

# JobKeeper enabling directions & agreements for legacy employers

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This page has information for legacy employers and their employees.

Legacy employers no longer receive JobKeeper payments but may be able to use some JobKeeper provisions.

Qualifying employers are employers that qualify for the JobKeeper scheme and receive payments for their eligible employees. Learn more at [JobKeeper scheme – overview \(www.fairwork.gov.au/coronavirus-and-australian-workplace-laws/pay-and-leave-during-coronavirus/jobkeeper-wage-subsidy-scheme/default\)](http://www.fairwork.gov.au/coronavirus-and-australian-workplace-laws/pay-and-leave-during-coronavirus/jobkeeper-wage-subsidy-scheme/default).

Learn about the extended Fair Work Act JobKeeper provisions (JobKeeper provisions) for legacy employers, which provide flexibility to manage the workplace during the coronavirus pandemic.

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

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

## Overview

The information in this section is for legacy employers and their eligible employees.

Qualifying employers and their employees can check what applies at [JobKeeper scheme – overview \(www.fairwork.gov.au/coronavirus-and-australian-workplace-laws/pay-and-leave-during-coronavirus/jobkeeper-wage-subsidy-scheme/default\)](http://www.fairwork.gov.au/coronavirus-and-australian-workplace-laws/pay-and-leave-during-coronavirus/jobkeeper-wage-subsidy-scheme/default).

Legacy employers are employers that:

- previously participated in the JobKeeper scheme, but no longer qualify, or choose not to participate, from 28 September 2020
- demonstrate at least a 10% decline in turnover for a relevant quarter and get either a:
  - 10% decline in turnover certificate from an eligible financial service provider, or
  - if they're a [small business \(https://www.fairwork.gov.au/Dictionary.aspx?TermID=2157\)](https://www.fairwork.gov.au/Dictionary.aspx?TermID=2157), a statutory declaration.

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

Under the extended JobKeeper provisions, from 28 September 2020 legacy employers can issue certain types of directions and make certain agreements with employees that they previously received JobKeeper payments for (eligible employees).

Legacy employers can:

- issue JobKeeper enabling stand down directions (with some changes) – for example, a direction to work less hours
- issue JobKeeper enabling directions for an employee to change their duties or work location
- make agreements with employees to work on different days or at different times.

Legacy employers need to comply with notice and consultation rules and other safeguards under the extended JobKeeper provisions.

The new directions or agreements can only start on or after 28 September. Notice and consultation can start before 28 September 2020.

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## Directions and agreements in place on 27 September 2020

The information in this section is for legacy employers and their eligible employees.

Qualifying employers and their employees can check what applies at:

- [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 \(www.fairwork.gov.au/coronavirus-and-australian-workplace-laws/pay-and-leave-during-coronavirus/jobkeeper-wage-subsidy-scheme/changing-duties-or-work-location-under-the-jobkeeper-scheme/changing-duties-or-work-location-under-the-jobkeeper-scheme\)](http://www.fairwork.gov.au/coronavirus-and-australian-workplace-laws/pay-and-leave-during-coronavirus/jobkeeper-wage-subsidy-scheme/changing-duties-or-work-location-under-the-jobkeeper-scheme/changing-duties-or-work-location-under-the-jobkeeper-scheme)
- [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)

Any existing JobKeeper enabling directions and agreements that legacy employers already have in place end on 27 September 2020. If legacy employers want to use JobKeeper enabling directions or agreements after this date, they need to reissue or make new directions and agreements with their employees. The new directions or agreements need to start on or after 28 September 2020.

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## New directions and agreements on or after 28 September 2020

The information in this section is for legacy employers and their eligible employees.

Qualifying employers and their employees can check what applies at:

- [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 \(www.fairwork.gov.au/coronavirus-and-australian-workplace-laws/pay-and-leave-during-coronavirus/jobkeeper-wage-subsidy-scheme/changing-duties-or-work-location-under-the-jobkeeper-scheme/changing-duties-or-work-location-under-the-jobkeeper-scheme\)](http://www.fairwork.gov.au/coronavirus-and-australian-workplace-laws/pay-and-leave-during-coronavirus/jobkeeper-wage-subsidy-scheme/changing-duties-or-work-location-under-the-jobkeeper-scheme/changing-duties-or-work-location-under-the-jobkeeper-scheme)
- [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)

To issue new directions or make new agreements that start on or after 28 September 2020, legacy employers need to qualify as a legacy employer for each relevant quarter. This includes:

- satisfying the 10% decline in turnover test
- having a certificate or statutory declaration.

See the [Legacy employers \(www.fairwork.gov.au/coronavirus-and-australian-workplace-laws/pay-and-leave-during-coronavirus/jobkeeper-wage-subsidy-scheme/legacy-employers/legacy-employers\)](http://www.fairwork.gov.au/coronavirus-and-australian-workplace-laws/pay-and-leave-during-coronavirus/jobkeeper-wage-subsidy-scheme/legacy-employers/legacy-employers) page for details.

Legacy employers can make new:

- [JobKeeper enabling stand down directions](#)
- [Directions to change duties or work location](#)
- [Agreements to change days or times of work.](#)

The new directions or agreements can only start on or after 28 September. Notice and consultation can start before 28 September 2020.

### Example: New directions and agreements on or after 28 September 2020

Motoko owns an eyewear business with 8 employees. Motoko's business previously participated in the JobKeeper scheme and Motoko had issued JobKeeper enabling stand down directions to her eligible employees.

From 28 September 2020, Motoko's business isn't eligible to continue receiving JobKeeper payments because the business's turnover no longer meets the eligibility requirements. The business now qualifies as a legacy employer because:

- for the period 28 September 2020 to 27 October 2020 (inclusive) Motoko's business has met the 10% decline in turnover test.
- Motoko has made a statutory declaration confirming the decline in turnover.

The original stand down directions ended on 27 September 2020. Motoko can issue new stand down directions to her previously eligible employees on or after 28 September 2020, as long as she follows requirements to make the new directions.

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

## JobKeeper enabling stand down directions

The information in this section is for legacy employers and their eligible employees.

Qualifying employers and their employees can check what applies at JobKeeper enabling stand down directions ([www.fair-work.gov.au/coronavirus-and-australian-workplace-laws/pay-and-leave-during-coronavirus/jobkeeper-wage-subsidy-scheme/jobkeeper-enabling-stand-down-directions/](http://www.fair-work.gov.au/coronavirus-and-australian-workplace-laws/pay-and-leave-during-coronavirus/jobkeeper-wage-subsidy-scheme/jobkeeper-enabling-stand-down-directions/)) .

Legacy employers can stand down employees who they previously received JobKeeper payments for in certain circumstances.

A legacy employer can use a JobKeeper enabling stand down direction to direct an employee, that they previously received JobKeeper payments for, to temporarily:

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

This means a legacy employer can temporarily reduce an employee's days or hours of work. However, JobKeeper enabling stand down directions made on or after 28 September 2020 can'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 (their ordinary hours before the impact of coronavirus).

Legacy employers need to follow the requirements for making a direction – see [Requirements for a JobKeeper enabling stand down direction](#) and [How to give a stand down direction](#) below.

### **Example: JobKeeper enabling stand down directions – legacy employer restrictions – valid direction**

Lina is a full-time dental assistant working 38 hours a week (7.6 hours a day) for Maria's Marvellous Molars Pty Ltd (Marvellous Molars). She's been employed since October 2018.

Marvellous Molars is running reduced operations due to an enforceable government direction. They're a legacy employer and previously received JobKeeper payments for Lina. They want to temporarily reduce Lina's hours with a JobKeeper enabling stand down direction.

Following all the consultation and notification requirements, Marvellous Molars directs Lina to work 5 hours per day, Monday to Friday for 4 weeks while the business is running reduced operations.

The employer's proposal is valid because:

- Marvellous Molars previously received JobKeeper payments for Maria
- Marvellous Molars makes sure that Lina is still working more than 2 hours on each working day
- Lina's hours are at least 60% of the hours she was working as at 1 March 2020
- Marvellous Molars follows all the requirements for making the direction.

### **Example: JobKeeper enabling stand down directions – legacy employer restrictions – invalid direction**

Andrew works part-time for an accounting firm. For the last 4 years, he's been employed to work 8 hours a day, 3 days a week.

Andrew's employer is a legacy employer and used to get JobKeeper payments for him. His employer wants to temporarily reduce Andrew's hours through a JobKeeper enabling stand down direction. His employer proposes to Andrew that he work 1 hour a day, 3 days a week until the business returns to full capacity.

His employer's proposal isn't valid. This is because:

- the stand down direction can't result in Andrew working less than 2 hours a day on any working day
- his hours can't be less than 60% of hours he worked as at 1 March 2020.

### **Example: JobKeeper enabling stand down directions – legacy employers – minimum engagement periods for employees**

Huberto works part-time at a takeaway burger shop. Business has been slow because of the impacts of coronavirus.

Before business slowed down, Huberto worked 3 hours a day 5 days a week.

The takeaway shop is a legacy employer and previously received JobKeeper payments for Huberto. The takeaway shop wants to temporarily reduce Huberto's hours with a JobKeeper enabling stand down direction. The takeaway shop directs Huberto to work 2 hours a day, 5 days a week until business improves.

Huberto asks his employer about minimum engagement periods in the Fast Food Award. The award says an employee can't work less than 3 consecutive hours on any occasion.

The employer explains that the minimum engagement rule doesn't apply while the JobKeeper direction is in place. This means that Huberto can be directed to only work 2 hours each shift even though the award says it should be 3 hours.

The employer's explanation is valid because a JobKeeper direction temporarily overrides the rules set out in the award. In this case, it overrides the minimum engagement clause in the Fast Food Award. It also applies until the direction is revoked or expires. The other terms and conditions set out in the Fast Food Award continue to apply as normal.

### **Calculating 1 March 2020 ordinary hours of work**

Legacy employers need to follow certain rules where it isn't possible or appropriate to determine an employee's ordinary hours of work as at 1 March 2020.

These rules apply to:

- employees whose ordinary hours of work have changed on or after 1 March 2020 for reasons unrelated to coronavirus or government initiatives to slow its transmission (for example, employees on long term unpaid leave on 1 March 2020)
- employees that weren't employed by the employer on 1 March 2020 (but who were employed on 1 July 2020).

For employees whose ordinary hours of work changed on or after 1 March 2020 for reasons unrelated to coronavirus or government initiatives to slow its transmission, their ordinary hours of work are calculated as their most recently changed ordinary hours of work (for reasons unrelated to coronavirus).

For employees not employed on 1 March 2020 (but employed on 1 July 2020), their ordinary hours of work are calculated as either:

- their ordinary hours of work when the employee started employment with the employer, or
- their hours of work as most recently changed for reasons unrelated to coronavirus.

When carrying out these calculations, any impact of a JobKeeper enabling stand down direction on the employee's ordinary hours of work can't be factored in.

### **Example: JobKeeper enabling stand down directions – calculating 1 March 2020 ordinary hours of work – employees whose ordinary hours have changed on or after 1 March 2020**

Riley was on unpaid leave from 1 April 2019 until 1 April 2020. She returned to work on 2 April 2020 on a part-time basis. Her employer received JobKeeper payments for Riley from 2 April 2020 to 27 September 2020.

Riley's employer qualifies as a legacy employer and wants to temporarily reduce Riley's hours because of a reduction in business related to the coronavirus pandemic. The employer proposes Riley works 25 hours per week.

The employer knows she can't reduce Riley's hours to less than 60% of what they were at 1 March 2020. However, Riley was on unpaid leave on 1 March 2020 so wasn't working any hours. After returning from leave Riley has been working 30 hours per week.

The employer can reduce Riley's hours to 25 hours per week because that isn't less than 60% of 30 hours.

This calculation is valid because 30 hours per week was Riley's most recent ordinary hours of work and Riley's hours of work changed after 1 March 2020 for reasons unrelated to coronavirus.

### **Requirements for a JobKeeper enabling stand down direction**

A legacy employer can give an employee, that they previously received JobKeeper payments for, a JobKeeper enabling stand down direction, as long as they meet the following conditions.

- The employee can't be usefully employed for their normal days or hours because of business changes attributable to:
  - the coronavirus pandemic, or
  - government initiatives to slow coronavirus transmission (such as an [enforceable government direction \(www.fairwork.gov.au/coronavirus-and-australian-workplace-laws/other-government-information-assistance/list-of-enforceable-government-directions-during-coronavirus/default\)](http://www.fairwork.gov.au/coronavirus-and-australian-workplace-laws/other-government-information-assistance/list-of-enforceable-government-directions-during-coronavirus/default) ).
- The legacy employer gives at least 7 days' written notice to an employee and consults with them (or their representative) before issuing a JobKeeper enabling stand down direction in writing. See [How to give a stand down direction](#) for more information.
- The legacy employer makes sure the direction is reasonable, taking into account all of the circumstances. This includes:
  - any caring responsibilities that the employee has
  - 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 to the employee.

Legacy employers have to implement the direction safely. This includes considering the nature and spread of coronavirus.

A legacy employer can't use a JobKeeper enabling stand down direction to increase the number of hours an employee works.

If a JobKeeper enabling stand down direction applies to an employee, the employee has to comply with it.

The direction doesn't apply:

- when an employee is taking authorised paid or unpaid leave (such as annual leave or long service leave), or
- during any time the Fair Work Act says the employee is entitled to be absent from work (as opposed to taking leave), for example on a public holiday.

For information about using sick and carer's or compassionate leave during a stand down direction, see [Pay, leave and ending employment for legacy employers \(www.fairwork.gov.au/coronavirus-and-australian-workplace-laws/pay-and-leave-during-coronavirus/jobkeeper-wage-subsidy-scheme/legacy-employers/pay-leave-and-ending-employment-for-legacy-employers/pay-leave-and-ending-employment-for-legacy-employers\)](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/pay-leave-and-ending-employment-for-legacy-employers) .

### How to give a stand down direction

Legacy employers need to:

- Notify the employee in writing at least 7 days before giving the JobKeeper enabling stand down direction (unless the employee genuinely agrees to a shorter timeframe).
- Follow the consultation rules for the direction – see [Notice and consultation rules](#) for what applies.
- Give the employee the direction in writing.

#### **Example: JobKeeper enabling stand down directions – legacy employer – giving a direction**

Arak works full-time for Tim's electrical business. Tim's business is a legacy employer under the JobKeeper scheme.

Tim's business can't operate at full capacity because of an enforceable government direction, so he decides to give Arak a JobKeeper enabling stand down direction to work 25 hours per week.

Tim provides Arak with written notice of his intention to issue a JobKeeper enabling stand down direction. Tim provides Arak with this notice 7 days before the proposed direction is due to come into effect. He consults with Arak during the 7 day period and keeps a written record of these discussions. He explains that the new hours are more than 60% of the 38 hours per week that Arak normally works, and that Arak will work at least 2 hours per day.

Arak agrees with the direction and Tim gives him a copy of the direction in writing.

To notify an employee of a direction or to issue one, legacy employers can use our:

- [Legacy employers - template letter to notify employees of a JobKeeper stand down direction \(DOCX 89.6KB\) \(www.fairwork.gov.au/ArticleDocuments/218/jobkeeper-legacy-employer-notification-of-stand-down-template-letter.docx.aspx\)](http://www.fairwork.gov.au/ArticleDocuments/218/jobkeeper-legacy-employer-notification-of-stand-down-template-letter.docx.aspx) (PDF 438.8KB) ([www.fairwork.gov.au/ArticleDocuments/218/jobkeeper-legacy-employer-notification-of-stand-down-template-letter.pdf.aspx](http://www.fairwork.gov.au/ArticleDocuments/218/jobkeeper-legacy-employer-notification-of-stand-down-template-letter.pdf.aspx))

- [Legacy employers - template letter for issuing a JobKeeper stand down direction \(DOCX 89.6KB\) \(www.fairwork.gov.au/Article-Documents/218/jobkeeper-legacy-employer-stand-down-template-letter.docx.aspx\)](http://www.fairwork.gov.au/Article-Documents/218/jobkeeper-legacy-employer-stand-down-template-letter.docx.aspx) (PDF 423KB) ([www.fairwork.gov.au/Article-Documents/218/jobkeeper-legacy-employer-stand-down-template-letter.pdf.aspx](http://www.fairwork.gov.au/Article-Documents/218/jobkeeper-legacy-employer-stand-down-template-letter.pdf.aspx)) .

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## Directions to change duties or work location

The information in this section is for legacy employers and their eligible employees.

Qualifying employers and their employees can check what applies at [Changing duties or work location under the JobKeeper scheme \(www.fairwork.gov.au/coronavirus-and-australian-workplace-laws/pay-and-leave-during-coronavirus/jobkeeper-wage-subsidy-scheme/changing-duties-or-work-location-under-the-jobkeeper-scheme/changing-duties-or-work-location-under-the-jobkeeper-scheme\)](http://www.fairwork.gov.au/coronavirus-and-australian-workplace-laws/pay-and-leave-during-coronavirus/jobkeeper-wage-subsidy-scheme/changing-duties-or-work-location-under-the-jobkeeper-scheme/changing-duties-or-work-location-under-the-jobkeeper-scheme) .

Legacy employers can also issue JobKeeper enabling directions to change work location or duties of employees who they previously received JobKeeper payments for, in certain circumstances. Legacy employers need to give at least 7 days' written notice to an employee and consult with them (or their representative) before issuing a direction to change duties or work location in writing. See [How to give a direction to change usual duties or work location](#) for more information.

These types of direction can only take effect on or after 28 September 2020, but notice and consultation can start before then.

### Requirements for a JobKeeper direction

To make a direction, the legacy employer needs to ensure that:

#### For change in usual duties

- the duties are within the employee's skill and competency
- the duties are safe (including considering the nature and spread of coronavirus)
- the employee has any required licences or qualifications to perform the duties
- the duties are reasonably within the scope of the employer's business operations

#### For change in work location

- the new location is suitable for the employee's duties
- the employee isn't required to travel an unreasonable distance in all the circumstances (including considering the nature and spread of coronavirus)
- it's safe for the employee to perform their duties at the new location (including considering the nature and spread of coronavirus)
- the employee performing their duties at the new location is reasonably within the scope of the employer's business operations.

The direction won't apply to the employee unless the legacy employer reasonably believes that the direction about duties is necessary to continue the employment of 1 or more employees. To determine whether it's necessary, it doesn't matter that the employer could have given a similar direction to another employee.

A legacy employer needs to make sure that the direction is reasonable, taking into account all of the circumstances, including:

- any caring responsibilities that the employee has
- 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 to an employee.

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, the employee needs to be paid the higher pay rate. For example, under any applicable award or agreement.

If a JobKeeper enabling direction applies to an employee, the employee has to comply with it.

### How to give a direction to change usual duties or work location

Legacy employers need to:

- Notify the employee in writing at least 7 days before giving the JobKeeper enabling direction (unless the employee genuinely agrees to a shorter timeframe).
- Follow the consultation rules for the direction – see [Notice and consultation rules](#) for what applies.
- Give the employee the direction in writing.

To notify an employee of a direction or to issue one, legacy employers can use our:

- [Legacy employers - template letter to notify employees of a JobKeeper stand down direction \(DOCX 89.6KB\)](http://www.fairwork.gov.au/ArticleDocuments/218/jobkeeper-legacy-employer-notification-of-stand-down-template-letter.docx.aspx) ([www.fairwork.gov.au/ArticleDocuments/218/jobkeeper-legacy-employer-notification-of-stand-down-template-letter.docx.aspx](http://www.fairwork.gov.au/ArticleDocuments/218/jobkeeper-legacy-employer-notification-of-stand-down-template-letter.pdf.aspx)) (PDF 438.8KB) ([www.fairwork.gov.au/ArticleDocuments/218/jobkeeper-legacy-employer-notification-of-stand-down-template-letter.pdf.aspx](http://www.fairwork.gov.au/ArticleDocuments/218/jobkeeper-legacy-employer-notification-of-stand-down-template-letter.pdf.aspx))
- [Legacy employers - template letter for issuing a JobKeeper stand down direction \(DOCX 89.6KB\)](http://www.fairwork.gov.au/ArticleDocuments/218/jobkeeper-legacy-employer-stand-down-template-letter.docx.aspx) ([www.fairwork.gov.au/ArticleDocuments/218/jobkeeper-legacy-employer-stand-down-template-letter.docx.aspx](http://www.fairwork.gov.au/ArticleDocuments/218/jobkeeper-legacy-employer-stand-down-template-letter.docx.aspx)) (PDF 423KB) ([www.fairwork.gov.au/ArticleDocuments/218/jobkeeper-legacy-employer-stand-down-template-letter.pdf.aspx](http://www.fairwork.gov.au/ArticleDocuments/218/jobkeeper-legacy-employer-stand-down-template-letter.pdf.aspx)) .

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## Agreements to change days or times of work

The information in this section is for legacy employers and their eligible employees.

Qualifying employers and their employees can check what applies at [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) ([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)) .

Legacy employers and their employees who previously received JobKeeper payments can agree to change the employees' usual days or times of work. This type of agreement can't result in the employee working less than 2 hours on a work day.

These agreements can't start before 28 September 2020, but can be made before then.

### Requirements for agreements to change days or times of work

These JobKeeper provisions enable a legacy employer to agree with an employee that they previously received JobKeeper payments for to perform their duties on different days or during different times. Before making an agreement, a legacy employer needs to make sure that:

- it is safe (including considering the nature and spread of coronavirus)
- it is reasonably within scope of the employer's business operations
- the employee's usual work hours aren't reduced overall (as this requires a JobKeeper enabling stand down direction).

If a legacy employer asks their employee to make an agreement to these changes, the employee has to consider the request and can't unreasonably refuse it. This means that the employee can't refuse the request just because it results in them working extra hours.

Any agreement has to be recorded in writing, such as in a letter or email.

When the agreement ends, employees' terms and conditions will revert back to what they were without the agreement in place.

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## Notice and consultation rules

The information in this section is for legacy employers and their eligible employees.

Qualifying employers and their employees can check what applies for notice and consultation rules at:

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

Under the extended JobKeeper provisions, legacy employers need to give employees 7 days' written notice before issuing a JobKeeper enabling direction. A shorter notice period can be given if the employee genuinely agrees to it.

Legacy employers need to consult with the employee about the direction during the 7 day notice period and keep a written record of the discussion.

While directions can only take effect on or after 28 September 2020, notice and consultation can start before then.

An employee can appoint a representative (including a union) during the 7 day notice period. If they do, the employer needs to recognise the representative and consult with them.

Consultation includes:

- providing information about the direction, including when it will take effect and the expected effects of the direction of the employee
- asking for the employee's views on the impact of the direction (for example, the impact on their family or caring responsibilities).

Legacy employers need to promptly and genuinely consider the employee's (or their representative's) views within the 7 day notice period. They aren't obliged to disclose confidential or commercially sensitive information to the employee.

If a legacy employer doesn't comply with the notice or consultation requirements, the direction won't apply to the employee.

### **Written notice about whether directions or agreements end or continue**

Legacy employers also need to give employees that are working under either a JobKeeper enabling direction or agreement written notice about whether their new direction or agreement will continue or end.

Where a JobKeeper enabling direction or agreement ends because the legacy employer doesn't continue to meet the conditions outlined under [New directions and agreements on or after 28 September 2020](#), the employer needs to give the employee written notice which outlines:

- that the direction or agreement will stop applying
- the date when the direction or agreement will stop applying.

Where the legacy employer does continue to meet the conditions under [New directions and agreements on or after 28 September 2020](#), the employer needs to notify the employee that the direction or agreement will continue.

Notice needs to be given before:

- 28 October 2020, for directions or agreements that apply between 28 September and 27 October 2020
- 28 February 2021, for directions or agreements that apply between 28 October 2020 and 27 February 2021.

Legacy employers can use our template letters to notify an employee if a direction or agreement will continue or will end. Download our:

- [Legacy employers – notice of a JobKeeper direction or agreement continuing template letter to notify an employee a direction or agreement is continuing \(DOCX 82.5KB\) \(www.fairwork.gov.au/ArticleDocuments/218/jobkeeper-legacy-employer-direction-or-agreement-continuing-notification.docx.aspx\) \(PDF 327.1KB\) \(www.fairwork.gov.au/ArticleDocuments/218/jobkeeper-legacy-employer-direction-or-agreement-continuing-notification.pdf.aspx\)](#) (because the employer has the relevant 10% decline in turnover certificate)
- [Legacy employers – notice of a JobKeeper direction or agreement ceasing template letter to notify an employee a direction or agreement is ceasing \(DOCX 77.7KB\) \(www.fairwork.gov.au/ArticleDocuments/218/jobkeeper-legacy-employer-direction-or-agreement-ceasing-notification.docx.aspx\) \(PDF 271KB\) \(www.fairwork.gov.au/ArticleDocuments/218/jobkeeper-legacy-employer-direction-or-agreement-ceasing-notification.pdf.aspx\)](#) (because the employer no longer has the relevant 10% decline in turnover certificate).

These templates include information on who can use these letters and how to complete them.

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## **When directions and agreements made on or after 28 September end**

The information in this section is for legacy employers and their eligible employees.

Qualifying employers and their employees can check what applies at:

- [JobKeeper enabling stand down directions \(www.fairwork.gov.au/coronavirus-and-australian-workplace-laws/pay-and-leave-during-coronavirus/jobkeeper-wage-subsidy-scheme/jobkeeper-enabling-stand-down-directions/default\)](#)

- [Changing duties or work location under the JobKeeper scheme \(www.fairwork.gov.au/coronavirus-and-australian-workplace-laws/pay-and-leave-during-coronavirus/jobkeeper-wage-subsidy-scheme/changing-duties-or-work-location-under-the-jobkeeper-scheme/changing-duties-or-work-location-under-the-jobkeeper-scheme\)](http://www.fairwork.gov.au/coronavirus-and-australian-workplace-laws/pay-and-leave-during-coronavirus/jobkeeper-wage-subsidy-scheme/changing-duties-or-work-location-under-the-jobkeeper-scheme/changing-duties-or-work-location-under-the-jobkeeper-scheme)
- [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)

Legacy employees need to meet the 10% decline in turnover test and have a certificate or statutory declaration (for a [small business employer \(https://www.fairwork.gov.au/Dictionary.aspx?TermID=2157\)](https://www.fairwork.gov.au/Dictionary.aspx?TermID=2157) ) for the relevant quarter, for each quarter they want to use the extended JobKeeper provisions. If they don't meet the requirements for the next quarter, any JobKeeper enabling directions and agreements given or made under the extended JobKeeper provisions 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.

Legacy employers need to notify their employees in writing about whether the new directions or agreements will continue applying, by the dates listed above. See [Written notice about whether directions or agreements end or continue](#) for more information.

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## Interaction with other obligations

The information in this section is for legacy employers and their eligible employees.

Qualifying employers and their employees can check what applies at:

- [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 \(www.fairwork.gov.au/coronavirus-and-australian-workplace-laws/pay-and-leave-during-coronavirus/jobkeeper-wage-subsidy-scheme/changing-duties-or-work-location-under-the-jobkeeper-scheme/changing-duties-or-work-location-under-the-jobkeeper-scheme\)](http://www.fairwork.gov.au/coronavirus-and-australian-workplace-laws/pay-and-leave-during-coronavirus/jobkeeper-wage-subsidy-scheme/changing-duties-or-work-location-under-the-jobkeeper-scheme/changing-duties-or-work-location-under-the-jobkeeper-scheme)
- [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)

Legacy employers who give a JobKeeper enabling direction or make an agreement need to comply with all existing rules in the Fair Work Act. This includes:

- [frequency of payment rules \(https://www.fairwork.gov.au/pay/paying-wages\)](https://www.fairwork.gov.au/pay/paying-wages)
- [minimum hourly pay rates \(in the applicable award or agreement\) \(https://www.fairwork.gov.au/pay/minimum-wages\)](https://www.fairwork.gov.au/pay/minimum-wages)
- [penalty rates, loadings or other allowances \(https://www.fairwork.gov.au/pay/penalty-rates-and-allowances\)](https://www.fairwork.gov.au/pay/penalty-rates-and-allowances) .

Other rules in the JobKeeper amendments to the Fair Work Act will also apply to directions or agreements made by legacy employers. This includes:

- directions need to be safe and reasonable
- rules about accrual of leave and other entitlements
- rules about requests for secondary employment, training or professional development.

More information on the JobKeeper provisions:

- [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 \(www.fairwork.gov.au/coronavirus-and-australian-workplace-laws/pay-and-leave-during-coronavirus/jobkeeper-wage-subsidy-scheme/changing-duties-or-work-location-under-the-jobkeeper-scheme/changing-duties-or-work-location-under-the-jobkeeper-scheme\)](http://www.fairwork.gov.au/coronavirus-and-australian-workplace-laws/pay-and-leave-during-coronavirus/jobkeeper-wage-subsidy-scheme/changing-duties-or-work-location-under-the-jobkeeper-scheme/changing-duties-or-work-location-under-the-jobkeeper-scheme)
- [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) .

## Contact us

Fair Work Online: [www.fairwork.gov.au](http://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

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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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