they will not be eligible for period 2 of JobKeeper 2.0.

### ***Payments***

The amount of the payments made in respect of an eligible employee will reduce again in period 2 of JobKeeper 2.0, commencing from 4 January 2020.

The further reduced payments will be:

- For employees who work an average of 20 or more hours per week - \$1,000 gross per fortnight (down from \$1,200); and
- For employees who work an average of less than 20 hours per week - \$650 gross per fortnight (down from \$750).

### ***Employee Eligibility***

The eligibility test for an employee will not change – the exception being that the new employment date for eligibility of **1 July 2020** will be applicable to JobKeeper 2.0.

### ***IS JOBKEEPER 2.0 A 'ONE IN, ALL IN' SCHEME?***

Yes. As per the original JobKeeper scheme, JobKeeper 2.0 is also 'one in, all in'. This means that all eligible employees must be nominated by their employer to participate.

### ***WHAT ABOUT OTHER ENTITIES AND ELIGIBILITY?***

Information for Sole Traders, Partnerships, Trusts and other Companies can be found on the ATO website [HERE](#).

## **JOBKEEPER ENABLING DIRECTIONS FROM 28 SEPTEMBER 2020**

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The *Coronavirus Economic Response Package (JobKeeper Payments) Amendment Bill 2020* extends the operation of Part 6-4C\* of the FW Act beyond 28 September 2020. Part 6-4C is a temporary provision in the FW Act, will remain in operation until its repeal date of 29 March 2021.

The application of Part 6-4C will be specific to whether an employer is a QUALIFYING employer, or a LEGACY employer. Each is detailed below, and it is important to know which one applies as there are differences between them .

*\* the ability for an employer to request that an employee take annual leave will not be a feature of Part 6-4C post 28 September 2020.*

### **QUALIFYING EMPLOYER**

A qualifying employer is an employer who is eligible for JobKeeper 2.0 payments (in respect of an eligible employee).

Those employers will continue to have access to existing Part 6-4C (with the exception of the Request for an employee to take a period of annual leave).

Part 6-4C as it currently looks, subject to the amendment as noted above, will operate in the same form for qualifying employers after 28 September 2020.

Details of the Directions and Request that can be made by a qualifying employer as per Part 6-4C from 28 September 2020 are below.

Please note that in many cases, a qualifying employer will need to re-issue a Direction. The QHA's templates for a Direction included a cessation date of 28 September 2020. This is due to Part 6-4C having an end date as per the Original JK Scheme. If an end date was provided in a Direction, please use the same template from the QHA Fact Sheet titled JobKeeper Enabling Directions to issue a new Direction.

To recap, the JobKeeper Enabling Directions ('Directions') available to qualifying employers are:

#### **1. DIRECTION TO REDUCE HOURS OR DAYS** (section 789GDC)

An employee must comply with any Direction to reduce hours of work or days of work.

A Direction to reduce hours or day is called a JobKeeper Enabling Stand Down Direction ('JKESDD'). By issuing a JKESDD, an employer gives a direction to an employee to:

- Not work on a day or days on which the employee would usually work.
- Work for a lesser period than the period which the employee would ordinarily work on a particular day or days.
- Work a reduced number of hours\* (compared with the employee's ordinary hours of work),

and not be paid for the period that work is not performed.

*\* For the purposes of a direction to work a reduced number of hours, the reduced number of hours may be nil.*

Part 6-4C effectively allows for a partial stand down of work – some of the time is worked, the rest is on stand down. A partial stand down is not permissible for a Stand Down provided under section 524 of the FW Act.

#### When an employee is on leave

A JKESDD does not apply to the employee during a period when the employee:

- (a) Is taking paid or unpaid leave that is authorised by the employer; or
- (b) Is otherwise authorised to be absent from their employment.

Note: An employee may take paid or unpaid leave (for example, annual leave) during all or part of a period during which the JKESDD would otherwise apply.

#### Restrictions Associated with Issuing a JKESDD

An employer can only give this type of Direction if:

- The employer is qualified for the JobKeeper scheme; and
- The employer is entitled to one or more JobKeeper payments for an eligible employee; and
- The employee cannot be usefully employed for the period the employee is directed not to work as per the JKESDD because of changes to the business that are attributed to:
  - The COVID-19 pandemic; or
  - Government initiatives to slow the transmission of COVID-19; and
- The implementation of the JKESDD is safe, having regard to (without limitation) the nature and spread of COVID-19.

#### Compliance

During the JobKeeper Enabling Stand Down Period, an employer is still required to comply with the following sections in relation to the employee who is subject to the Direction:

- (a) Section 789GD (refer to the Definitions section);
- (b) The minimum payment guarantee as defined;
- (c) The hourly rate of pay guarantee as defined.

Note: The above obligations only apply to the hours the employee is required to work, not those for which they are stood down.

## **2. DIRECTION TO UNDERTAKE ALTERNATIVE DUTIES (section 789GE)**

An employee must comply with any Direction by the employer to perform any duties that are within the employee's skill and competency.

The Direction can be given if:

- The employer qualifies for the JobKeeper 2.0 scheme, and
- The employer is entitled to one or more JobKeeper payments for an eligible employee; and
- The duties are safe, having regard to (without limitation) the nature and spread of COVID-19; and
- The employee has any license or qualification required to perform the duties the subject of the direction; and
- The duties are reasonably within the scope of the employer's business operations.

#### Where a Direction may not have effect

A Direction made under this section has no effect unless the employer reasonably believes the direction is necessary to continue the employment of one of more of its employees (section 789GL).

When considering this necessary requirement, it is immaterial that a similar Direction could have been given to another employee.

#### Employees performing other duties

With many parts of the hospitality industry still shut down, in some instances there will be limited work that can be performed. Employers should exercise some caution in relation to the duties employees are asked to perform, particularly where an employee has previously been stood down and is now being asked to return to the workplace.

Please note that there is some risk in asking employees to return to the workplace to perform other duties, such as painting, cleaning and maintenance. An employee might challenge or dispute a direction of this nature, or this might lead to an employee questioning the lawfulness of the original stand down.

### **3. DIRECTION TO WORK AT AN ALTERNATIVE LOCATION (section 789GF)**

Section 789GF provides that an employer can direct an employee to change their location of work to a place that is different to their usual place of work if:

- The employer qualifies for JobKeeper 2.0, and
- The employer is entitled to one or more JobKeeper payments for an eligible employee; and
- The new location is suitable for the employee to perform their duties; and
- The new location is within a reasonable travelling distance for the employee; and
- The new location is reasonably within the scope of the employer's business operations; and
- The new location is safe, having regard to (without limitation) the nature and spread of COVID-19.

#### Where a Direction may not have effect

A Direction made under this section has no effect unless the employer reasonably believes the direction is necessary to continue the employment of one of more of its employees (section 789GL).

When considering this *necessary* requirement, it is immaterial that a similar direction could have been given to another employee.

### **TYPES OF REQUEST AVAILABLE:**

#### **4. REQUEST TO ALTER THE EMPLOYEE'S DAYS AND TIMES OF WORK (section 789GG)**

An employer can request an employee to work on different days and/or at different times to the employee's usual work days and times.

Section 789GG provides that:

- Where an employer qualifies for JobKeeper 2.0, and
- The employer is entitled to one or more JobKeeper payments for an eligible employee; and
- The employer requests to make an agreement with the employee regarding the days and/or times of work;
- The employee must consider the request and must not unreasonably refuse the request.

The type of agreement the employer can request the employee to make with them includes:

- That the employee’s duties will be performed on different days to days usually worked by the employee; or
- That the employee’s duties will be performed at different times to times the employee usually works.

If an employee does not agree to the employer’s request, the Fair Work Commission (‘FWC’) can settle the dispute about the request via arbitration. Refer to page 17 for more information about the FWC’s role.

### Requirements of the Request

The request must:

- Be safe, having regard to (without limitation) the nature and spread of COVID-19; and
- Be reasonably within the scope of the employer’s business operations; and
- Not result with the employee’s number of hours of work reducing.

*Request Example: An employee may request an employee who usually works weekends to work weekdays as the venue no longer trades on a weekend due to the impact of the COVID-19 pandemic.*

## **STEPS TO FOLLOW WHEN SEEKING TO ISSUE A DIRECTION: QUALIFYING EMPLOYER**

In order to issue a Direction described above, a qualifying employer:

### **Step 1:**

Must give an employee written notice of the Direction by issuing the employee with:

- Notice of JobKeeper Enabled Direction - refer to Attachment B; and
- (Proposed) JobKeeper Enabled Direction - refer to Attachment C.

### **Step 2:**

Must consult with the employee and their representative, if they have one, about the proposed Direction. Consultation is required by section 789GM.

### **Step 3:**

Must keep a written record of the consultation e.g. a File Note.

### **Step 4:**

After considering any matters raised by the employee during the consultation step, update the proposed Direction, and issue it to the employee. This Direction must be issued at least three (3) clear days after the Notice was issued at Step 1.

All at times, an employer must ensure that the Direction is reasonable in the circumstances. In addition, the Direction must meet the relevant criteria for being a Direction – as detailed earlier when referring to each type of Direction a qualifying employer can issue.

### Additional Information About the Notice:

- The Notice referred to at Step 1 directly above can be issued electronically.
- The Notice will remain in place until it is replaced with another Direction, it is revoked by the employer or by the FWC, or JobKeeper 2.0 expires.

## **LEGACY EMPLOYER**

A legacy employer is an employer who was previously eligible for the Original JK Scheme payments (in respect of an eligible employee), however, they did not qualify for JobKeeper 2.0 payments.

Legacy employers will still be able to access some of the flexibilities in Part 6-4C after 28 September 2020 and provide **modified** JobKeeper Enabling Directions. The flexibilities will be limited in application, as detailed below.

The proviso to a legacy employer utilising Part 6-4C is that a legacy employer **must have** a certificate stating they have experienced a 10% decline in turnover.

### **WHAT ARE THE CERTIFICATE REQUIREMENTS?**

As mentioned, to be a legacy employer for the purposes of issuing a JobKeeper Enabled Direction, the employer must be able to prove there has been a 10% decline in turnover. Those employers are required to:

- Obtain a 10% decline in turnover certificate from a financial services provider; OR
- If a small business with less than 15 employees (by head count and not including non regular and systematic casual employees), that business can choose to self-certify there has been a decline. Note that a small business employer can still elect to obtain a written certificate from an eligible financial services provider if they prefer.

The 10% decline in turnover test requires that:

- For the period between 28 September and 27 October, the employer must have a 10% decline in turnover in the June 2020 quarter compared to June quarter 2019.
- For the period between 28 October and 27 February 2021, the employer must have a 10% decline in turnover in the September 2020 quarter compared to September quarter 2019.
- For the period between 28 February and 28 March 2021, the employer must have a 10% decline in turnover in the December 2020 quarter compared to December quarter 2019.

### **Note:**

1. The above aligns with the BAS lodgement dates for each completed quarter NOT the application of the turnover test for employers to qualify for JobKeeper 2.0;
2. A legacy employer must have a certificate, or have self-certified (if an employer with less than 15 employees as defined above) in order to utilise the JobKeeper Enabling Directions and Request detailed below. No certificate for any of the above periods will mean that any Directions or Request in place will become invalid for the period there is no certificate for. As a result, the Direction/s or Request will not be enforceable.

### **WHAT IS TURNOVER FOR LEGACY PURPOSES?**

Turnover is calculated as it is for GST purposes and is reported on Business Activity Statements (BAS). It includes all taxable supplies and all GST free supplies but not input taxed supplies.

Members are encouraged to speak to their financial advisers for more details, as the QHA does not provide financial advice and assistance.

## **WHO IS A FINANCIAL SERVICES PROVIDER?**

A financial services provider for the purposes of a certificate is:

- A registered tax agent, BAS agent; or
- A qualified accountant; but not
- A financial service provider who is a director, employee of an associated entity of the employer or an associated entity of the employer.

## **HOW DOES A SMALL BUSINESS EMPLOYER CERTIFY THE TURNOVER?**

Small business owners (less than 15 employees) may choose to have a statutory declaration to the effect that the employer satisfies the 10% decline in turnover test for the designated quarter applicable to a specified time.

The declaration must be made by an individual who either is, or is authorized by, the employer, and who has knowledge of the financial affairs of the employer.

## **THE (MODIFIED) JOBKEEPER ENABLING DIRECTIONS AND REQUEST**

A legacy employer will be able to, post 28 September, issue JobKeeper Enabling Directions ('Direction'), and make a Request, as detailed below.

These directions can only take effect for a period beginning on or after 28 September 2020.

If an employer currently has a JobKeeper Direction/Request in place as per the Original JK Scheme, but the employer will not qualify for JobKeeper 2.0 and will instead be a legacy employer from 28 September 2020, that existing Direction/Request will automatically cease on 28 September 2020.

In order to re-issue the Direction/Request legacy employers will need to make sure that they meet the legacy employer requirements for the Direction/Request and that they comply with the notification and consultation requirements, both of which are set out in this section.

Notification requirements extend from at least 3 days, to at least 7 days for legacy employers.

### **1. JOBKEEPER ENABLING STAND DOWN DIRECTION ('JKESDD')**

A legacy employer can give a JKESDD to an employee to work a reduced number of hours or days to a minimum of 60% of an employee's ordinary hours (as assessed on 1 March 2020). Refer to the Definitions section for more details on what ordinary hours are.

HOWEVER, the reduction to hours cannot result in an employee working less than two consecutive hours in a day that they work (minimum engagement requirement).

This means that the JKESDD cannot reduce working hours to NIL any longer.

An employer can give a JKESDD provided that:

- The employee received a JobKeeper payment for a fortnight before 28 September 2020. That is, they were an eligible employee for the Original JK Scheme, and had received at least one JobKeeper payment; and

- The employee cannot be “usefully employed” for the employee’s normal days or hours because of changes to the business attributable to the COVID-19 pandemic or Government initiatives to slow the transmission of COVID-19; and
- The JKESDD can be implemented safely, having regard to the nature and spread of COVID-19; and
- The hourly rate of pay guarantee is met; and
- The JKESDD is reasonable in all the circumstances, including, but not limited to, considering the employee’s caring responsibilities and if the JKESDD will have a disparate effect on a category of employees over others who are subject to the same JKESDD.

## **2. DIRECTION TO CHANGE LOCATION OF WORK**

A legacy employer can give a Direction to an employee to perform their duties at a location that is different to their normal workplace. This may include the employee’s home.

Such a Direction can only be made where:

- The employee received a JobKeeper payment for a fortnight before 28 September 2020. That is, they were an eligible employee for the Original JK Scheme, and had received at least one JobKeeper payment; and
- The different location is suitable for the employee’s duties; and
- The different location is safe considering the nature and spread of COVID-19; and
- The performance of duties at the new location is reasonably within the scope of the employer’s business operations; and
- The Direction is reasonable in all the circumstances, including, but not limited to, considering the employee’s caring responsibilities and if the Direction will have a disparate effect on a category of employees over others who are subject to the same Direction; and
- The employer has information before them that leads them to reasonably believe that this Direction is necessary to maintain the employment of the employee.

For the last dot point, the employer needs to have actual factual information before them that leads them to reasonably believe that it is necessary.

## **3. DIRECTION TO ALTER USUAL DUTIES**

A legacy employer can give a Direction to an employee to change their usual duties.

Such a Direction can only be made where:

- The employee received a JobKeeper payment for a fortnight before 28 September 2020. That is, they were an eligible employee for the Original JK Scheme, and had received at least one JobKeeper payment; and
- The new duties to be performed are within the employee’s skill and competence; and
- The employee holds any relevant qualification and license required to perform the new duties; and
- The different location is safe considering the nature and spread of COVID-19; and
- The new duties are reasonably within the scope of the employer’s business operations; and
- The Direction is reasonable in all the circumstances, including, but not limited to, considering the employee’s caring responsibilities and if the Direction will have a disparate effect on a category of employees over others who are subject to the same Direction; and
- The employer has information before them that leads them to reasonably believe that this Direction is necessary to maintain the employment of the employee.

Where an employee is, as a result of a Direction, working in duties that attract a higher rate of pay, the employee must be paid the higher rate of pay.

#### **TYPES OF REQUEST AVAILABLE:**

##### **Request to work different days and/or times of work**

A legacy employer can request an employee to work different days and/or times of work.

Such a Request can be made of an employee who received JobKeeper payments in the Original JK Scheme only.

Where a Request is made, an employee can be requested to perform their duties on different days and/or at different times to what they usually work, provided that:

- The employee received a JobKeeper payment for a fortnight before 28 September 2020. That is, they were an eligible employee for the original JobKeeper scheme, and had received at least one JobKeeper payment; and
- The performance of the duties on the different days and/or times is safe considering the nature and spread of COVID-19; and
- The employee is paid in full for the different days and times of work. This means that the employee receives applicable penalty rates, loadings or other allowances; and
- The performance of the duties on the different days and/or times is reasonably within the scope of the employer's business operations; and
- The Request does not have the effect of reducing the employee's number of hours of work; and
- The Request does not have the effect of requiring the employee to work less than 2 consecutive hours in a day that they work.

An employee cannot unreasonably refuse such a Request.

An employee's ability to agree or disagree to a Request is a workplace right under the FW Act, and an employer cannot disadvantage the employee on this basis.

#### **STEPS TO FOLLOW WHEN SEEKING TO ISSUE A DIRECTION: LEGACY EMPLOYER**

In order to issue a Direction, a legacy employer:

##### **Step 1:**

Must give an employee written notice of the intention to issue a Direction. The notice can be provided by electronic means.

##### **Step 2:**

Must provide the employee or their appointed representative (if any) with information about the proposed Direction, including information about:

- The nature of the proposed Direction;
- When the proposed Direction will take effect;
- The expected effects of the proposed Direction on the employee.

This can be done at the same time as the notice referred to in Step 1 above.

##### **Step 3:**

Must consult with the employee and their representative, if they have one, about the proposed Direction. This includes inviting the employee or their appointed representative (if any), to give their views about the impact of the proposed Direction.

A legacy employer must give prompt and genuine consideration to any views expressed by the employee or their appointed representative (if any).

**Step 4:**

After considering any matters raised by the employee or their appointed representative (if any), during Step 3, update the proposed Direction, and issue it to the employee. This Direction must be issued at least seven (7) clear days\* after the written notice was issued at Step 1.

At all times, an employer must ensure that the Direction is reasonable in the circumstances. In addition, the Direction must meet the relevant criteria for being a Direction.

**An employer should keep a written record of their consultation and discussions e.g. a File Note.**

*\* Please note this timeframe is longer for legacy employers.*

## **FAIR WORK COMMISSION'S ROLE TO ARBITRATE DISPUTES**

The following applies to both qualifying and legacy employers.

An employee or their Union (as their representative), **or** an employer or their employer association (as their representative) may lodge a dispute with the FWC to deal with a dispute arising under the FW Act.

The relevant form to complete to notify FWC of the dispute is [Form F13A](#).

The FWC, in dealing with the dispute, can:

- Mediate;
- Conciliate;
- Express an opinion; or
- Arbitrate (i.e. make a binding decision)

the dispute.

Where arbitrating a dispute, the FWC may make an Order:

- That the FWC considers it desirable to give effect to the employer's Direction.
- To set aside the employer's Direction
- Substituting the employer's Direction for another Direction.
- That the FWC considers appropriate.

Failure to follow an Order can result in penalties of up to \$12,600 for an individual and \$63,00 for a business.

The FWC has developed a Benchbook for dealing with JobKeeper related disputes. The Benchbook can be viewed [HERE](#).

# COMMON JOBKEEPER QUESTIONS AND ANSWERS

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## **GENERAL**

### **IS JOBKEEPER 2.0 A 'ONE IN, ALL IN' SCHEME?**

Yes. As per the Original JK Scheme, JobKeeper 2.0 is also 'one in, all in'. This means that all eligible employees must be nominated by their employer to participate.

### **HOW DOES SCHEDULE J OF THE HIGA INTERACT WITH A JOBKEEPER DIRECTION/REQUEST?**

A Direction that has been made as per Schedule J in the *Hospitality Industry (General) Award 2020* will have no effect if the employer and the employee are JobKeeper eligible.

Schedule J states:

"J.4 Schedule J does not apply to any employee employed by an employer that qualifies for the JobKeeper Scheme if the employee is an 'eligible employee' as defined in s.9 of the Coronavirus Economic Response Package (Payments and Benefits) Rules 2020."

Therefore, any Schedule J directions in place as per the above situation, must be replaced with a JobKeeper Direction were applicable and relevant.

### **DOES AN EMPLOYEE HAVE TO COMPLY WITH A JOBKEEPER DIRECTION?**

Yes, where a Direction is given to an employee, and that Direction complies with the requirements of Part 6-4C of the FW Act, the employee must comply with it.

The only exception to this is if the Direction is unreasonable in all of the circumstances. In such a case, the Direction will not apply to the employee. An example of where a Direction may not be reasonable is in circumstances where the Direction has a significant impact of the employee's caring responsibilities.

### **ARE THERE ANY PENALTIES FOR A LEGACY EMPLOYER WHO ISSUES A DIRECTION WITHOUT MEETING THE 10% DECLINE IN TURNOVER TEST?**

A legacy employer who knowingly fails to meet the 10% turnover test, and who issues a JobKeeper Enabling Direction or makes a Request faces penalties of up to \$13,200 for individuals and \$66,600 for body corporates.

### **CAN I REQUEST AN EMPLOYEE TO TAKE ANNUAL LEAVE WITH JOBKEEPER 2.0?**

No, the ability to request an employee to take annual leave, or to take annual leave at half pay expires on 28 September 2020. JobKeeper 2.0 does not include the ability for an employer (qualifying and legacy) make such a request.

An employer can, however, reach an agreement with an employee to take a period of annual leave. Please be mindful of any requirements stated in an employee's industrial instrument in this regard.

### **WHEN WILL THE JOBKEEPER EXTENSION PAYMENT COMMENCE?**

The Original JK Scheme payment has been available from 30 March 2020. Period 1 of JobKeeper 2.0 commences on 28 September 2020 and Period 2 of JobKeeper 2.0 commences on 4 January 2021.

## HOW LONG WILL THE JOBKEEPER PAYMENT LAST FOR?

The original JobKeeper Payment will be available until 27 September 2020. Period 1 of JobKeeper 2.0 will be available until 3 January 2021, and Period 2 of JobKeeper 2.0 will be available until 28 March 2021.

## DOES AN EMPLOYER HAVE TO PARTICIPATE IN JOBKEEPER?

No, an employer elects to participate, and can also elect not to participate.

## DOES AN EMPLOYER HAVE TO PARTICIPATE FOR THE ENTIRE JOBKEEPER PERIOD?

Employers do not have to be part of JobKeeper for the duration of the scheme.

Employers can join at any time provided the employer submits the approved forms prior to the end of the relevant fortnightly period from which they intend to participate.

## PAYMENT GENERALLY

### WHEN AND HOW WILL THE JOBKEEPER PAYMENT BE PAID TO EMPLOYERS?

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

### ARE THERE ANY JOBKEEPER SCHEME CUT OFF DATES THAT EMPLOYERS NEED TO BE AWARE OF?

The following table sets out the remaining payment periods and minimum amounts payable under the original JobKeeper payment scheme:

<b>Payment date (Reimbursement to Employer)</b>	<b>Amount <u>per employee</u></b>
By 14 August	\$3,000 (for fortnights starting 22 June and 6 July)
By 14 September	\$4,500 (for fortnights starting 20 July, 3 August and 17 August)
By 14 October	\$3,000 (for fortnights starting 31 August and 14 September)

### I PAY WEEKLY, CAN I CONTINUE TO DO SO?

Yes, provided the eligible employee is paid \$750 each week, amounting to a total of \$1,500 for each of the JobKeeper payment fortnights.

## **WHAT IF I PAY EMPLOYEES MONTHLY?**

It is important that employees receive payment at some time during the JobKeeper fortnight. However where an employer pays their staff monthly, the ATO will be able to reallocate payments between periods. However, overall an employee must have received the equivalent \$1,500 per fortnight.

## **CAN I USE MY NORMAL PAYROLL CYCLE EVEN IF IT MEANS THE PAYMENT FOR A JOBKEEPER FORTNIGHT IS MADE JUST AFTER THE FORTNIGHT ENDS?**

Employers can make the payments through the continuation of their existing pay cycle and using their existing payroll mechanisms. Employers need to ensure that an eligible employee receives \$1,500 for each JobKeeper fortnight, and the payment should be clearly linked to the fortnight period that the payment relates to.

## **MY NORMAL PAYROLL CYCLE PAYS ON EVEN IF IT MEANS THE PAYMENT FOR A JOBKEEPER FORTNIGHT IS MADE JUST AFTER THE FORTNIGHT ENDS?**

Employers can make the payments through the continuation of their existing pay cycle and using their existing payroll mechanisms. Employers need to ensure that an eligible employee receives \$1,500 for each JobKeeper fortnight, and the payment should be clearly linked to the fortnight period that the payment relates to.

## **EMPLOYEE IS ABSENT FROM THE WORKPLACE E.G. STAND DOWN, ON LEAVE ETC.**

### **WILL AN EMPLOYEE RECEIVING THE GOVERNMENT'S PAID PARENTAL LEAVE PAY OR DAD AND PARTNER PAY BE ELIGIBLE?**

An employee will not be eligible for the JobKeeper Payment if they are receiving paid Parental Leave Pay or Dad And Partner Pay from Services Australia during the relevant JobKeeper fortnight.

However, an employee will be eligible if they are on unpaid parental leave from their employer, and they are receiving *employer funded* paid parental leave (not associated with the Government scheme).

### **WILL AN EMPLOYEE IN RECEIPT OF WORKERS' COMPENSATION BE ELIGIBLE?**

An employee receiving workers' compensation will be eligible for the JobKeeper Payment if the employee is working, for example, on reduced hours.

Generally they will not be eligible if they are not working (ie the employee is totally incapacitated from work) during the relevant JobKeeper fortnight.

### **WILL AN EMPLOYEE WHO IS ON LEAVE BE ELIGIBLE?**

Employees are eligible to receive the JobKeeper payment when they are on paid leave, such as annual leave, long service leave or personal/carer's leave, or on a period of unpaid leave.

The JobKeeper subsidy will go towards the cost of the leave paid to the eligible employee – it is not paid on top of the leave payment. Leave taken while the JobKeeper payment scheme is in operation should not be re-credited. Leave can still be taken while the JobKeeper payment scheme is in operation. Employees that are absent from the workplace on unpaid leave are entitled to the JobKeeper payment.

## **WHAT HAPPENS TO A JOBKEEPER ENABLING DIRECTION WHILE AN EMPLOYEE IS ABSENT FROM WORK?**

A JobKeeper Enabling Direction will not apply during a period of leave – paid or unpaid, or the employee is otherwise entitled to be, and is, absent, for example, on a public holiday.

This means that an employee receives payment for their pre-JobKeeper Enabling Direction hours of work for the absence if it is a period of paid leave, or a public holiday.

## **IF AN EMPLOYEE'S HOURS/DAYS OF WORK ARE REDUCED AS A RESULT OF A DIRECTION WHAT HAPPENS TO THE ACCRUAL OF THEIR LEAVE ENTITLEMENTS?**

Employees continue to accrue leave entitlements as if the direction had not been given.

## **DOES THE PERIOD WHEN AN EMPLOYEE IS STOOD DOWN COUNT TOWARDS CONTINUITY OF SERVICE?**

Yes, it counts for the purpose of continuity of service for the purposes of redundancy and pay in lieu of notice.

## **WHAT REQUESTS CAN AN EMPLOYEE MAKE OF THEIR EMPLOYER WHILE STOOD DOWN AS A RESULT OF A DIRECTION TO REDUCE HOURS/DAYS OF WORK?**

An employee may request to engage in any of the following for the duration of the stand down:

- Secondary employment
- Training; or
- Professional development.

Employers must consider these requests and cannot unreasonably refuse them. Should an employer unreasonably refuse, the employer may face penalties of up to \$12,600 for an individual and \$63,000 for a business.

## **CASUAL EMPLOYMENT**

### **HOW CAN I ASSESS WHETHER A CASUAL EMPLOYEE IS A LONG TERM CASUAL?**

In accordance with the ATO guidelines, an employee is a long-term casual employee, if on 1 July 2020, they were:

- A casual employee, and
- Employed on a regular and systematic basis during the period of 12 months that ended on 1 July 2020, and
- During this period was employed by either:
  - A. The same employing entity, or
  - B. More than one employing entity, but all entities being within the same wholly owned group, or
  - C. More than one employing entity, but this was due to a change in ownership of the business, so the employee worked for the same business during the relevant time period.

The ATO has published the following commentary on their website:

*A casual employee is likely to be employed on a regular and systematic basis with a recurring work schedule or a reasonable expectation of ongoing work.*

*While a pattern or roster of hours may be a strong indication of regular and systematic employment, it is not necessary to have worked the same days and hours over each pay period. You may be considered employed on a regular and systematic basis and therefore eligible for the JobKeeper payment where there is a pattern of work with hours offered and accepted regularly.*

*This is general guidance about how the JobKeeper payments apply to casual employees and does not represent advice about how 'regular and systematic' employment might arise under the Fair Work Act.*

The above commentary can be viewed on their website [HERE](#).

Although the ER Department can provide general information about ATO eligibility criteria for the JobKeeper payment, we are unable to offer a formal determination for you as to whether your casual employee's circumstances match their assessment of a 'regular and systematic' casual.

Employers who wish to seek the ATO's comment on the matter should contact the ATO directly.

### **WHAT ABOUT A CASUAL EMPLOYEE THAT DIDN'T QUALIFY AS A LONG-TERM CASUAL EMPLOYEE AT 1 MARCH 2020 BUT MIGHT QUALIFY AT 1 JULY 2020?**

The ATO has published the following commentary on their website:

*A casual employee is likely to have been employed during the relevant 12 month period on a regular and systematic basis if they had a recurring work schedule or maintained a reasonable expectation of ongoing work.*

*While a pattern or roster of hours may be a strong indication of regular and systematic employment, it is not necessary to have worked the same days and hours over each pay period. For example, due to the effects of the coronavirus on employment, an individual may have worked fewer shifts in the months of March to June 2020.*

*An individual may have been employed on a regular and systematic basis where there was a pattern of work with hours regularly offered and accepted.*

*Relevant factors which may indicate that an individual was not employed on a regular and systematic basis include:*

- *the employer was unable to offer suitable work to the individual for substantial periods of time*
- *the individual made themselves unavailable for work over a substantial period of time*
- *the individual was only offered, and/or only accepted, work irregularly or occasionally.*

*This is general advice for employers about their entitlements to JobKeeper payments for casual employees. It does not represent advice about 'regular and systematic' employment under the Fair Work Act.*

*Whether casual employment is on a "regular and systematic basis" depends on the circumstances of each case. We will generally not review a reasonable and good faith assessment by an employer of which employees are long-term casual employees assessed under either the 1 March 2020 test or the 1 July 2020 test.*

The above commentary can be viewed on ATO website [HERE](#).

Although the ER Department can provide general information about ATO eligibility criteria for the JobKeeper payment, we are unable to offer a formal determination for you as to whether your casual employee's circumstances match their assessment of a 'regular and systematic' casual.

Employers who wish to seek the ATO's comment on the matter should contact the ATO directly.

### **IS A CASUAL EMPLOYEE WHO HAS MOVED BETWEEN DIFFERENT BUSINESSES WITHIN THE SAME CORPORATE GROUP ELIGIBLE?**

A casual can still meet the test of working for 12 months on a regular and basis if they were transferred from one member of a wholly-owned corporate group to another member in the same group within the last 12 months.

### **HOW DOES THE CASUAL EMPLOYEE TEST APPLY IF A BUSINESS HAS CHANGED OWNERSHIP WITHIN THE LAST 12 MONTHS OR SINCE 1 JULY 2020?**

A casual employee is still eligible for JobKeeper where a business has changed ownership within the last 12 months so long as the casual has been working for the same business (despite the ownership change).

The other eligibility requirements must also be met too.

## **APPRENTICES AND TRAINEES**

### **ARE APPRENTICES AND TRAINEES ELIGIBLE FOR JOBKEEPER PAYMENTS?**

Yes, provided they meet all of the employee eligibility requirements. They cannot however, receive both JobKeeper payments and the Supporting Apprentices and Trainees Wages subsidy.

## **END OF EMPLOYMENT**

### **WHAT HAPPENS IF MY EMPLOYEE RESIGNS?**

If an employee for whom you are receiving the JobKeeper Payment resigns, you must notify the ATO. Depending of the timing of the resignation, an employer may need to refund some money to the ATO.

### **IS AN EMPLOYEE ON A FIXED TERM CONTRACT ELIGIBLE FOR JOBKEEPER?**

Yes, an employee on a fixed term contract will be eligible where they met the eligibility criteria. Payments will stop at the end of the fixed term (the fortnight it falls in) and the employer will need to notify the ATO.

## **OTHER EMPLOYMENT QUESTIONS**

### **WHAT ABOUT AN EMPLOYEE WHO HAS A SECOND JOB?**

Where an eligible employee has more than one job, they can only be nominated for one JobKeeper Payment from one employer.

The employee will need to notify their primary employer to claim the JobKeeper Payment on their behalf. If one job is casual and the other is permanent part-time or permanent full time, they must nominate the employer at their permanent job to be their primary employer.

Similarly, if an employee derives income from both work and self-employment (for example as a sole trader) they must nominate the work to which the JobKeeper Payment will apply.

The claiming of the tax-free threshold will in most cases be sufficient notification than an employer is the employee's primary employer. The ATO will be providing additional guidance to assist employees in determining which employer to notify.

### **I'VE HIRED AN NEW EMPLOYEE (POST 1/7/20). WHAT DO I PAY THEM?**

A new employee hired after 1 July 2020 is not eligible for the JobKeeper payment.

If an employee had accepted an offer of employment prior to or on 1 July 2020 (eg they signed and returned an employment contract), but they did not actually commence employment until after 1 July 2020, they will not be eligible. Employers should review any employment contract documentation provided to the employee, to confirm when the employment was actually going to commence.

### **THE JOBKEEPER SCHEME REFERS TO RE-ENGAGED EMPLOYEES POTENTIALLY BEING ELIGIBLE TO RECEIVE PAYMENTS. SHOULD I CONSIDER RE-HIRING PEOPLE?**

Whilst there is the potential for a person who was employed on 1 March 2020 or on 1 July 2020, and whose employment later ceased, but is re-hired, to be able to receive JobKeeper, please note this concept does create some difficulties in relation to employment relations entitlements e.g. redundancy pay, if this was previously paid to the former employee.

It's also important to understand whether the employee will be eligible, including whether a casual employee will or will not be considered a long-term casual employee, and whether an employee is eligible with another or multiple employers or has nominated another employer.

Please contact the QHA's ER Department to discuss your specific circumstances if you are considering whether you might re-engage a previous employee due to the JobKeeper scheme.

### **WHAT ABOUT AN EMPLOYEE ALREADY IN RECEIPT OF OTHER SERVICES AUSTRALIA INCOME SUPPORT PAYMENTS, SUCH AS JOBSEEKER?**

If an employee is receiving a Services Australia income support payment, like the JobSeeker Payment, and they have been told by their employer that they are receiving the JobKeeper Payment, the employee must report that income to Services Australia.

The employee may need to cancel their JobSeeker Payment. If they do not report the income or, cancel their JobSeeker Payment, an employee may incur a debt that they will be required to pay back to the relevant authority.

### **HOW THE PAYMENT WORKS BASED ON USUAL EARNINGS (EG BEFORE TAX)**

#### **WHAT IF MY EMPLOYEE USUALLY EARNS LESS THAN THE JOBKEEPER AMOUNT PER FORTNIGHT?**

If any eligible employee currently earns less than the relevant JobKeeper amount before tax per fortnight, the employer will need to pay them the full JobKeeper amount as relevant to that employee per fortnight before tax to receive the JobKeeper payment reimbursement.

## **WHAT IF MY EMPLOYEE USUALLY EARNS MORE THAN THE JOBKEEPER AMOUNT PER FORTNIGHT?**

If an employee is paid the relevant value of the JobKeeper payment or more a fortnight (under an award, enterprise agreement or contract of employment), an employer is still liable to pay that amount\*.

*\* unless another arrangement has been entered into via mutual agreement to reduce ordinary hours of work or a Direction has been given in accordance with Part 6-4C of the Fair Work Act 2009.*

## **SEVERAL EMPLOYEES HAVE BEEN STOOD DOWN. WHAT DO THEY RECEIVE?**

Where eligible, an employee who has been stood down will receive the relevant JobKeeper payment amount (before tax) per fortnight.

## **1 JULY 2020 ELIGIBILITY TEST REQUIREMENTS**

Refer to the relevant section of this Q&A Information Guide on the new employment date of 1 July 2020.

## **VISA WORKERS**

### **THE TYPE OF VISA FOR MY EMPLOYEE IS NOT LISTED IN THE EMPLOYEE ELIGIBILITY SECTION. HOW DO I CHECK THIS?**

Employers are encouraged to talk to their migration agent / solicitor on eligibility and other options for a visa worker not eligible for the JobKeeper payment.

### **ONE OF MY EMPLOYEES IS WORKING IN AUSTRALIA ON A TEMPORARY VISA. IS SHE ELIGIBLE?**

No, the employee is not eligible.

To be eligible for JobKeeper an employee must, as at 1 July 2020 be: a) an Australian citizen, b) the holder of a permanent visa, or c) a Special Category (Subclass 444) Visa Holder

## **LABOUR HIRE BUSINESS INTERACTIONS**

### **I RUN A LABOUR HIRE COMPANY. WILL EMPLOYEES BE ELIGIBLE IF THEIR 'HOST EMPLOYER' CLAIMS THE JOBKEEPER PAYMENT?**

Employees are only eligible in respect of their direct employer.

## **SUPERANNUATION AND JOBKEEPER**

### **HOW DOES SUPERANNUATION WORK?**

Scenario 1: Employee Working and Earns More Than The Relevant JobKeeper Amount Per Fortnight.

If an employee ordinarily earns \$2,000 per fortnight and is still working hours to earn those wages at a business, the employer's superannuation contribution is based on \$2,000.

**Scenario 2:** Employee Working and Earns Less Than The Relevant JobKeeper Amount Per Fortnight.

If an employee ordinarily earns \$1,000 per fortnight and is still working hours to earn those wages at a business, and the relevant JobKeeper amount for the employee is \$1,200 per fortnight (e.g. after 28 September 2020) full JobKeeper subsidy is paid to the employee – so they get an additional \$200 in their pay.

The employer's superannuation contribution is based on \$1,000, unless they choose to base it on the \$1,200 (incorporating the extra \$200)

**Scenario 3:** Employee on Stand Down.

If an employee is on stand down, they receive the relevant JobKeeper amount per fortnight. No superannuation contributions need to be made by the employer.

**MAKING JOB KEEPER PAYMENTS PRIOR TO ATO APPROVAL AS ELIGIBLE**

**IF I MAKE PAYMENTS FOR EMPLOYEES AS PART OF THIS SCHEME, BEFORE THE ATO HAS CONFIRMED THAT I (AND THE EMPLOYEES I'VE MADE JOBKEEPER PAYMENTS TO) MEET THE ELIGIBILITY CRITERIA, IS THERE A RISK THAT I WON'T BE REIMBURSED?**

The ER Department has provided the information in this Information Guide to assist you with understanding the JobKeeper scheme, however the QHA cannot *guarantee* that you (and the relevant employees) will be deemed eligible for the scheme – only the ATO can make this decision.

Employers should weigh up this issue when deciding whether to participate in the scheme.

**Further Assistance**

Financial QHA members are encouraged to contact the QHA's Employment Relations Department (refer the contact details at the bottom of this page) for a confidential discussion about the information in this Information Guide, or to discuss any queries relating to specific workplace matters.

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