



Legacy employers – template letter for issuing a JobKeeper direction to change duties or work location

Who can use this template letter?

Legacy employers who want to give a previously eligible employee a JobKeeper direction to change duties or work location that applies after 27 September can use this template to issue the new direction.

Existing JobKeeper enabling directions and agreements for legacy employers ended on 27 September 2020. If you're a legacy employer and need to modify your employee's working arrangements (e.g. hours of work or days of work) after this date, you will need to re-issue or make new directions and agreements with your relevant employees.

A new JobKeeper direction to change duties or work location can be used by a legacy employer to direct a previously eligible employee to perform duties:

- that are different to those that the employee usually performs, or at a place different from the employee's normal place of work, including at the employee's home.

Go to [Legacy employers](#) and [JobKeeper enabling directions and agreements for legacy employers](#) at coronavirus.fairwork.gov.au/JobKeeper for information about:

- who is a legacy employer
- meeting the 10% decline in turnover test each quarter, and certificate/statutory declaration requirements
- the rules and requirements for legacy employers when issuing JobKeeper directions or making JobKeeper agreements.

How do I issue a direction as a legacy employer?

To issue the direction, you need to:



1. **Notify your employees in writing that you intend to issue a JobKeeper direction to change their duties or work location**

You need to notify the employee in writing of your intention to give the direction **at least 7 days** before issuing the direction (unless the employee genuinely agrees to a shorter timeframe).

You can use our **Legacy employers – template letter to notify employees of JobKeeper direction to change duties or work location** to do this.

The Fair Work Ombudsman is committed to providing you with advice that you can rely on.

The information contained in this template is general in nature. If you are unsure about how it applies to your situation you can call our Infoline on 13 13 94 or speak with a union, industry association or a workplace relations professional.

Download this template on our [Tools and resources during coronavirus page](https://coronavirus.fairwork.gov.au/coronavirus-and-australian-workplace-laws/contact-us/tools-and-resources-during-coronavirus) at coronavirus.fairwork.gov.au/coronavirus-and-australian-workplace-laws/contact-us/tools-and-resources-during-coronavirus



2. Consult with your employees about the proposed direction

Employers need to consult with the employee about the proposed direction during the 7 day notice period before giving the direction and keep a written record of the consultation. The rules are set out in **Step 9 of the checklist below**.

You can read more about how to consult with your employees on [JobKeeper enabling directions and agreements for legacy employers](https://coronavirus.fairwork.gov.au/JobKeeper) at coronavirus.fairwork.gov.au/JobKeeper



3. Give the JobKeeper direction to change duties or work location in writing

Once you have notified your employee of your intention to issue a direction and genuinely consulted with them on it, you can use **the template letter below** to issue the direction in writing to your previously eligible employee.

! IMPORTANT

If you're a **qualifying** employer participating in the JobKeeper wage subsidy scheme after 27 September 2020 and you plan to change the duties or work location of an employee, this template does not apply to you. If you plan to change the duties or work location of an employee, please use our **Qualifying employers – template letter for issuing a JobKeeper direction to change duties or work location**.

You can download this template on our [Tools and resources during coronavirus page](https://coronavirus.fairwork.gov.au/coronavirus-and-australian-workplace-laws/contact-us/tools-and-resources-during-coronavirus) at coronavirus.fairwork.gov.au/coronavirus-and-australian-workplace-laws/contact-us/tools-and-resources-during-coronavirus

For more information about [JobKeeper enabling directions and your workplace rights and obligations around coronavirus](https://coronavirus.fairwork.gov.au) see coronavirus.fairwork.gov.au

! IMPORTANT

Make sure you're using the latest version of this template letter by **downloading the most up-to-date version** from coronavirus.fairwork.gov.au/coronavirus-and-australian-workplace-laws/contact-us/tools-and-resources-during-coronavirus

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Checklist: What legacy employers must consider before changing an employee's duties or work location

Legacy employers can only give a JobKeeper direction to change an employee's duties or work location to their previously eligible employees in certain circumstances.

Use the below checklist to ensure you're meeting your obligations before issuing the direction.

Step 1 – Confirm you are a legacy employer

To be a legacy employer you must:

- have participated in the JobKeeper scheme before 28 September 2020 but no longer qualify (or choose not to participate) on or after 28 September 2020.

Step 2 – Confirm you're eligible to give a JobKeeper direction

You must:

- be able to show at least a 10% decline in actual GST turnover for the previous quarter compared with the same quarter in 2019 ('10% decline in turnover test') **and**
- have a certificate from an eligible financial service provider confirming that you have satisfied the 10% decline in turnover test (or, if you're a [small business employer](#), be able to provide a statutory declaration to that effect) **and**
- have previously received the JobKeeper payment in relation to the employee you want to give the direction to before 28 September 2020 (**previously eligible employee**).

Need more help?

Find information about [legacy employers](#) at coronavirus.fairwork.gov.au/JobKeeper

Step 3 – Make sure you're giving the direction because it is necessary to continue employing one or more employees

The direction won't apply to the employee unless the employer reasonably believes that the direction is necessary to continue the employment of 1 or more employees.

For more information visit [JobKeeper wage subsidy scheme](#) at coronavirus.fairwork.gov.au/JobKeeper

Step 4 – Make sure the direction complies with the following requirements

Change in duties

If you're changing an employee's duties, make sure that:

- the new duties are within their skill and competency
- the new duties are safe (including having regard to the nature and spread of coronavirus)
- the employee has any required licences and/or qualifications to perform the new duties, **and**
- the new duties are reasonably within the scope of your business operations. For example, you can't direct an employee to do odd jobs unrelated to the operation of the business.

Change in work location

If you're changing an employee's work location (including to the employee's home), make sure that:

- the location is suitable for their work

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- they don't have to travel an unreasonable distance (including considering the circumstances surrounding coronavirus)
- it's safe for the employee to perform their job at the new location (including considering the nature and spread of coronavirus), **and**
- the employee performing their duties at the new location is reasonably within the scope of your business operations.

For more information visit [JobKeeper wage subsidy scheme](https://coronavirus.fairwork.gov.au/JobKeeper) at coronavirus.fairwork.gov.au/JobKeeper

Step 5 – Check what wages you will need to pay

When an employee is subject to an enabling direction about location or duties, you need to pay the employee their usual pay for any hours that the employee does work (including any allowances and penalty rates) while the direction applies (taking into account any higher base pay rate for any new duties). If the temporary new duties attract a higher pay rate (for example, under an applicable award or enterprise agreement), you must pay the employee the higher pay rate.

! IMPORTANT

An employee's base pay rate can't be reduced, while a direction to change usual duties is in place.

Step 6 – Make sure the direction is implemented safely, including considering the nature and spread of coronavirus

Learn more about [Health and safety in the workplace during coronavirus](https://coronavirus.fairwork.gov.au) at coronavirus.fairwork.gov.au

Step 7 – Make sure the direction is reasonable

You have to take into account all of the circumstances, including:

- the previously eligible employee's caring responsibilities.
- if the direction applies to a category of employees, making sure it doesn't have an unfair effect on some employees in that category compared to others

If a direction is unreasonable, it doesn't apply.

Step 8 – Notify the affected employee

You must notify the employee **in writing** of your intention to give the direction at **least 7 days** before issuing the direction (unless the employee genuinely agrees to a shorter timeframe).

To notify the employee, use our **Legacy employers – template letter to notify employees of JobKeeper direction to change duties or work location**. Download this template on our [Tools and resources during coronavirus page](https://coronavirus.fairwork.gov.au/coronavirus-and-australian-workplace-laws/contact-us/tools-and-resources-during-coronavirus) at coronavirus.fairwork.gov.au/coronavirus-and-australian-workplace-laws/contact-us/tools-and-resources-during-coronavirus

Step 9 – Consult with the affected employee

Before giving the direction, you have to consult with the employee about the proposed direction and take their views into consideration. If you don't do this, the direction won't apply to the employee.

An employee can appoint a representative, which can be their union. If they do, you must recognise the representative and consult with them.

To consult with the employee or representative you have to:

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provide information about the direction, when it will take effect and how you expect it will affect the employee, **and**

ask for the employee's views on the impact of the direction (for example on their family or caring responsibilities).

You **must** promptly and genuinely consider the previously eligible employee's views in the 7 day period prior to you giving a direction. You aren't required to disclose confidential or commercially sensitive information.

If you have previously notified and consulted with the employee on a proposed direction, you don't need to notify or consult with the employee again if:

in relation to the previous direction, you complied with the above outlined notification and consultation obligations, **and**

in deciding to issue this direction, you considered any views expressed by the employee or their representative in the consultation which occurred before the earlier direction.

Read more about how to consult on [JobKeeper enabling directions and agreements for legacy employers](https://www.fairwork.gov.au/JobKeeper) at [coronavirus.fairwork.gov.au/JobKeeper](https://www.fairwork.gov.au/JobKeeper).

You can use our [Consultation and cooperation in the workplace best practice guide](https://www.fairwork.gov.au/how-we-will-help/templates-and-guides) at www.fairwork.gov.au/how-we-will-help/templates-and-guides to help with the consultation conversation.

Need help?

- Complete our short course about having [difficult conversations in the workplace](https://www.fairwork.gov.au/learning) at www.fairwork.gov.au/learning
- Submit an enquiry online through [My account](https://www.fairwork.gov.au/register) at www.fairwork.gov.au/register
- Contact us on 13 13 94 (select the prompt for the coronavirus hotline).

Step 10 – Keep a written record of the consultation

You must keep a written record of the consultation.

Step 11 – Use this template letter to issue the direction to the affected employee

You can only give the direction in writing after you've:

1. given the employee notice in writing (e.g. by using this template letter)
2. consulted with the employee or their representative and made any relevant changes to the intended direction

Once you have completed the steps above, you can give the JobKeeper direction.

The direction must be given in writing to the employee. To give the direction, you can use our template letter below.

! IMPORTANT

This template letter has been colour coded to assist you to complete it accurately. You simply need to replace the **red < > writing** with what applies to your previously eligible employee and situation.

Explanatory information is shown in *blue italics* to assist you and **should be deleted once you have finished the letter**.

Provide the letter to the employee and keep a copy of the letter for your records.

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TEMPLATE LETTER: Legacy employers – for issuing a JobKeeper direction to change duties or work location

<Print on your business letterhead if applicable>

<Date>

Optional **Private and confidential**

<Insert employee's full name>

<Insert employee's contact details>

JobKeeper direction to change duties or work location

Dear <insert first name>

I am writing to inform you that as of <date> I am directing you to <insert details of direction i.e. 'change your duties' or 'change your location of work' > from <insert start date> to <insert end date> in regards to your employment as a <insert position/classification> with <insert business/company name>.

<insert the business/company name> is entitled to give you a direction in accordance with the Fair Work Act JobKeeper provisions because:

- the business participated in the JobKeeper scheme before 28 September 2020 but is not participating after 28 September 2020
- the business has a certificate or statutory declaration demonstrating that it satisfies the 10% decline in turnover test for the designated quarter
- the business previously received JobKeeper payments in relation to your employment.

For the <insert quarter> the <insert the business/company name> has obtained a <statutory declaration / certificate> and is entitled to give you a JobKeeper direction to <change duties or work location>.

[Explanatory information – please delete once you have finished the letter]

Employers need to:

- *notify the employee in writing **at least 7 days before issuing the direction** (unless the employee genuinely agrees to a shorter timeframe). You can use our **Legacy employers – template letter to notify employees of JobKeeper direction to change duties or work location** to do this.*
- ***consult** with the employee (or their representative) about the direction*
- *keep a **written record** of the consultation*
- *make the direction **in writing**.*

IMPORTANT: Find who a [legacy employer](https://coronavirus.fairwork.gov.au/coronavirus-and-australian-workplace-laws/pay-and-leave-during-coronavirus/jobkeeper-wage-subsidy-scheme/legacy-employers) is, including the conditions you need to meet, at coronavirus.fairwork.gov.au/coronavirus-and-australian-workplace-laws/pay-and-leave-during-coronavirus/jobkeeper-wage-subsidy-scheme/legacy-employers

Your direction to change <'duties' or 'location of work'>

Your <insert details of direction i.e. 'duties' or 'location of work' are/is> being changed as follows:

- *[Delete if not relevant]* <insert details of how the employee's duties have been changed i.e. 'from current duties as a Regional manager to new duties as a Sales assistant'>
- *[Delete if not relevant]* your current location of work will be changed from <insert original address> to <insert new address>.

What will I be paid?

[Delete if not relevant] You will be paid your normal pay for all time worked. Your pay will not be reduced during this period.

[Explanatory information – please delete once you have finished the letter]

An employee's base pay rate can't be reduced while a direction to change usual duties is in place. If the temporary new duties attract a higher base pay rate (for example, under an applicable award or enterprise agreement), the employee needs to be paid the higher pay rate.

[Delete if not relevant] Because the duties I am directing you to do attract a higher pay rate under **<insert award or agreement details>**, you will be paid the higher pay rate during this period of \$**<insert pay rate>** per hour. You will also be paid any applicable entitlements (for example allowances and penalty rates) at this higher rate during this period.

Where can I go for support?

If you have any questions, please contact me on **<insert contact details>**.

For up to date information about your workplace entitlements and obligations during coronavirus you can visit the Fair Work Ombudsman [coronavirus website](https://www.fairwork.gov.au/coronavirus) at coronavirus.fairwork.gov.au.

Thank you for your understanding during this difficult time.

[Explanatory information – please delete once you have finished the letter]

We've included a couple of additional tips below to help you improve communication with your previously eligible employees. You may wish to make the letter more personal by:

- *Hand signing or adding a digital handwritten signature to the letter*
- *Sending the letter from a person that the employee recognises and is credible (rather than from an individual the employee may not know).*

Yours sincerely,

<Insert name>

<Insert position>

<Insert contact details>