

Federal Government JobKeeper payment - updated frequently asked questions

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7 April 2020



Question 1a:

My March turnover will not be more than 30% down on March last year – can I use a different period (e.g. April 2020 vs April 2019, or another period) to assess my eligibility?

Answer:

Businesses with a turnover of less than \$1 billion must be able to show that their turnover has decreased by more than 30% over a comparable period from the prior year (if your turnover is above \$1 billion, your turnover must have fallen by more than 50%).

The comparable period must be a minimum of 1 month.

Turnover will be defined according to the current calculation for GST purposes (i.e. reported as sales on the Business Activity Statements). It includes all taxable supplies and all GST Free supplies but not input taxed supplies, made in Australia (does not include supplies made wholly overseas).

A business can apply for the payment if you reasonably expect that your turnover will fall by 30% or more (or 50% if applicable) relative to your turnover in a corresponding period a year earlier. For example, this may mean if you expect your turnover to decline for the month of April, this would be sufficient for the purposes of eligibility. **The ATO will provide guidance about self-assessment of actual and anticipated falls in turnover once legislation is released.**

Therefore if your Business' turnover for the month of March itself will not decrease by more than 30%, but you can show that your turnover for the period 1 April - 30 April 2020 has decreased by more than 30% compared to the same period in 2019, then you would still be eligible for the JKP subsidy effective from 30 March 2020.

The government has noted that Employers will need to satisfy the payment requirements (that is, paying all eligible employees a minimum of \$1,500 per fortnight before tax) for their eligible employees in respect of each 14-day period covered by the scheme. The first period starts on Monday 30 March 2020 and ends on Sunday 12 April 2020.

The payment requirement is that they pay their eligible employees a minimum of \$1,500 per fortnight in the scheme payment periods. Where an employer pays their staff monthly, the ATO will be able to reallocate payments between periods. However, overall an employee must receive the equivalent of \$1,500 per fortnight.

The final period will start on Monday 14 September 2020 and end on Sunday 27 September 2020.

Question 1b:

Does that mean we will only receive the subsidy for the period from May onwards (and not April)?

Answer:

If a business does not meet the turnover test at the start of the JobKeeper scheme on 30 March 2020, the business can start receiving the JobKeeper payment at a later time once the turnover test has been met. In this case, the JobKeeper Payment is not backdated to the commencement of the scheme. Businesses can receive the JobKeeper payment up to 27 September 2020.

We would note however that a business should also analyse the rules once they are clarified with regard to self-assessing an anticipated fall in turnover, for the month of April, as noted in the answer to question 1a.

Question 2:

If I have acquired other businesses in the past 12 months, which has resulted in an inorganic increase in my turnover – but the turnover of those individual businesses have declined year on year (or where I have no comparable period from last year), am I still eligible?

Answer:

What we know so far:

In addition to the previously announced turnover thresholds for business over or under \$1bn in turnover, Treasury has advised:

To establish that a business has faced either a 30 (or 50) per cent fall in their turnover, most businesses would be expected to establish that their turnover has fallen in the relevant month or three months (depending on the natural activity statement reporting period of that business) relative to their turnover a year earlier.

Where a business was not in operation a year earlier, or where their turnover a year earlier was not representative of their usual or average turnover, (e.g. because there was a large interim acquisition, they were newly established or their turnover is typically highly variable) the Tax Commissioner will have discretion to consider additional information that the business can provide to establish that they have been significantly affected by the impacts of the Coronavirus.

The Tax Commissioner will also have discretion to set out alternative tests that would establish eligibility in specific circumstances (e.g. eligibility may be established as soon as a business has ceased or significantly curtailed its operations). There will be some tolerance where employers, in good faith, estimate a greater than 30 (or 50) per cent fall in turnover but actually experience a slightly smaller fall.

On this basis, for those business owners in this situation – the application process will require the presentation of data that supports an owner's assessment that their turnover has declined by more than 30% (or 50%). Business owners will need to seek advice on the best way to present relevant supporting data as part of their application.

Question 3:

The \$1,500 per fortnight figure has been described as a before tax payment – am I then required to withhold tax on this payment when paying it to employees?

Answer:

Yes. Whilst not yet confirmed by legislation, the payment is a subsidy of \$1,500 per fortnight, before tax.

From this we can assume that employers are required to withhold PAYG Withholding on any payments made to employees as part of their payroll, as they normally would. Government fact sheets confirm that employers are required to withhold tax as appropriate for all employees.

The business will then be reimbursed via the JKP in the following month.

Question 4:

Is the receipt of the JKP subsidy from the Government taxable income for my business?

Answer:

Again, this is not yet confirmed, however given that the payment that businesses will receive is a subsidy to wages, which are generally a deductible expense, it is likely that the JKP payment that businesses receive will be assessable income.

Question 5:

If I have to increase what I pay a particular employee to ensure they receive the minimum \$1,500 per fortnight before tax, am I required to pay super guarantee on the full \$1,500?

Answer:

No. The Treasury announcements have stated that the Employer has an obligation to pay Superannuation Guarantee on the employee's usual wages, however for any additional top up that the employer must pay to their employees to get to the minimum \$1,500 per fortnight, payment of any Super Guarantee is at the employer's discretion.

Example:

John currently earns \$1,000 per fortnight from his employer, before tax. On this amount, the business pays \$95 (9.5%) to John's superannuation fund.

As part of the JobKeeper Payment, the business increases John's wages to \$1,500 per fortnight. The business has the discretion as to whether they pay the 9.5% Super Guarantee on the additional \$500 in wages paid to John.

Question 6:

If I have employees who ordinarily earn more than \$1,500 before tax per fortnight, can I reduce their role (e.g. – convert them to part time), such that their wage becomes \$1,500 per fortnight before tax, and then simply pay them at the JKP rate?

Answer:

There are two parts to this question. The Treasury Fact Sheets advise that where an employee ordinarily earns more than \$1,500 before tax per fortnight, they will continue to receive their regular income according to the prevailing workplace arrangement.

This term – “prevailing workplace arrangement” – is currently unclear.

If an employer and the employees agree to reduce their hours and pay accordingly, then this may be considered the prevailing workplace arrangement. Whether an employer can reduce an employee’s working hours and pay, is dependent on the employee’s workplace agreements, be it an Award, the Fair Work Act, or an individual employment contract.

We would recommend that a business owner seeks appropriate legal advice on their employment law obligations before implementing any such actions. We would also caution businesses from arranging a “contrived” situation where arrangements with their employees reduce their wages to the \$1,500 before tax per fortnight level.

There will likely be integrity measures introduced into the enacting legislation that will penalise employers who contrive such outcomes.

Where employees have been stood down, or their hours of work reduced in line with the current needs and operations of the business, but continue to be employed by the business, you must pay them at a minimum, \$1,500 before tax per fortnight, to be eligible for the JKP.

Question 7:

If I have employees who take annual leave, or public holidays, am I required to pay them in addition to the \$1,500 before tax per fortnight?

Answer:

The JKP is designed as a reimbursing subsidy to employers for their normal wages paid to employees. With the exception of those employees currently earning less than \$1,500 before tax per fortnight, there should be no change in the way you currently pay your employees where they are working normally. This includes the normal taking of approved Annual Leave, as well as Public Holidays.

The JKP is simply a funding mechanism that will reimburse some or all of the costs of keeping your workforce employed during this pandemic crisis.

Question 8:

If I have employees who are paid less than \$1,500 per fortnight before tax, when must I increase their pay to be eligible for the JKP?

Answer:

If you want to claim the JKP for eligible employees immediately, you must begin to pay them the minimum \$1,500 per fortnight before tax from 30 March 2020. If an employee has not been paid this amount from that time, and you want to claim the subsidy, you must pay a “top-up” payment to employees so that they are eligible. The ATO will provide further guidance on how this will work.

The employer will be reimbursed \$1,500 per fortnight for each eligible employee.

Employers cannot pay their employees less than \$1,500 per fortnight and be entitled to a payment for that employee.

Question 9:

If I have stood down employees without pay after 1 March 2020 can I “back pay” them to 30 March 2020?

Answer:

Yes. If you have stood down employees without pay after 1 March 2020, and you want to claim the JobKeeper Payment, you will need to confirm your eligible employees want to be part of the scheme and arrange for them to be paid a minimum of \$1,500 per fortnight before tax from 30 March 2020.

Question 10:

What happens if I don't have the money to continue paying my eligible employees until the JKP payments are made?

Answer:

The JobKeeper Payment is a reimbursement scheme that will be paid by the ATO monthly in arrears.

In cases where this may present cash flow difficulties, the government has suggested those businesses may want to speak to their bank to discuss their options. The banks have said businesses may be able to use the upcoming JobKeeper Payment as a basis to seek credit in order to pay their employees until the scheme is making its first payments (due first week of May 2020).

Question 11:

I purchased a business in the last 12 months and retained some casual employees who worked for the previous business owner.

OR

I accepted some casual employees from another member of my corporate group.

Are the casual employees eligible?

Answer:

Employers must assess whether their casual employees satisfy the test of working for 12 months on a regular and systemic basis. A casual may still meet this condition even if the entity operating the business has changed recently, or even if they were transferred from another member of a corporate group within the past 12 months.

We also note the answer to question 1b – regarding the acquisition of businesses and meeting the turnover test requirements.

Question 12:

Will the ATO use the JobKeeper Payments to offset a BAS debt?

Answer:

The payment will generally be paid directly to the employer and not used to offset tax liabilities, as the intent is that it is a payment that facilitates employers to pay their employees.

Question 12:

Can I receive the JobKeeper Payments for employees in receipt of Workcover?

Answer:

Employees will not be eligible for the JobKeeper scheme if they are fully incapacitated, unable to work and being supported by a workers' compensation scheme. In other cases, employees would be eligible as they are in an employment relationship with their employer, provided their employer has an obligation to pay some component of their salary or wages. If your employee is fully compensated under your WorkCover insurance, they will be ineligible for the JobKeeper scheme.

Question 13:

I have employees on fixed term contracts. Are they eligible for the JobKeeper Payment?

Answer:

Fixed term contractors are eligible for the JobKeeper payment if you were employed at 1 March 2020 and meet the other eligibility criteria.

Question 14:

I have employees on unpaid leave (e.g. Unpaid Maternity Leave). Are they eligible for the JobKeeper Payment? Will I have to pay them?

Answer:

Yes, unless the employee is in receipt of Government Paid Parental Leave or Dad and Partner Pay. If you are an eligible employee and your employer is an eligible employer, they will receive the payment whether you are working, on leave, or have been stood down.

If you have staff who are on unpaid leave, you will be required to pay them a minimum of \$1,500 per fortnight before tax, in order to receive the JobKeeper payment subsidy.

If your employees are in receipt of Government Paid Parental Leave, or Dad and Partner Pay through Services Australia (Centrelink), then they are not eligible for the JobKeeper Payment.

Question 15:

I have employees on a salary sacrifice arrangement. Can it continue?

Answer:

Yes. The JobKeeper payment may be paid to an employee in cash, or as a fringe benefit or extra superannuation contribution where the employer and employee agree.

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