

Legacy employers – notice of a JobKeeper direction or agreement continuing template letter

What is this template letter?

From 28 September 2020 under the extended JobKeeper provisions in the Fair Work Act legacy employers can:

- issue JobKeeper enabling stand down directions (with some changes)
- issue JobKeeper enabling directions in relation to employees' duties and locations of work
- make agreements with employees to work on different days or at different times (with some changes).

They can only issue directions and make agreements with employees that they previously received JobKeeper payments for before 28 September 2020 (**previously eligible employees**). There are also other requirements that they need to comply with, including meeting the 10% decline in turnover test.

To find out how to issue or make a JobKeeper direction or agreement as a legacy employer, go to [Legacy employers](#) and [JobKeeper enabling directions and agreements for legacy employers](#) at coronavirus.fairwork.gov.au/JobKeeper

Once a legacy employer has issued or made a JobKeeper direction or agreement as a legacy employer, they need to follow rules about telling employees in writing whether the direction or agreement will continue or end in the next relevant period, which depends on whether they met certain criteria.

A legacy employer can use this template letter to give their employee **written notice** of a continuing JobKeeper direction or agreement.

Who can use this template letter?

You can use this template letter if:

- ✓ you are a **legacy employer**
- ✓ as a legacy employer you issued a **JobKeeper direction** to, or made a **JobKeeper agreement** with, a previously eligible employee on or after 28 September 2020, **and**
- ✓ you need to provide written notice to your employee that their JobKeeper direction or agreement **will continue** in the next relevant period.

To continue a JobKeeper direction or agreement in the next relevant period, a legacy employer needs to hold a certificate (or statutory declaration if they are a [small business employer](#)) demonstrating that they meet the 10% decline in turnover test for the designated quarter corresponding to that period. The table below outlines the periods for JobKeeper directions or agreements and quarters that apply to them.

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, an industry association or a workplace relations professional.

| Period for JobKeeper direction or agreement | Quarter to meet 10% decline in turnover test | Comparison quarter |
|---|--|--------------------|
| 28 September to 27 October 2020 (inclusive) | June 2020 | June 2019 |
| 28 October 2020 to 27 February 2021 (inclusive) | September 2020 | September 2019 |
| 28 February to 28 March 2021 (inclusive) | December 2020 | December 2019 |

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 making JobKeeper directions or agreements.

! IMPORTANT

If you are a legacy employer and you have **not** met the 10% decline in turnover test for the designated quarter, you are not entitled to continue with a JobKeeper direction or agreement.

If you are a legacy employer and need to notify an employee about a JobKeeper direction or agreement ending, you can use our **Legacy employers – notice of a JobKeeper direction or agreement ending template letter**, which you can download at coronavirus.fairwork.gov.au/JobKeeper

When to use this template letter

Legacy employers must provide **written notice** to employees subject to a JobKeeper direction or agreement to confirm the direction or agreement will continue. You can use this template to do this.

! 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/JobKeeper

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Checklist: What legacy employers need to do before they can use this template letter to provide notice about a JobKeeper direction or agreement continuing into the next relevant period

Use the checklist in this document to make sure this template letter is right for you:

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) after 28 September 2020.

Step 2 – Confirm you're eligible to use the extended JobKeeper provisions

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 (the '10% decline in turnover test') **and**
- have a certificate to confirm it (or statutory declaration if you're a [small business employer](#)) **and**
- have previously received the JobKeeper payment in relation to the employee before 28 September 2020.

Need more help?

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

Step 3 – Confirm you have a JobKeeper enabling direction or agreement in place with an employee

This can be either:

- a JobKeeper enabling direction
- a JobKeeper agreement

Not sure what the difference is between a JobKeeper enabling direction and a JobKeeper agreement? Go to [legacy employers](#) and [JobKeeper enabling directions and agreements for legacy employers](#) at coronavirus.fairwork.gov.au/JobKeeper for help.

Step 4 – Confirm your certificate or statutory declaration showing you meet the 10% decline in turnover test is for the relevant quarter you're continuing the direction

In order to continue with a JobKeeper enabling direction or agreement as a legacy employer, you need to meet the 10% decline in turnover test and get a certificate (or statutory declaration if you're a [small business employer](#)) for the:

- quarter ending 30 September 2020, if you want a direction or agreement to continue after 27 October 2020 (until 27 February 2021)
- quarter ending 31 December 2020, if you want a direction or agreement to continue after 27 February 2021 (until the Fair Work Act JobKeeper provisions end on 28 March 2021).

Go to [Legacy employers](#) at coronavirus.fairwork.gov.au/JobKeeper for information about obtaining certificates or statutory declarations.

! IMPORTANT

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If you have **not** met the 10% decline in turnover test for the relevant quarter, you are not entitled to continue with a JobKeeper enabling direction or agreement.

If you need to notify an employee about a JobKeeper enabling direction or agreement ending, you can use our **Legacy employers – notice of a JobKeeper direction or agreement ending template letter** which you can download at coronavirus.fairwork.gov.au/JobKeeper.

Step 5 - Give your employee written notice that the JobKeeper enabling direction or agreement is going to continue

Use the template letter below to give your employee who is subject to a JobKeeper enabling direction or agreement written notice that the direction or agreement will continue.

You must do this:

- **before 28 October 2020**, for JobKeeper enabling directions or agreements continuing past this date
- **before 28 February 2020**, for JobKeeper enabling directions or agreements continuing past this date.

! 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**.

Need help?

- Visit [JobKeeper wage subsidy scheme](https://coronavirus.fairwork.gov.au/JobKeeper) coronavirus.fairwork.gov.au/JobKeeper
- Submit an enquiry online through [My account](https://www.fairwork.gov.au/register) at www.fairwork.gov.au/register
- Call us on 13 13 94 (select the prompt for the coronavirus hotline)
- Read about employer eligibility and the extended JobKeeper scheme on the [ATO website – JobKeeper extension](#)
- Complete our short course about having [difficult conversations in the workplace](#) at www.fairwork.gov.au/learning
- Read our [Consultation and cooperation in the workplace best practice guide](#) www.fairwork.gov.au/how-we-will-help/templates-and-guides

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TEMPLATE LETTER: Notice of a continuing JobKeeper direction or agreement

<Print on your business letterhead>

<Date>

Optional: Private and confidential

<Insert employee's full name>

<Insert employee's contact details>

Notice that your JobKeeper <direction / agreement> is continuing

Dear <insert first name>

I am writing to notify you that your existing JobKeeper <enabling direction / agreement> will continue after <28 October 2020 / 28 February 2021> until <insert date, which could be any date before the end of the next relevant period, or "at least the end of 27 February 2021", or "the Fair Work Act JobKeeper provisions end on 28 March 2021", as applicable>.

Optional: Why is the <direction / agreement> continuing?

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

Legacy employers have to tell their employees under a JobKeeper direction or agreement that the agreement is continuing. There is no minimum obligation to tell the employee why it is continuing.

Use this section if you want to tell your employee why the direction or agreement is continuing.

If not, delete this section.

<insert the business/company name> previously <issued you a JobKeeper direction / made a JobKeeper agreement with you> in accordance with the Fair Work Act JobKeeper legacy employer provisions. We did this because we've been significantly affected by the coronavirus and it helped us to keep paying our employees and access additional flexibility to manage our business requirements.

The Fair Work Act JobKeeper provisions require that the 10% decline in turnover test is applied each quarter, and a certificate or statutory declaration obtained in order for a legacy employer to continue with a <JobKeeper direction / JobKeeper agreement>.

For the <insert quarter> <insert the business/company name> has obtained a <statutory declaration / certificate> and is entitled to extend your existing JobKeeper <direction / agreement>.

As a result, your <JobKeeper direction / JobKeeper agreement> is being extended until <at least the end of 27 February 2021 / the Fair Work Act JobKeeper provisions end on 28 March 2021>.

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

The end date for a direction or agreement can be earlier than the last day of the relevant period and can be any time until 28 March 2021. But if the employer fails to satisfy the turnover test for a designated quarter on 28 October 2020 or 28 February 2021, the direction or agreement will cease to have effect at that time.

What happens now?

The conditions set out in the <JobKeeper direction / JobKeeper agreement> that <insert the business/company name> <gave / made with> you on <insert date> continue to apply.

The changes in that <JobKeeper direction / JobKeeper agreement> were <insert details of direction e.g. "reduce your hours and days of work to XXX">.

All your other terms and conditions of employment in accordance with your <award / agreement / other instrument> continue to apply as normal, except for the ones that have been changed by this <JobKeeper direction / JobKeeper agreement>.

I will update you if anything changes.

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

If you have any questions about this letter, please feel free to contact me on **<insert contact details>**.

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 to your 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 company name>