



My boss is getting JobKeeper - what does that mean for me?

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What is the JobKeeper scheme?

The JobKeeper scheme was introduced by the Federal government. The scheme is intended to make it easier for employers whose income has been adversely affected by the COVID-19 pandemic to maintain employment relationships with their staff, in the hope that, once things have returned to some type of normality, it will be easier for the economy to swing back into operation.

This blog is directed towards the effect of the JobKeeper scheme on workers. We will not address the criteria which employers are required to satisfy to qualify for the scheme.

Minimum payment to employees on JobKeeper

The JobKeeper scheme, which runs from 30 March to 27 September 2020, can apply to employees who were employed as at 1 March 2020. This means employees who were stood down or made redundant after that date could be re-employed and receive JobKeeper payments.

Employers must pay each eligible employee the greater of:

- \$1500 per fortnight before tax; or
- their usual rate of pay per fortnight,

and, once they have done so, will receive the \$1500 per fortnight subsidy.

I have been stood down, can I still receive the JobKeeper subsidy?

Employees who have been stood down can still receive the subsidy even if they are not actually working. However, this does not mean that an employee can refuse to work and still expect to receive the subsidy. This is because the subsidy is paid in arrears. The employer must pay the sum to the employee first and will then receive the subsidy. So, if an employer requires an employee to return to work to perform duties, and the employee refuses to do so, the employer could simply not pay the employee and therefore would not qualify to receive the subsidy.

It is likely that employers who have stood employees down but who have qualified for the subsidy, might require those employees to return to work to undertake extraordinary tasks (like stocktake, extraordinary cleaning, redecorating etc.) and therefore, achieve some productive work. Given the amendments to the *Fair Work Act* (see below) we consider that such directions will be lawful in certain circumstances. However, all employers are still required to pay their employees the legal minimum rate for the work they perform if it exceeds the \$1500 per fortnight subsidy.

JobKeeper enabling directions

The Federal Government has introduced amendments to the [Fair Work Act 2009](#) which took effect from 9 April 2020 and will be automatically repealed on 28 September 2020. These amendments allow employers who qualify for the JobKeeper scheme to issue “JobKeeper enabling directions” to an employee for the period in which they are eligible to receive a JobKeeper payment. JobKeeper enabling directions must be given in writing, after appropriate consultation with the affected employee/s and must be reasonable. Such directions include:

1. JobKeeper enabling stand down directions

An employer can direct an employee:

- not to work on particular days;
- to work for shorter periods; or
- to work a reduced number of hours (including no hours at all).

However, such a direction can only be made if:

- the employee cannot be usefully employed for their normal days or hours due to business changes caused by the pandemic or government initiatives to “flatten the curve”, such as government health orders; and
- the direction can be implemented safely. The nature of the spread of the virus is one of the factors to be taken into account.

Note, even if an employer directs an employee to stand down and work no hours at all, the employer would still be required to pay the employee at least \$1500 gross per fortnight.

2. Duties directions

An employer can direct an employee to perform any other duties within their skill and competence as long as:

- the duties are safe (including taking into account the nature of the spread of the virus);
- the employee is qualified to perform the duties and holds any required licenses; and
- the duties are reasonably within scope of the employer's business operations.

3. Location directions

An employer can direct an employee to perform duties at a different location, including the employee's home as long as:

- the place is suitable for the employee's duties;
- the place is safe (including taking into account the nature of the spread of the virus);
- the employee is not required to travel an unreasonable distance to get to the place (including with regard to the pandemic); and
- performance of the employee's duties at the place is reasonably within the scope of the employer's business operations.

JobKeeper enabling directions:

- are effective even they are inconsistent with provisions of the *Fair Work Act*, or an applicable Modern Award or Enterprise Agreement;
- must be reasonable in all of the circumstances; and
- a Duties direction or Location direction can only be issued if the employer has a reasonable belief that the direction is necessary to continue the employment of one or more employees (and the employer is able to provide information to support that belief).

Consultation and notice

Before issuing a JobKeeper enabling direction, an employer must consult with the employee or their representative, and keep a written record of the consultation. In addition, the employer must give at least three days' notice in writing of their intention to issue the direction, or such lesser period as agreed by the employee.

Other changes an employer can make under the JobKeeper scheme

In addition to the above JobKeeper directions, an employer who is eligible for the JobKeeper scheme can:

- request that an employee work on different days or different times than usual, as long as it does not result in a reduction of hours, and the employee must not reasonably refuse that request;
- request that employees take annual leave (as long as the remaining leave balance is not less than two weeks), and the employee must not unreasonably refuse the request; and

- by agreement with an employee, the employee can take twice as much annual leave at half the employee's rate of pay.

Disputes about JobKeeper enabling directions

An employee, employer, trade union or employer organisation can seek the assistance of the [Fair Work Commission](#) in relation to a dispute about any of the above matters. The Fair Work Commission can conduct a conciliation or an arbitration in order to resolve the dispute.

Do you have any questions about JobKeeper or any other aspects of employment? Whether COVID-19 related or not, please contact [Margaret](#), [Anthony](#) or [Carly](#) from [Andersons Workplace Law Team](#).

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