



Legacy employers – template letter to notify employees of a JobKeeper stand down direction

Who can use this template letter?

Legacy employers who want to give a JobKeeper stand down direction that applies after 27 September can use this template to notify their employees of their intent 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 stand down direction can be used by a legacy employer to direct a previously eligible employee:

- not to work on 1 or more days that they usually work
- to work for a shorter period than they usually work on a particular day or days, or
- to work less hours overall than they usually work.

However, any new JobKeeper stand down directions **cannot**:

- result in an employee working less than 2 hours on a work day
- reduce a full-time or part-time employee's hours of work to less than 60% of their ordinary hours as at 1 March 2020 (their ordinary hours before the impact of coronavirus).

For information about alternative ways of calculating an employees' ordinary hours where it isn't possible or appropriate to calculate as at 1 March 2020, go to [JobKeeper enabling directions and agreements for legacy employers](#).

Go to [Legacy employers](#) and [JobKeeper enabling directions and agreements for legacy employers](#) at coronavirus.fairwork.gov.au/JobKeeper for more 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
- calculating an employees' ordinary hours.

How do I issue a JobKeeper direction as a legacy employer?

To issue the direction, you need to:

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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.



1. Notify your employees in writing that you intend to issue a JobKeeper stand down direction

You can use this template letter below to do this. You need to notify the employee in writing of your intention to give the direction **at least 7 days** before issuing the direction (unless they genuinely agree to a shorter timeframe).



2. Consult with your employees about the proposed direction

You 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 about consultation are set out in **Step 10 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 stand down direction 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 our **Legacy employers – template letter for issuing a JobKeeper stand down direction** to issue the direction in writing to your previously eligible employee.

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

! IMPORTANT

If you're a qualifying employer participating in the JobKeeper wage subsidy scheme after 27 September 2020 and plan to stand down an employee, this template does not apply to you. Please use our **Qualifying employers – template letter to notify employees of a JobKeeper stand down direction**.

If you have never accessed the JobKeeper scheme and plan to stand down an employee, this template does not apply to you. You need to use our **Template letter for standing down employees - for employers not accessing the JobKeeper Fair Work Act provisions**.

You can download these templates 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

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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 standing down employees

Legacy employers can only give a JobKeeper stand down direction 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 to an employee

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 – Check you are giving the proposed JobKeeper stand down direction for one of the following reasons only

The direction is because the previously eligible employee can't be usefully employed for their normal days or hours because of:

- changes to the business attributable to coronavirus, **or**
- changes to the business due to government initiatives to slow coronavirus transmission (for example, because of an enforceable government direction).

Step 4 – Check the proposed JobKeeper stand down direction complies with the following requirements

Under the new direction:

- the employee **will be** working at least 2 hours on a work day; **and**
- the employee's total hours of work over the week **will be at least** 60% of their ordinary hours as at 1 March 2020.

Use [Find my award](#) at www.fairwork.gov.au/findmyaward to find the applicable award or go to the [Fair Work Commission website](#) to find an agreement at www.fwc.gov.au/awards-and-agreements/agreements.

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□ Step 5 – Check what wages you will need to pay

While the JobKeeper stand down applies:

- ✓ Employees subject to a JobKeeper stand down direction don't need to be paid for the hours that they aren't working due to the direction (i.e. when they are stood down).

When the JobKeeper stand down doesn't apply:

- ✓ **Time worked:** Employees subject to a JobKeeper stand down direction need to be paid their usual pay for the hours that they work, including any allowances and penalty rates.
- ✓ **Leave and authorised absence:** Employees may be able to take some forms of paid leave. For information about when a JobKeeper stand down direction applies and what leave employees can take, go to [Pay, leave and ending employment for legacy employers](https://coronavirus.fairwork.gov.au/jobkeeper) at coronavirus.fairwork.gov.au/jobkeeper

! IMPORTANT

An employee's base pay rate can't be reduced for any hours that they do work. You need to pay their normal hourly rate for all time worked.

□ Step 6 – Check how leave is accrued and service is counted during this period

Employees subject to a JobKeeper stand down direction still accrue their usual leave entitlements for the period the direction applies (as if the direction hadn't been given to them). Service is considered continuous for the purposes of redundancy and pay in lieu of notice (i.e. it counts as time worked).

□ Step 7 – Make sure the stand down 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 8 – Make sure the stand down direction is reasonable

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

- the 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 9 – Use this template letter to provide notice in writing to 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).

! 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.

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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.

This template letter is only suitable for legacy employers who are entitled to give a JobKeeper stand down direction. If this doesn't apply to you, please **do not** use this template. View our other stand down template letters available on our [Tools and resources during coronavirus page](https://www.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](https://www.fairwork.gov.au/coronavirus-and-australian-workplace-laws/contact-us/tools-and-resources-during-coronavirus)

Once you've used this template to provide notice to your employees that you intend to issue a new direction, continue the steps in this checklist.

Step 10 – Consult with the affected employee

Before giving a JobKeeper stand down 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:

- 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 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 11 – Keep a written record of the consultation

You must keep a written record of the consultation.

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□ Step 12 – Use our ‘Legacy employers - template letter for issuing a JobKeeper stand down direction’ to give the direction to the 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 stand down direction.

The JobKeeper stand down direction **must be given in writing to the employee**. To give the direction, you can use our **Legacy employers - template letter for issuing a JobKeeper stand down direction**. 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

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TEMPLATE LETTER: Legacy employers – to notify employees of a new JobKeeper stand down direction

<Print on your business letterhead if applicable>

<Date>

Private and confidential

<Insert employee's full name>

<Insert employee's contact details>

Notice of intent to issue JobKeeper stand down direction to reduce hours or days of work

Dear <insert first name>

I'm writing to notify you of my intent to give you a new JobKeeper stand down direction to <insert details of direction, e.g. 'reduce your hours and days of work'> from <insert start date> to <insert end date> in regards to your employment as a <insert position/classification> with <insert the business/company name.>

<insert the business/company name> is entitled to give you a stand down 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 <statutory declaration / certificate> and is entitled to give you a JobKeeper <direction / agreement>.

Your stand down direction

<Your current JobKeeper stand down direction will end on XXX>.

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

Legacy employers need to:

- **notify** the previously eligible employee in writing **at least 7 days before issuing the direction** (unless the employee genuinely agrees to a shorter timeframe)
- **consult** with the previously eligible employee (or their representative) about the direction
- keep a **written record** of the consultation
- **make the direction in writing**. To do this, you can use our **Legacy employers - template letter for issuing a JobKeeper stand down direction** at coronavirus.fairwork.gov.au/JobKeeper

IMPORTANT: Find who a [legacy employer](#) 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

From <insert date>, I intend to reduce your <hours/days> of work as follows:

- <insert details of how the previously eligible employee's hours and/or days of work have been reduced for example 'from 38 hours a week to 32 hours a week'>.

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

IMPORTANT: The direction can't:

- result in the employee working less than 2 hours in a day; or
- reduce the employee's overall hours of work to less than 60% of their ordinary hours set out in their award or agreement as at 1 March 2020 (note there are different ways to calculate ordinary hours if this is inappropriate/not applicable – go to [JobKeeper enabling directions and agreements for legacy employers](#) at coronavirus.fairwork.gov.au/JobKeeper for information).

Meeting to discuss this letter

I would like to consult with you about my intent to give you this JobKeeper stand down direction.

If you would like to, you are entitled to appoint a representative to consult with me about the JobKeeper stand down direction on your behalf. The representative can be your union.

Are you (and/or your representative) available <insert method of contact for example by phone or in-person> on <insert date of proposed meeting> at <insert time/place>?

Please contact me on <insert phone number/email address> to:

- provide me with the name and details of your representative, if you want to appoint one
- confirm your (and/or your representative's) availability to attend the proposed meeting or to advise if this time is not convenient so a new time can be scheduled.

Why am I being stood down?

I intend to stand you down because <insert reason for direction i.e. 'you can't be usefully employed for your normal days or hours because of changes to our business attributable to coronavirus' or 'you can't be usefully employed for your normal days or hours because of changes to our business attributable to government initiatives to slow coronavirus transmission'>.

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

You may wish to put more specific detail here about why the employee can't be usefully employed, for example, the business is subject to an enforceable government direction and isn't allowed to open, or the business has to limit the amount of people in the space and needs to roster employees separately. Providing more detail to explain why the stand down is necessary may help your employee to better understand why this step is necessary.

Will I be paid during the JobKeeper stand down period?

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

When an employee is subject to a JobKeeper enabling stand down direction (to not work on certain days, to work for a lesser period, or to work for a reduced number of hours), the employer must pay them their usual pay for any hours that the employee does work. The employee's hourly base pay rate can't be reduced.

Employees may be able to take some forms of paid leave. If an employee is taking paid or unpaid leave that the employer has authorised (such as annual leave) or is otherwise entitled to be absent from work (such as on a public holiday), the direction doesn't apply. Employees need to be paid their usual pay for these periods.

For information about when a JobKeeper stand down direction applies and what leave employees can take, go to [Pay, leave and ending employment for legacy employers](#) at coronavirus.fairwork.gov.au/JobKeeper

You will be paid in accordance with the following:

- **Time worked:** For the hours that you work, you will be paid your usual pay, including any allowances and penalty rates.
- **Leave:** You may be able to take some forms of paid leave. If you take authorised paid leave (either for the hours where you are stood down or during your working hours) you will be paid your usual pay that applies during the leave **<including leave loading>**. For information on what leave you can take, go to [Pay, leave and ending employment for legacy employers](https://coronavirus.fairwork.gov.au/JobKeeper) at coronavirus.fairwork.gov.au/JobKeeper. If you would like to take paid leave, please contact me to discuss.
- **Other authorised absences:** For any hours or days where you're authorised to be absent (e.g. a public holiday) you will be paid your usual pay.

You will continue to accumulate leave as normal during the intended stand down period.

Please let me know if you would like to discuss taking on secondary employment, training or professional development during the intended stand down period.

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

Employees who are subject to a JobKeeper enabling stand down direction can request to take on secondary employment, training or professional development. Employers must consider these requests and can't unreasonably refuse them.

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, and information about other government support available during this time, you can visit the Fair Work Ombudsman [coronavirus website](https://coronavirus.fairwork.gov.au) at coronavirus.fairwork.gov.au

What to do next?

- Please contact me as soon as possible on <insert contact details>** to confirm your (and/or your representative's) availability to attend the proposed meeting to discuss this letter, or to schedule a new time.

Once we have discussed my intention to give you this direction, I'll consider our discussion and notify you as soon as possible of any changes. When giving you the direction, I will notify you in writing at least 7 days from the **<date of this letter>**.

Thank you.

[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>