

Extension of JobKeeper provisions in the Fair Work Act

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On 1 September 2020, legislation to extend the JobKeeper scheme passed Parliament. As part of this, the JobKeeper provisions in the Fair Work Act were also extended with some changes. The extended provisions take effect from 28 September 2020. The last day the extended provisions will apply is 28 March 2021.

The JobKeeper scheme helps employers who have been significantly affected by coronavirus to keep paying their employees. It also gives certain employers increased flexibility to help manage their business by using the Fair Work Act JobKeeper provisions (JobKeeper provisions).

Read on for information about the extension of the Fair Work Act JobKeeper provisions. For information about the extension of JobKeeper payments, visit [JobKeeper Payment \(https://www.ato.gov.au/general/JobKeeper-Payment/\)](https://www.ato.gov.au/general/JobKeeper-Payment/) on the Australian Taxation Office (ATO) website.

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- [Pay, leave and ending employment for legacy employers \(www.fairwork.gov.au/coronavirus-and-australian-workplace-laws/pay-and-leave-during-coronavirus/jobkeeper-wage-subsidy-scheme/legacy-employers/pay-leave-and-ending-employment-for-legacy-employers\)](http://www.fairwork.gov.au/coronavirus-and-australian-workplace-laws/pay-and-leave-during-coronavirus/jobkeeper-wage-subsidy-scheme/legacy-employers/pay-leave-and-ending-employment-for-legacy-employers)

Extension of the Fair Work Act JobKeeper provisions

Under the extended provisions, qualifying employers who are receiving JobKeeper payments for their employees (and continue receiving them after 27 September 2020) can continue using the JobKeeper provisions to:

- give their employees JobKeeper enabling stand down directions (for example, a direction to work less or no hours)
- give their employees JobKeeper enabling directions (for example, a direction to change duties or work location)
- make agreements with their employees to change their days or times of work (for example, an agreement that an employee will work on different days).

Employers who qualify for the JobKeeper scheme and who receive JobKeeper payments on behalf of employees for the first time on or after 28 September 2020 can also use these JobKeeper provisions.

Employers will no longer be able to use the JobKeeper provisions to make agreements with their employees to take annual leave (including at half pay). Those provisions stop applying from 28 September 2020. See [Agreements to take annual leave](#) below.

Any JobKeeper enabling directions or agreements to change an employee's days or times of work already in place on 27 September 2020 keep applying after this date as long as the employer continues to qualify for the scheme and the requirements to give a direction or make an agreement continue to be met.

For these employers, JobKeeper enabling directions or agreements stop applying when they're cancelled, withdrawn or replaced (including by a Fair Work Commission order), or on 29 March 2021 (whichever comes first).

Learn more about employer eligibility, JobKeeper payments and the extended JobKeeper scheme at [JobKeeper extension \(https://www.ato.gov.au/General/JobKeeper-Payment/In-detail/Extension-of-the-JobKeeper-Payment/\)](https://www.ato.gov.au/General/JobKeeper-Payment/In-detail/Extension-of-the-JobKeeper-Payment/) [↗] on the ATO website.

More information about the current JobKeeper provisions for qualifying employers:

- [JobKeeper scheme – overview \(www.fairwork.gov.au/coronavirus-and-australian-workplace-laws/pay-and-leave-during-coronavirus/jobkeeper-wage-subsidy-scheme/\)](http://www.fairwork.gov.au/coronavirus-and-australian-workplace-laws/pay-and-leave-during-coronavirus/jobkeeper-wage-subsidy-scheme/)
- [JobKeeper enabling stand down directions \(www.fairwork.gov.au/coronavirus-and-australian-workplace-laws/pay-and-leave-during-coronavirus/jobkeeper-wage-subsidy-scheme/jobkeeper-enabling-stand-down-directions/default\)](http://www.fairwork.gov.au/coronavirus-and-australian-workplace-laws/pay-and-leave-during-coronavirus/jobkeeper-wage-subsidy-scheme/jobkeeper-enabling-stand-down-directions/default)
- [Changing duties or work location under the JobKeeper scheme \(www.fairwork.gov.au/coronavirus-and-australian-workplace-laws/pay-and-leave-during-coronavirus/jobkeeper-wage-subsidy-scheme/changing-duties-location-or-days-and-times-of-work-under-the-jobkeeper-scheme/default\)](http://www.fairwork.gov.au/coronavirus-and-australian-workplace-laws/pay-and-leave-during-coronavirus/jobkeeper-wage-subsidy-scheme/changing-duties-location-or-days-and-times-of-work-under-the-jobkeeper-scheme/default)
- [Changing days or times of work under the JobKeeper scheme \(www.fairwork.gov.au/coronavirus-and-australian-workplace-laws/pay-and-leave-during-coronavirus/jobkeeper-wage-subsidy-scheme/changing-days-or-times-of-work-under-the-jobkeeper-scheme/changing-days-or-times-of-work-under-the-jobkeeper-scheme\)](http://www.fairwork.gov.au/coronavirus-and-australian-workplace-laws/pay-and-leave-during-coronavirus/jobkeeper-wage-subsidy-scheme/changing-days-or-times-of-work-under-the-jobkeeper-scheme/changing-days-or-times-of-work-under-the-jobkeeper-scheme)

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Legacy employers and information for eligible financial service providers

The extended provisions allow some employers, known as legacy employers, to continue using some of the JobKeeper provisions (with some changes) if they meet certain conditions. These conditions include:

- previously participating in the JobKeeper scheme, but no longer participating from 28 September 2020
- demonstrating at least a 10% decline in turnover for a relevant quarter, by obtaining a certificate from an eligible financial service provider, or a statutory declaration for [small businesses \(https://www.fairwork.gov.au/Dictionary.aspx?TermID=2157\)](https://www.fairwork.gov.au/Dictionary.aspx?TermID=2157) .

Legacy employers can only use these JobKeeper provisions in relation to employees they received JobKeeper payments for before 28 September 2020 (previously eligible employees).

Employers don't need to have received JobKeeper payments every fortnight between 30 March and 28 September 2020 to be considered a legacy employer. For example, a childcare sector employer who previously received JobKeeper payments can be a legacy employer even though they were ineligible for JobKeeper payments after 20 July 2020.

More information for legacy employers:

- [Legacy employers \(www.fairwork.gov.au/coronavirus-and-australian-workplace-laws/pay-and-leave-during-coronavirus/jobkeeper-wage-subsidy-scheme/legacy-employers\)](http://www.fairwork.gov.au/coronavirus-and-australian-workplace-laws/pay-and-leave-during-coronavirus/jobkeeper-wage-subsidy-scheme/legacy-employers)
- [JobKeeper enabling directions and agreements for legacy employers \(www.fairwork.gov.au/coronavirus-and-australian-workplace-laws/pay-and-leave-during-coronavirus/jobkeeper-wage-subsidy-scheme/legacy-employers/jobkeeper-enabling-directions-](http://www.fairwork.gov.au/coronavirus-and-australian-workplace-laws/pay-and-leave-during-coronavirus/jobkeeper-wage-subsidy-scheme/legacy-employers/jobkeeper-enabling-directions-)

[and-agreements-for-legacy-employers](#))

- [Information for eligible financial service providers \(www.fairwork.gov.au/coronavirus-and-australian-workplace-laws/pay-and-leave-during-coronavirus/jobkeeper-wage-subsidy-scheme/legacy-employers/information-for-eligible-financial-service-providers\)](#)
- [Pay, leave and ending employment for legacy employers \(www.fairwork.gov.au/coronavirus-and-australian-workplace-laws/pay-and-leave-during-coronavirus/jobkeeper-wage-subsidy-scheme/legacy-employers/pay-leave-and-ending-employment-for-legacy-employers/pay-leave-and-ending-employment-for-legacy-employers\)](#)

Satisfying the 10% decline in turnover test each quarter

Legacy employers will need to satisfy the 10% decline in turnover test and have a certificate (or statutory declaration) for each relevant quarter. If they don't, all JobKeeper enabling directions or agreements will automatically end on:

- 28 October 2020, if the above conditions aren't met for the September 2020 quarter
- 28 February 2021, if the above conditions aren't met for the December 2020 quarter.

Visit our [Information for eligible financial service providers \(www.fairwork.gov.au/coronavirus-and-australian-workplace-laws/pay-and-leave-during-coronavirus/jobkeeper-wage-subsidy-scheme/legacy-employers/information-for-eligible-financial-service-providers\)](#) page for more information, including to download our template 10% decline in turnover certificate.

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Legacy employers & JobKeeper directions and agreements

Under the extended provisions, legacy employers can, for their previously eligible employees:

- 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).

Any legacy employer issuing directions or making agreements must follow the enhanced notice and consultation requirements under the JobKeeper provisions.

Legacy employers also need to give their employees who are subject to a JobKeeper enabling direction or agreement written notice about whether:

- they've obtained a certificate or statutory declaration for the relevant quarter
- the JobKeeper enabling direction or agreement will continue or end.

More information:

- [JobKeeper enabling directions and agreements for legacy employers \(www.fairwork.gov.au/coronavirus-and-australian-workplace-laws/pay-and-leave-during-coronavirus/jobkeeper-wage-subsidy-scheme/legacy-employers/jobkeeper-enabling-directions-and-agreements-for-legacy-employers\)](#)
- [Information for eligible financial service providers \(www.fairwork.gov.au/coronavirus-and-australian-workplace-laws/pay-and-leave-during-coronavirus/jobkeeper-wage-subsidy-scheme/legacy-employers/information-for-eligible-financial-service-providers\)](#)

JobKeeper enabling directions or agreements in place for legacy employers on 27 September 2020

Any JobKeeper enabling directions or agreements that legacy employers already have in place will end on 27 September 2020. They'll need to reissue or make new directions and agreements.

While legacy employers can only give a JobKeeper enabling direction under the extended JobKeeper provisions that starts on or after 28 September 2020, they can give notice and start consultation before this date.

JobKeeper enabling stand down directions

Legacy employers can continue to issue JobKeeper enabling stand down directions to their previously eligible employees after 27 September 2020, provided the direction doesn't:

- 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.

For more information, visit [JobKeeper enabling directions and agreements for legacy employers \(www.fairwork.gov.au/coronavirus-and-australian-workplace-laws/pay-and-leave-during-coronavirus/jobkeeper-wage-subsidy-scheme/legacy-employers/jobkeeper-enabling-directions-and-agreements-for-legacy-employers\)](#) .

JobKeeper enabling directions to change duties or work location

Legacy employers can continue to give a direction to change a previously eligible employee's duties or work location.

For more information, visit [JobKeeper enabling directions and agreements for legacy employers \(www.fairwork.gov.au/coronavirus-and-australian-workplace-laws/pay-and-leave-during-coronavirus/jobkeeper-wage-subsidy-scheme/legacy-employers/jobkeeper-enabling-directions-and-agreements-for-legacy-employers\)](http://www.fairwork.gov.au/coronavirus-and-australian-workplace-laws/pay-and-leave-during-coronavirus/jobkeeper-wage-subsidy-scheme/legacy-employers/jobkeeper-enabling-directions-and-agreements-for-legacy-employers) .

JobKeeper agreements to change days or times of work

Legacy employers can continue to make agreements to change a previously eligible employee's days or hours of work. The agreement can't result in the employee working less than 2 hours on a work day.

For more information, visit [JobKeeper enabling directions and agreements for legacy employers \(www.fairwork.gov.au/coronavirus-and-australian-workplace-laws/pay-and-leave-during-coronavirus/jobkeeper-wage-subsidy-scheme/legacy-employers/jobkeeper-enabling-directions-and-agreements-for-legacy-employers\)](http://www.fairwork.gov.au/coronavirus-and-australian-workplace-laws/pay-and-leave-during-coronavirus/jobkeeper-wage-subsidy-scheme/legacy-employers/jobkeeper-enabling-directions-and-agreements-for-legacy-employers) .

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Agreements to take annual leave

Under the original JobKeeper provisions, qualifying employers could make agreements with eligible employees to take annual leave. This included taking annual leave at half-pay.

These provisions have been repealed and stop applying from 28 September 2020. From this date, any agreement that was made under these provisions stops applying.

From 28 September 2020, employers and employees need to follow the usual rules for taking and requesting annual leave, including those set by an award or agreement.

Learn more about the usual rules for taking annual leave on our [Annual leave \(www.fairwork.gov.au/coronavirus-and-australian-workplace-laws/pay-and-leave-during-coronavirus/annual-leave\)](http://www.fairwork.gov.au/coronavirus-and-australian-workplace-laws/pay-and-leave-during-coronavirus/annual-leave) page.

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Enforcement and dealing with disputes

The Fair Work Commission (Commission) continues to have the power to deal with disputes related to the JobKeeper provisions under the extended scheme.

The Commission also has the power to deal with some disputes related to whether:

- legacy employers hold certificates for the 10% decline in turnover test
- the certificates have been issued by an eligible financial service provider.

Get more information on the role the Commission has in dealing with JobKeeper disputes at [JobKeeper disputes \(https://www.fwc.gov.au/disputes-at-work/jobkeeper-disputes\)](https://www.fwc.gov.au/disputes-at-work/jobkeeper-disputes) [↗](#) on the Commission's website.

We (the Fair Work Ombudsman) continue to help employers and employees understand and follow Australian workplace laws for the JobKeeper scheme. We do this by:

- providing information and education
- providing tools, templates and guides
- helping you resolve workplace issues.

Our [Resolving workplace issues during coronavirus \(www.fairwork.gov.au/coronavirus-and-australian-workplace-laws/contact-us/resolving-workplace-issues-during-coronavirus/resolving-workplace-issues-during-coronavirus\)](http://www.fairwork.gov.au/coronavirus-and-australian-workplace-laws/contact-us/resolving-workplace-issues-during-coronavirus/resolving-workplace-issues-during-coronavirus) page has more information and resources to help you resolve workplace disputes. It also has information about our enforcement role under the JobKeeper scheme and who can help with:

- questions about eligibility for the JobKeeper scheme
- disputes about directions or requests under the JobKeeper scheme
- disputes related to requirements for legacy employers, including certificates.

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More information

Legacy employers

- [Legacy employers \(www.fairwork.gov.au/coronavirus-and-australian-workplace-laws/pay-and-leave-during-coronavirus/jobkeeper-wage-subsidy-scheme/legacy-employers\)](http://www.fairwork.gov.au/coronavirus-and-australian-workplace-laws/pay-and-leave-during-coronavirus/jobkeeper-wage-subsidy-scheme/legacy-employers)
- [Information for eligible financial service providers \(www.fairwork.gov.au/coronavirus-and-australian-workplace-laws/pay-and-leave-during-coronavirus/jobkeeper-wage-subsidy-scheme/legacy-employers/information-for-eligible-financial-service-providers\)](http://www.fairwork.gov.au/coronavirus-and-australian-workplace-laws/pay-and-leave-during-coronavirus/jobkeeper-wage-subsidy-scheme/legacy-employers/information-for-eligible-financial-service-providers)

- [JobKeeper enabling directions and agreements for legacy employers \(www.fairwork.gov.au/coronavirus-and-australian-workplace-laws/pay-and-leave-during-coronavirus/jobkeeper-wage-subsidy-scheme/legacy-employers/jobkeeper-enabling-directions-and-agreements-for-legacy-employers\)](http://www.fairwork.gov.au/coronavirus-and-australian-workplace-laws/pay-and-leave-during-coronavirus/jobkeeper-wage-subsidy-scheme/legacy-employers/jobkeeper-enabling-directions-and-agreements-for-legacy-employers)
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Qualifying employers

- [JobKeeper enabling stand down directions \(www.fairwork.gov.au/coronavirus-and-australian-workplace-laws/pay-and-leave-during-coronavirus/jobkeeper-wage-subsidy-scheme/jobkeeper-enabling-stand-down-directions/default\)](http://www.fairwork.gov.au/coronavirus-and-australian-workplace-laws/pay-and-leave-during-coronavirus/jobkeeper-wage-subsidy-scheme/jobkeeper-enabling-stand-down-directions/default)
- [Changing duties or work location under the JobKeeper scheme \(www.fairwork.gov.au/coronavirus-and-australian-workplace-laws/pay-and-leave-during-coronavirus/jobkeeper-wage-subsidy-scheme/changing-duties-location-or-days-and-times-of-work-under-the-jobkeeper-scheme\)](http://www.fairwork.gov.au/coronavirus-and-australian-workplace-laws/pay-and-leave-during-coronavirus/jobkeeper-wage-subsidy-scheme/changing-duties-location-or-days-and-times-of-work-under-the-jobkeeper-scheme)
- [Changing days or time of work under the JobKeeper scheme \(www.fairwork.gov.au/coronavirus-and-australian-workplace-laws/pay-and-leave-during-coronavirus/jobkeeper-wage-subsidy-scheme/changing-days-or-times-of-work-under-the-jobkeeper-scheme/changing-days-or-times-of-work-under-the-jobkeeper-scheme\)](http://www.fairwork.gov.au/coronavirus-and-australian-workplace-laws/pay-and-leave-during-coronavirus/jobkeeper-wage-subsidy-scheme/changing-days-or-times-of-work-under-the-jobkeeper-scheme/changing-days-or-times-of-work-under-the-jobkeeper-scheme)

JobKeeper scheme

- [JobKeeper scheme – overview \(www.fairwork.gov.au/coronavirus-and-australian-workplace-laws/pay-and-leave-during-coronavirus/jobkeeper-wage-subsidy-scheme\)](http://www.fairwork.gov.au/coronavirus-and-australian-workplace-laws/pay-and-leave-during-coronavirus/jobkeeper-wage-subsidy-scheme)
- [Resolving workplace issues during coronavirus \(www.fairwork.gov.au/coronavirus-and-australian-workplace-laws/contact-us/resolving-workplace-issues-during-coronavirus\)](http://www.fairwork.gov.au/coronavirus-and-australian-workplace-laws/contact-us/resolving-workplace-issues-during-coronavirus)

JobKeeper payment

Visit the ATO website for information about:

- [how the JobKeeper scheme works \(https://www.ato.gov.au/General/JobKeeper-Payment/\)](https://www.ato.gov.au/General/JobKeeper-Payment/) 
- [eligibility requirements for employers \(https://www.ato.gov.au/general/jobkeeper-payment/employers/eligible-employers/\)](https://www.ato.gov.au/general/jobkeeper-payment/employers/eligible-employers/)  and [employees \(https://www.ato.gov.au/general/jobkeeper-payment/employees/eligible-employees/\)](https://www.ato.gov.au/general/jobkeeper-payment/employees/eligible-employees/) 
- [steps to enrol for the JobKeeper payment \(https://www.ato.gov.au/General/JobKeeper-Payment/Employers/Enrol-for-the-Job-Keeper-payment/\)](https://www.ato.gov.au/General/JobKeeper-Payment/Employers/Enrol-for-the-Job-Keeper-payment/) 
- [your eligible employees \(https://www.ato.gov.au/General/JobKeeper-Payment/Employers/Your-eligible-employees/\)](https://www.ato.gov.au/General/JobKeeper-Payment/Employers/Your-eligible-employees/) 
- [JobKeeper guides \(https://www.ato.gov.au/General/JobKeeper-Payment/JobKeeper-guides/\)](https://www.ato.gov.au/General/JobKeeper-Payment/JobKeeper-guides/)  for employers and sole traders.

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Fair Work Infoline: 13 13 94

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Hearing & speech assistance

Call through the National Relay Service (NRS):

For TTY: 13 36 77. Ask for the Fair Work Infoline 13 13 94

Speak & Listen: 1300 555 727. Ask for the Fair Work Infoline 13 13 94

The Fair Work Ombudsman is committed to providing advice that you can rely on. The information contained on this website 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 workplace relations professional. Visitors are warned that this site may inadvertently contain names or pictures of Aboriginal and Torres Strait Islander people who have recently died.

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