

Leave & the JobKeeper scheme

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Extension of JobKeeper provisions in the Fair Work Act

On 1 September 2020, the JobKeeper provisions in the Fair Work Act were extended with some changes.

We've added new information about:

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

We've also created a 10% decline in turnover template certificate for legacy employers, with other template documents being published soon. We encourage you to check back regularly for updates.

You can also [subscribe to email updates \(https://www.fairwork.gov.au/website-information/staying-up-to-date/subscribe-to-email-updates\)](https://www.fairwork.gov.au/website-information/staying-up-to-date/subscribe-to-email-updates) and we'll let you know when we've updated all of our information.

To support the implementation and operation of the [JobKeeper scheme \(www.fairwork.gov.au/coronavirus-and-australian-workplace-laws/pay-and-leave-during-coronavirus/jobkeeper-wage-subsidy-scheme/default\)](http://www.fairwork.gov.au/coronavirus-and-australian-workplace-laws/pay-and-leave-during-coronavirus/jobkeeper-wage-subsidy-scheme/default) in Australian workplaces, temporary provisions have been added to the Fair Work Act (Fair Work Act JobKeeper provisions). These provisions apply to employers who have qualified for the JobKeeper scheme and their eligible employees. The provisions apply from 9 April until 28 September 2020.

This page has information about annual leave and other paid and unpaid leave options for qualifying employers and their eligible employees accessing the JobKeeper scheme.

On this page:

- [Agreements about using annual leave under the JobKeeper scheme](#)
- [Other paid and unpaid leave options when accessing the JobKeeper scheme](#)
- [More information.](#)

In this section:

- [JobKeeper wage subsidy scheme \(www.fairwork.gov.au/coronavirus-and-australian-workplace-laws/pay-and-leave-during-coronavirus/jobkeeper-wage-subsidy-scheme/default\)](http://www.fairwork.gov.au/coronavirus-and-australian-workplace-laws/pay-and-leave-during-coronavirus/jobkeeper-wage-subsidy-scheme/default)
- [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, location or days and times of work under the JobKeeper scheme \(www.fairwork.gov.au/coronavirus-and-australian-workplace-laws/pay-and-leave-during-coronavirus/jobkeeper-wage-subsidy-scheme/changing-duties-location-or-days-and-times-of-work-under-the-jobkeeper-scheme/default\)](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)
- [Pay and the JobKeeper scheme \(www.fairwork.gov.au/coronavirus-and-australian-workplace-laws/pay-and-leave-during-coronavirus/jobkeeper-wage-subsidy-scheme/pay-and-the-jobkeeper-scheme/default\)](http://www.fairwork.gov.au/coronavirus-and-australian-workplace-laws/pay-and-leave-during-coronavirus/jobkeeper-wage-subsidy-scheme/pay-and-the-jobkeeper-scheme/default)
- [Ending employment and the JobKeeper scheme \(www.fairwork.gov.au/coronavirus-and-australian-workplace-laws/pay-and-leave-during-coronavirus/jobkeeper-wage-subsidy-scheme/ending-employment-and-the-jobkeeper-scheme\)](http://www.fairwork.gov.au/coronavirus-and-australian-workplace-laws/pay-and-leave-during-coronavirus/jobkeeper-wage-subsidy-scheme/ending-employment-and-the-jobkeeper-scheme) .

Agreements about using annual leave under the JobKeeper scheme

The Fair Work Act JobKeeper provisions mean that a qualifying employer can:

- request an eligible employee to take paid annual leave (as long as they keep a balance of at least 2 weeks)
- agree in writing with an eligible employee for them to take annual leave at half pay for twice the length of time.

To make an agreement about using annual leave under the Fair Work Act JobKeeper provisions, a qualifying employer needs to:

- qualify for and enrol in the JobKeeper scheme
- be entitled to JobKeeper payments for the employee to whom the agreement applies
- be a national system employer in the [Fair Work system \(https://www.fairwork.gov.au/about-us/legislation/the-fair-work-system\)](https://www.fairwork.gov.au/about-us/legislation/the-fair-work-system) .

Agreements under the Fair Work Act JobKeeper provisions can only be made about using annual leave, not other types of leave.

Any agreements made under the new JobKeeper provisions end on 28 September 2020. Employees' terms and conditions will revert back to what they were without the direction in place.

An employee's usual terms and conditions of employment (for example under an award, enterprise agreement or employment contract) continue to apply, except to the extent they are modified by a JobKeeper enabling stand down direction or agreement made under the Fair Work Act JobKeeper provisions. For more information go to: [JobKeeper payment and interaction with other minimum entitlements. \(www.fairwork.gov.au/coronavirus-and-australian-workplace-laws/pay-and-leave-during-coronavirus/jobkeeper-wage-subsidy-scheme/pay-and-the-jobkeeper-scheme#jobkeeper-payment-and-interaction-with-other-minimum-entitlements\)](http://www.fairwork.gov.au/coronavirus-and-australian-workplace-laws/pay-and-leave-during-coronavirus/jobkeeper-wage-subsidy-scheme/pay-and-the-jobkeeper-scheme#jobkeeper-payment-and-interaction-with-other-minimum-entitlements)

Requesting employees to take annual leave

If an employer asks their employee to take annual leave, the employee has to consider the request. They can't unreasonably refuse it.

Employees who are on annual leave continue to accrue their usual leave entitlements while they're on leave, and the period of leave counts as service.

Example: Requesting employee to take annual leave

Kushna works part-time, 2 days a week, for a car rental business. She is paid \$800 per fortnight (before tax). As a result of the coronavirus outbreak, business has slowed down significantly.

Kushna's employer qualifies for the JobKeeper scheme and is entitled to the JobKeeper payment of \$1500 per fortnight for Kushna.

Kushna has 6 weeks of accumulated annual leave.

Under Kushna's enterprise agreement, her employer can normally only direct her to take annual leave if she has accrued more than 8 weeks.

Under the JobKeeper provisions in the Fair Work Act, Kushna's employer can ask her to take annual leave, which she has to consider and can't unreasonably refuse. For the period that Kushna's employer is claiming the JobKeeper payment for her, they can use the Fair Work Act JobKeeper provisions to ask her to take leave. They can do this even though it's different to the enterprise agreement.

Kushna's employer explains that since the business is so quiet it would be a good time for Kushna to use some of her accrued leave and asks her to consider taking a month of leave. Kushna considers the request and agrees to take 4 weeks paid annual leave. She's been planning to do some renovations on her house for a while and this will be a good opportunity.

While she is on annual leave, Kushna is paid the JobKeeper payment of \$1500 per fortnight (before tax) as this is higher than the amount she would be paid for her annual leave.

She also continues to accrue annual leave and sick and carer's leave entitlements during this time.

Taking annual leave at half pay

Employees who make an agreement to take annual leave at half pay continue to accrue leave entitlements (such as annual and sick and carer's leave) as if they were taking annual leave at full pay.

If an employee takes leave at half pay, redundancy pay and payment in lieu of notice of termination are also calculated as if the agreement hadn't been made.

Example: Taking leave at half pay

Jacob works for a hair salon that has suffered a reduction in business following the coronavirus outbreak. Jacob's employer qualifies for the JobKeeper scheme and is entitled to receive JobKeeper payments for him.

Because his employer has qualified for JobKeeper and is receiving payments for him, Jacob is entitled to use the JobKeeper provisions to ask his employer if he can take annual leave at half pay. Jacob's employer agrees for him to take 2 weeks of his accrued annual leave at half pay over a period of 4 weeks. They put the agreement in writing.

While he's on leave, Jacob accrues his annual leave and sick and carer's leave as if he was taking annual leave at full pay.

Jacob usually earns \$1900 per fortnight. For annual leave at half pay, Jacob would normally be entitled to \$950 per fortnight (before tax). Under the JobKeeper scheme, Jacob is paid the full JobKeeper payment of \$1500 per fortnight (before tax).

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Other paid and unpaid leave options

Taking paid leave instead of minimum JobKeeper payment

If an employee is given a JobKeeper enabling stand down direction, the employee will be entitled to be paid at least the amount of the JobKeeper payment for a fortnight (\$1500 before tax). This amount may be less than the employee would have received if they had worked their usual hours during that fortnight.

If an eligible employee has been given a JobKeeper enabling stand down direction to work less hours than usual (or no hours), but wants to be paid their normal pay, they can agree with their employer to use their paid leave entitlements to top up the amount they're being paid. If that happens, for the time they're on paid leave, they're not on a JobKeeper enabling stand down.

Example: JobKeeper during leave periods – stand down direction doesn't apply

Nilushan is a full-time chef at a catering business. Nilushan's employer is entitled to JobKeeper payments for him. Nilushan is paid \$30 per hour and \$2280 per fortnight.

Due to a significant downturn in catering work due to coronavirus, Nilushan's employer gives him a JobKeeper enabling stand down direction not to work for the next 6 weeks. While he is stood down, Nilushan is paid the JobKeeper payment amount of \$1500 (before tax) per fortnight.

Before his employer gave him the stand down direction, Nilushan had been approved to take 2 weeks of annual leave in the middle of the 6-week stand down period.

The stand down direction doesn't apply during the 2 weeks when Nilushan is taking annual leave. This means his employer needs to pay Nilushan his ordinary fortnightly pay of \$2280 while he's on annual leave.

An employee and their employer can agree for the employee to take leave (such as annual leave or long service leave), including taking annual leave at half-pay. In any relevant fortnight, the employee must be paid the greater of either the amount of the

JobKeeper payment or their usual pay for work performed, including leave payments.

An employer can't unreasonably refuse an employee's request to take annual leave.

Employees subject to a JobKeeper enabling 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).

Example: Accruing leave during JobKeeper stand down

Elisha is a full-time designer in Nathan's engineering business. Nathan's business is entitled to JobKeeper payments for Elisha.

There's been a significant reduction in demand for design work due to coronavirus. Nathan gives Elisha a JobKeeper enabling stand down direction not to attend work for the next 8 weeks.

During this period, Elisha's annual leave entitlements continue to accumulate based on her full-time hours, as if the JobKeeper enabling stand down direction hadn't been given.

Sick and carer's leave and compassionate leave

On 18 May 2020 the Federal Court of Australia handed down a decision finding that an employee who has been stood down under the Fair Work Act can't take paid sick and carer's leave or compassionate leave.

This page has been updated to reflect this decision.

An appeal of this decision will be heard by the Full Federal Court of Australia. In the meantime, the decision reflects the current state of the law and applies to affected employers and employees.

The JobKeeper scheme doesn't affect an eligible employee's entitlement to accrue paid sick or carer's leave under the National Employment Standards and the relevant award.

However, an employee who has been given a JobKeeper enabling stand down direction to work less or no hours isn't entitled to use paid sick and carer's leave or compassionate leave for the days or hours that they've been directed not to work.

To find out more, go to our [Sick and carer's leave page \(https://www.fairwork.gov.au/leave/sick-and-carers-leave\)](https://www.fairwork.gov.au/leave/sick-and-carers-leave) .

Unpaid leave

An eligible employee on authorised unpaid leave must receive at least the amount of the JobKeeper payment from their qualifying employer for the period they're on unpaid leave, if they meet the eligibility conditions for the JobKeeper scheme.

To find out more about different types of unpaid leave, go to our [Leave section \(https://www.fairwork.gov.au/leave\)](https://www.fairwork.gov.au/leave) .

Unpaid pandemic leave

The Fair Work Commission has introduced 2 weeks' unpaid pandemic leave in 99 awards. Find out more on our [Unpaid pandemic leave and annual leave changes in awards page \(www.fairwork.gov.au/coronavirus-and-australian-workplace-laws/temporary-changes-to-workplace-laws-during-coronavirus/unpaid-pandemic-leave-annual-leave-changes-in-awards/default\)](http://www.fairwork.gov.au/coronavirus-and-australian-workplace-laws/temporary-changes-to-workplace-laws-during-coronavirus/unpaid-pandemic-leave-annual-leave-changes-in-awards/default) .

An eligible employee taking unpaid pandemic leave must receive at least the amount of the JobKeeper payment from their qualifying employer if they meet the eligibility conditions for the JobKeeper scheme.

Long service leave

The JobKeeper scheme doesn't impact or change an employee's long service leave entitlements.

Paid parental leave or dad or partner pay

Employees receiving payments under the JobKeeper scheme or who lose their job because of coronavirus might be able to claim Parental Leave Pay or Dad and Partner Pay.

Employees receiving Parental Leave Pay or Dad and Partner Pay aren't eligible for the JobKeeper scheme for the period they're getting Parental Leave Pay or Dad or Partner Pay.

Find out more about eligibility, Parental Leave Pay, and Dad and Partner pay on the Services Australia website:

- [Parental Leave Pay](https://www.servicesaustralia.gov.au/individuals/services/centrelink/parental-leave-pay) [↗] (<https://www.servicesaustralia.gov.au/individuals/services/centrelink/parental-leave-pay>)
- [Dad and Partner Pay](https://www.servicesaustralia.gov.au/individuals/services/centrelink/dad-and-partner-pay) [↗] (<https://www.servicesaustralia.gov.au/individuals/services/centrelink/dad-and-partner-pay>) .

To learn more about the workplace entitlements for this type of leave, go to our [Paid parental leave page](https://www.fairwork.gov.au/leave/maternity-and-parental-leave/paid-parental-leave) (<https://www.fairwork.gov.au/leave/maternity-and-parental-leave/paid-parental-leave>) .

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More information

Read more in our Library about:

- [difference between stand down, unpaid leave and shut down](https://www.fairwork.gov.au/library/k600633_difference-between-stand-down-unpaid-leave-shut-down) (https://www.fairwork.gov.au/library/k600633_difference-between-stand-down-unpaid-leave-shut-down)
- [unpaid leave & continuous service](https://www.fairwork.gov.au/library/k600426_unpaid-leave-continuous-service) (https://www.fairwork.gov.au/library/k600426_unpaid-leave-continuous-service) .

JobKeeper scheme

For more information on the scheme, including how to enrol, go to the [ATO website – JobKeeper section](https://www.ato.gov.au/general/jobkeeper-payment/) (<https://www.ato.gov.au/general/jobkeeper-payment/>) [↗].

Pay and wages

Information, tools and resources:

- [Minimum wages](https://www.fairwork.gov.au/pay/minimum-wages) (<https://www.fairwork.gov.au/pay/minimum-wages>)
- [Pay slips and record-keeping](https://www.fairwork.gov.au/pay/pay-slips-and-record-keeping) (<https://www.fairwork.gov.au/pay/pay-slips-and-record-keeping>)
- [Pay Calculator](https://www.fairwork.gov.au/pay/pay-calculator) (<https://www.fairwork.gov.au/pay/pay-calculator>) .

Leave

Information, tools and resources:

- [Annual leave](https://www.fairwork.gov.au/leave/annual-leave) (<https://www.fairwork.gov.au/leave/annual-leave>)
- [Sick & carer's leave](https://www.fairwork.gov.au/leave/sick-and-carers-leave) (<https://www.fairwork.gov.au/leave/sick-and-carers-leave>)
- [Unpaid pandemic leave in awards](http://www.fairwork.gov.au/coronavirus-and-australian-workplace-laws/temporary-changes-to-workplace-laws-during-coronavirus/unpaid-pandemic-leave-annual-leave-changes-in-awards/default) (www.fairwork.gov.au/coronavirus-and-australian-workplace-laws/temporary-changes-to-workplace-laws-during-coronavirus/unpaid-pandemic-leave-annual-leave-changes-in-awards/default)
- [Annual Leave Calculator](https://www.fairwork.gov.au/leave/leave-calculator) (<https://www.fairwork.gov.au/leave/leave-calculator>) .

Enforcement and dealing with disputes

We help employers and employees understand and follow Australian workplace laws. We do this by:

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

Our [Resolving workplace issues during coronavirus page](http://www.fairwork.gov.au/coronavirus-and-australian-workplace-laws/contact-us/resolving-workplace-issues-during-coronavirus/) (www.fairwork.gov.au/coronavirus-and-australian-workplace-laws/contact-us/resolving-workplace-issues-during-coronavirus/) has 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.

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Contact us

Fair Work Online: www.fairwork.gov.au

Fair Work Infoline: 13 13 94

Need language help?

Contact the Translating and Interpreting Service (TIS) on 13 14 50

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

