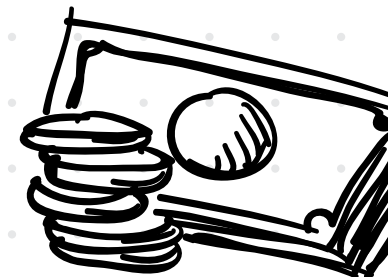




# REBUILD TOGETHER

COVID-19 AND WORKPLACE RELATIONS

CLASS NOTES





# CHARLES WATSON

GM - IR, POLICY & GOVERNANCE  
The Real Media Collective  
(Key-Note Speaker)

Charles has a strong background in HR and workplace relations. His experience includes roles such as leading the consulting team at Workforce Guardian and GM - Workplace Relations and Legal Services at the PIAA (now PVCA). He has also worked for law firms Clayton Utz and Herbert Smith Freehills.

# JOBKEEPER OVERVIEW

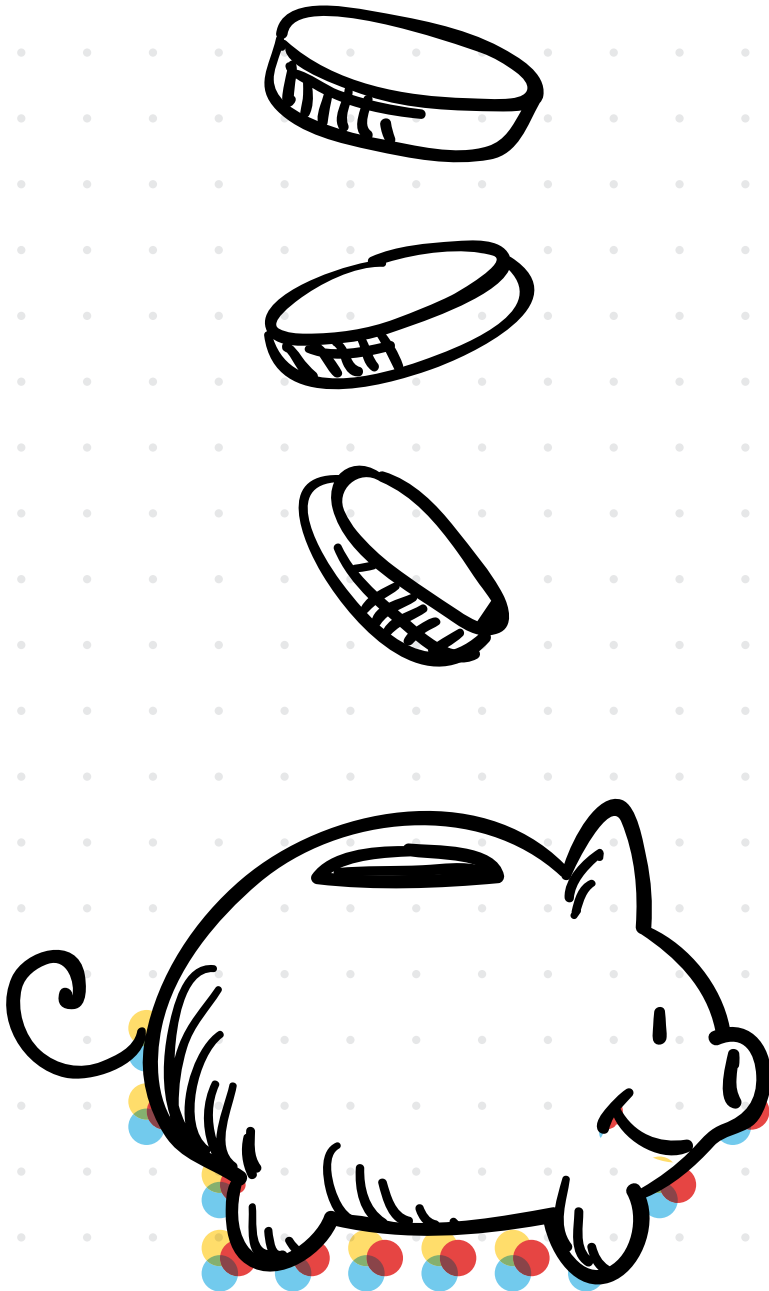
Jobkeeper is a part of the federal government economic stimulus package.

The government scheme is a \$1500 per fortnight wage subsidy paid to eligible and participating employers, and for the purpose of passing it on to eligible and participating employees.

The ATO pays JobKeeper payments to qualifying employers for eligible employees, as a reimbursement monthly in arrears, beginning in May 2020 until 28 September 2020.

Until the JobKeeper subsidy payments are paid, eligible employers are meant to have been paying eligible employees at least the \$1500 per fortnight, whether working or stood down.

EXTENDED UNTIL  
31 MAY 2020



# ELIGIBILITY

**EMPLOYERS** / Eligible if as at 1 March 2020 they carried on an Australian business and satisfy all the related requirements:

1. Employed at least one eligible employee as at 1 March; and
2. Eligible employees are employed on the fortnight you are claiming for; and
3. Your business does not fall within the ineligible categories such as those in liquidation or bankruptcy; and
4. Your business experienced a 30% fall in turnover (aggregated turnover of \$1b or less) or,
5. Your business experienced a 50% fall in turnover (aggregated turnover of more than \$1b).



**EMPLOYEES** / Eligible employees are those employees that as at 1 March 2020:

- Were 16 years of age or over.
- May be a long-term casual employee (if regularly and systematically employed for at least 12 months).
- An Australian resident or an Australian tax resident under a special category visa.
- Has provided their employer with the completed nomination form.

**EXCLUDED EMPLOYEES** / There are also excluded employees, such as those who during a relevant fortnight:

- Are entitled to parental leave pay under the federal governments Paid Parental Leave Act or receiving Dad or partner pay under that Act; or
- Are "totally incapacitated" for work and receiving workers compensation payments in respect of that incapacity for any period overlapping within a relevant fortnight.



## DON'T FORGET

**"ONE IN, ALL IN" RULE** / If an employer chooses to participate in the JobKeeper scheme, they are required to nominate all of their eligible employees.

**"WAGE CONDITION"** / Requires an employer pay an eligible employee at least the \$1500 per relevant fortnight to satisfy ongoing eligibility for ATO payment in arrears.

**"MINIMUM PAYMENT GUARANTEE"** / Employers must ensure for the fortnight the employer is entitled to the JobKeeper payment eligible employees are paid the greater of:

1. The JobKeeper payment of \$1500 per fortnight; or
2. The amount payable to the employee for the work performed during the fortnight, and at their usual hourly rate.

# FAIR WORK ACT



Temporary amendments to the Act - 9 April 2020 until 28 September 2020. Purpose - provide workplace flexibilities to save jobs in the longer term.

Apply to employers who qualify for the JobKeeper scheme to give directions to eligible and allow employers to:

- Stand down employees (partially or in full).
- Direct employees to undertake different duties and or at different location (including employees working from home).
- Alter days and times of work.
- Enter into agreements with employees to change ordinary working days and times.
- Request an employee to take annual leave (including at half pay).

## JobKeeper directions:

- Must be 'reasonable' and necessary in the circumstances.
- Employer must give three days written notice before the direction, and genuinely consult with affected employees (or their representative) about the direction.



AMENDMENTS ARE  
TEMPORARY - 9 APRIL TO 28  
SEPTEMBER 2020



AMENDMENTS ARE EFFECTIVE  
FROM 8 APRIL UNTIL  
30 JUNE 2020.

# AWARD AMENDMENTS



Effective from 8 April until 30 June 2020, industrial awards have had Schedule X interleaved that contains:

**UNPAID PANDEMIC LEAVE** / An employee is entitled to take up to 2 weeks' unpaid leave if the employee is required by government or medical authorities or on the advice of a medical practitioner to self-isolate and is consequently prevented from working.

Not for assisting family or household member.

A once off entitlement.

Counts as service for entire period of leave.

Must start before 30 June 2020, but may end after that date.

**ANNUAL LEAVE PERIOD AT HALF THE PAY** / An employee and employer may agree to the employee taking twice as much leave on half the pay (includes leave loading).

Counts as service for entire period of leave.

Must start before 30 June 2020, but may end after that date.



MUST START BEFORE 30 JUNE,  
CAN END AFTER THAT DATE.



## ENTERPRISE AGREEMENTS



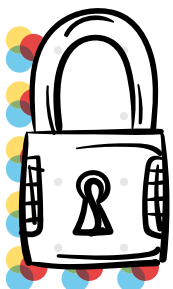
- An employer and its employees who are covered by the enterprise agreement can agree to a variation. Any variation must be approved by the majority of employees who vote for the variation.
- The requirements for varying an agreement are similar to those for approving a new agreement, including that the agreement as varied must pass the better off overall test.

## INDIVIDUAL FLEXIBILITY ARRANGEMENTS



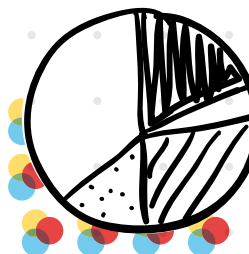
- Awards and Enterprise agreements allow IFA's to be negotiated with individual employees.
- Possible option to consider if JobKeeper scheme does not apply or need different arrangement to JobKeeper enabling directions.

## WORKPLACE HEALTH AND SAFETY



- Increased requirements at this time.
- Both employers and employees have legal obligations.
- Address any WHS issues raised by employees.
- Increase review of workplace practices, including 'working from home' arrangements.

## GENERAL CONSIDERATIONS AND RESPONSIBILITIES



- An employer cannot require an employee to work more hours of work than those stated in their employment contracts, unless agreement is reached.
- Employees are required to adhere to fair, reasonable and lawful employer directions.
- Penalties may apply for inappropriate conduct by employers under the JobKeeper scheme.
- Clear communication with employees at this time is critical.

These notes are extracted from the RMC webinar given on 6 May 2020.

Please contact Charles Watson, GM – IR, Policy and Governance, at [charles@thermc.com.au](mailto:charles@thermc.com.au) if you require greater clarification and assistance.

# Q&A



The answers to the following questions raised during the webinar were provided based on the current interpretation of the law at the time. Given Treasury and Fair Work Commission interpretations have evolved and altered, it is recommended to confirm at the time the question arises.



**Q / What happens if an employee resigns or is terminated during the JobKeeper period?**

**A /** If an employee resigns or is terminated for whatever reason, then follow normal processes as if BAU, and payout accrued entitlements to the employee upon termination or as required.

Further to a previous query, if an employee who is part of the JobKeeper scheme resigns or is terminated, there is a requirement for a business to notify the ATO if an employee's eligibility ceases, for whatever reason, and advise the fortnight from which the JobKeeper payment is no longer being claimed.

**Q/ Are employees who commenced with my business after 1 March 2020 entitled to receive JobKeeper payments?**

**A /** Employees who commenced with your business after 1 March 2020 are not eligible employees and therefore not entitled to receive JobKeeper payments.

EMPLOYEES STARTING AFTER 1 MARCH ARE NOT ENTITLED TO JOBKEEPER

**Q/ What if an employee refuses to go back to work as their job can't guarantee 1.5M distancing?**

**A /** The answer will depend upon the exact reasons why distancing cannot occur and needs to be addressed.

Current government medical advice is that wherever possible, to spend less than 15 minutes of face to face contact when the distance is less than 1.5 metres or spend less than 2 hours with others in any enclosed space at a distance of at least 1.5 metres.

To overcome distancing issues in a workplace, a business may need to consider installing acrylic shields or 'spit-screens'. If an employer has installed such protective equipment as part of an WHS plan it will minimise the possibility of body fluids becoming aerosolized and coming in contact with a co-worker.

**Q / Can we give a casual employee a JobKeeper direction?**

**A /** To be eligible, a casual employee they would need to have been regularly and systematically employed over the previous 12 months. Once such an employee is a participating employee in the scheme an employer may give a JobKeeper direction to that employee.

**Q / How does superannuation work on JobKeeper payments?**

**A/** This will depend upon the exact circumstances, however the Superannuation Guarantee Ruling 2009 requires that employers contribute superannuation on all ordinary time earnings (OTE) i.e. all ordinary hours worked by an employee.

- However, based on policy and proposed legislative changes to be enacted, if an employee is not working (perhaps as a result of being stood down) and only being paid the JobKeeper payment subsidy, there is no obligation to contribute superannuation on that JobKeeper payment only.
- If the employee is working, and being paid more than usual as a result of receiving the JobKeeper payments, superannuation is only contributable on what would represent their normal wage component.
- If the employee is working and ordinarily receives more than the \$1500 per fortnight (before tax) for the hours they work, and receives the JobKeeper payment to subsidise that wage, then the entire pay for the ordinary hours of work performed is superable.

# Q&A

**Q / What if my employee won't adhere to a JobKeeper Direction?**

**A /** We recommend consulting with your employee first and try and work out a solution and address why the employee is refusing.

Ultimately, and if the direction is reasonable, and the employee continues to refuse to adhere to the direction, an employer may need to lodge a dispute with the Fair Work Commission who will attempt to resolve the dispute.

**Q / What if my employee has WHS concerns and won't attend work?**

**A /** Consider the employees concern and seek as much detail from the employee. If you are able to evidence and satisfy your WHS related duties, you may then consider giving the employee a direction to present themselves to work.

**Q / What do I pay employees if they are on sick leave?**

**A /** If they are a permanent employee, then simply deduct the period of personal leave from their accrued personal leave. If the employee is entitled to receive the JobKeeper payment during a particular fortnight, the employer should continue to receive the JobKeeper payments as normal.

**Q / Do I need to requalify my business each month to entitle my business to continue to receive the JobKeeper payments?**

**A /** If your business has already qualified for the scheme there is no requirement to requalify (currently). However, there are ongoing administration and reporting requirements.

**NO REQUIREMENT TO REQUALIFY EACH MONTH (CURRENTLY)**

For example, if an employee who is part of the JobKeeper scheme resigns or is terminated, there is a requirement for a business to notify the ATO if an employee's eligibility ceases, for whatever reason, and advise the fortnight from which the JobKeeper payment is no longer being claimed.

**Q / Our first pay period of JobKeeper was for hours worked 25/3 – 31/3 inclusive. The payroll was paid to all of our team 1/4. Will we receive the subsidy for the full period or only for 30th and 31st? We are getting mixed responses.**

**A /** As part of transitioning into the 13 fortnight JobKeeper calendar, there is likely going to be a difference between an employer's particular pay-cycle and the JobKeeper fortnightly pay periods.

The first JobKeeper payment fortnight period starts on 30 March 2020 to the 12 April 2020.

**FIRST FORTNIGHT JOBKEEPER PERIOD 30 MARCH TO 12 APRIL**

The JobKeeper \$1,500 per fortnight payment subsidy applies to the paydays (payment date) within the defined fortnights and from which fixed fortnight the payment applies.

JobKeeper payments are not retrospective for dates earlier than 30 March 2020, but can include the dates within the JobKeeper fortnight that form part of the employer pay-cycle.

For each JobKeeper fortnight, the employer is only entitled to a JobKeeper payment if the employer has satisfied the 'wage condition'. The wage condition requires that an employer pay each participating employee at least \$1,500 for each JobKeeper fortnight.

If adjustment is necessary, your payroll system should be able to process this accordingly.

## ATO GUIDANCE ON

**REIMBURSEMENTS /** For the first two fortnights (30 March – 12 April, 13 April – 26 April), we will accept the minimum \$1,500 payment for each fortnight has been paid by you even if it has been paid late, provided it is paid by you by the end of April. This means that you can make two fortnightly payments of at least \$1,500 per fortnight before the end of April, or a combined payment of at least \$3,000 before the end of April.





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