

JobKeeper Explored for Borderline Business - FAQs

Q: *Can you have an apprentice where you are receiving the subsidies surrounding them as well as getting job keeper for them? Or which one should we go with?*

A: If your business is eligible for both, you need to choose either the JobKeeper Payment or the Apprentice subsidy. The Apprentice subsidy is up to 50% of the employees' wages up to \$7000 per quarter or a total of \$21,000 from 1 January 2020 to 30 September 2020. JobKeeper is \$1500 per fortnight starting from 30 March 2020 to 27 September 2020. We suggest making the calculation as to which is the most beneficial to your organisation. The Department of Education, Skills and Employment has put out a [Fact Sheet](#) and [FAQ](#) sheet on Apprentice & Trainee Support.

Q: *If you have claimed the Supporting Apprentice payment for the Jan-Mar quarter. Can the JobKeeper Payment kick in after that starting 1/4/20?*

A: Yes. Where an eligible employer claims the JobKeeper Payment from 30 March 2020, if they also meet the criteria for Supporting Apprentices and Trainees, they will be eligible to claim Supporting Apprentices and Trainees for wages paid during the period 1 January 2020 to 31 March 2020.

Q: *For part-time employees and casuals, who normally earn less than \$1500/fortnight, what are the options or obligations around the extra payment? Is it a straight win-fall for the employee or can the employer expect that the employee makes themselves available to work additional hours? For a casual employee, do they have to work to obtain the JobKeeper payment?*

A: Employers can reasonably ask employees to perform the hours of work up to the value of \$1500, the employee cannot unreasonably refuse, so long as the employer has made the request in accordance with the JobKeeper enabling direction rules. A couple of points to keep in mind are:

- For part-time employees, if this means working more than their normal hours, you need to check your Award, Contract, EA, or other industrial instrument to see whether hours over their ordinary hours need to be calculated at overtime rates
- Casual employees are typically required to advise the employer of their hours of availability – if a casual employee continuously advises that they are unavailable for work or refuses rostered shifts, seek professional advice on reasonable management action.
 - o TIP: If you believe this might be a challenge during this time, ask casual employees to provide updated notice of their availability ahead of developing the roster.
- When considering reasonable grounds for an employee to refuse a request, we suggest considering the grounds employees may refuse a request to work overtime which includes things such as health & safety, personal situation, workplace needs/industry patterns of work, entitlement to penalty/overtime rates, terms of their employment relating to expectations for working hours, notice given of additional hours, previous communication from the employee re availability for additional hours, nature of the employee's role and level of responsibility, and terms of the modern award or applicable industrial instrument.

Q: *What if you have nothing for the staff on JobKeeper to do? What do you do with them as well as keeping them motivated to understand that they need to work if required? Are we able to keep our employee on and they not actually attend work and give them the \$750 to stay home?*

A: You can pay an employee JobKeeper Payment without having them perform work, however we strongly recommend finding useful work to engage them. This is a unique opportunity for your business and important for employee engagement, connectivity and mental health. To assist, we have provided access to our previous webinar on 'JobKeeper to AssetCreator' where we gave a methodology, platform and tools to help employers to do exactly that. You can access them [here](#).

JobKeeper Explored for Borderline Business - FAQs

Q: *What do we do for casual staff who were nearly 12 months employed but missed out by days? Can we claim them in April (rather than March payments)?*

A: To our knowledge the cut-off date is the cut-off date – i.e. if they were employed for 12 months as at 1 March 2020 they are eligible, if they were 12 months on 3 March 2020, they are not eligible.

Q: *What do you do if staff refuse to do tasks that are outside their normal duties? Do we get them to sign something so that they understand that they need to do whatever is required and does this then open a can of worms from a Workcover perspective?*

A: The recent amendments to the Fair Work Act 2009 allow for JobKeeper Enabling Directions (if your business and the employee are eligible) to be given to an employee including directing them to perform different duties to normal provided that:

- those duties are within their skills and competencies and they hold any required licence or qualifications (where applicable)
- the employee continues to be paid the greater of either their ordinary base hourly rate of pay; or the base hourly rate of pay that is applicable to the duties (i.e. if they are performing higher duties which would attract a higher pay rate under an Award, this must be paid)
- the direction can be implemented safely (including having regard to the nature and spread of Covid-19)

We have provided a plain English summary of these and other changes which you can access [here](#).

If employees refuse to follow a reasonable direction that fits within the criteria specified in the JobKeeper Enabling legislation, we recommend seeking professional advice on what discussion to have with them and, if needed, what reasonable management action may be appropriate.

Q: *Does the \$750 make up their wage for the week or do they receive the \$750 and then they might only do 15 hours then that is paid additional to them?*

A: The JobKeeper payment pays for wages up to \$1500. An example might explain this most easily: If an employee is paid \$25 per hour and works 15 hours per week that is \$375 for the week – so they are paid the \$750 only. If an employee is paid \$25 per hour and work 35 hours per week that is \$875 for the week – so they are paid \$875 only (in both cases the business uses the \$750 in the week to cover that value of their wages).

Q: *Are our casual staff eligible to be paid JobKeeper if they are not claiming it from any other employer?*

A: Yes - employees can only claim JobKeeper Payment from one employer. This is why the communication process with your employees is so important – this is the [link](#) for the forms and timeframes for that communication.

Q: *Is there any indication about how long the Job Keeper payment will go for?*

A: The end date stipulated at this point is 27 September 2020.

JobKeeper Explored for Borderline Business - FAQs

- Q:** *A casual worker works 20 hours for \$400 per week. Can an employer pay the employee \$750 for the week as JobKeeper payment (no super), OR should they pay the employee \$400 for the hours worked (plus super) then pay a job keeper top up to the amount of \$750 per week (no super)?*
- A:** Employers need to pay the hours that the employee worked at their ordinary rate (plus Superannuation guarantee on that amount). For the additional amount (\$350 in this example), you are not obliged to pay the Superannuation guarantee on that \$350.
- Q:** *If you are still having an employee work their usual hours and the value of their work is more than \$1500 can an employer only pay \$1500?*
- A:** No, if you are having them work their normal hours you need to pay them their normal income.
- Q:** *As we calculate and report on our quarterly GST turnover on a cash basis, are we obliged to use the cash basis when calculating GST turnover for JobKeeper payments or can we use the accruals basis if the accruals basis allows the business to qualify when it would not using cash basis.*
- A:** If you report on a cash basis you can chose whether to use cash or accrual calculations for the purpose of establishing eligibility for JobKeeper payment. Importantly you should use the same basis to consider the actual amount and the comparable amount.
- Q:** *We received a number of questions relating to the alternative tests including criteria for irregular turnover, the rules for businesses that have "lumpy" income, and what is meant by acquisition or disposal of business and whether this covers decisions made to no longer sell or promote products under a particular brand.*
- A:** The ATO has released the [explanatory statement](#) relating to the alternative tests. We recommend talking to your financial advisor to check your individual circumstances or contact Chris at Viden.
- Q:** *Our business is a partnership arrangement between myself and my wife. Is the eligibility for one of the partners from our business to claim JobKeeper effected if the other partner, who works as a casual for another business, receives the JobKeeper payment from that business? In effect this would mean that both partners would receive the JobKeeper payment from two different entities is this ok?*
- A:** Yes – as long as each person is only claiming JobKeeper Payment from one eligible entity.
- Q:** *Our business is "seasonal", bumpy, drought affected and has had a solid growth strategy. is it possible to combine alternative test criteria?*
- A:** No, the tests are not combined – you only need to meet one of the test criteria to be eligible. They also will not cancel each other out. Once you meet the requirements for one test you are eligible even if another of the alternate tests is not satisfied.
- Q:** *Turnover test period – If the business does not qualify for JobKeeper payments in April, qualifies in May, does not qualify in June, and then that quarter results in a 30% reduction in turnover, can the business claim JobKeeper for the entire quarter or is payment only received for May and June?*
- A:** Once a business tests its eligibility and is included in system (in May in the example above), it is included in the system for that month and all future months. You are not required to retest eligibility once you are in the system.

JobKeeper Explored for Borderline Business - FAQs

Q: *Can we apply for JobKeeper in future months if we then satisfy the requirements. Do we need to enrol now to secure our potential need in the coming months? Do we need to pay employees from April, or just from the month from which we want to start claiming?*

A: You can enrol in JobKeeper from any month you become eligible. As to the timing of the enrolment, you are required to enrol before the end of the fortnight you wish to claim for. For example, if you are not eligible for April but believe you will be eligible for May, you will need to enrol before 10 May 2020, the end of the first May JobKeeper fortnight.

Q: *Is there any consequence in enrolling a client for JobKeeper from April, if they may not genuinely be eligible until May? How do they complete their monthly declaration?*

A: If a business seeks to claim for April it must either pass the Basic Test for April, estimate to pass the Basic Test for the April – June quarter or satisfy an Alternative Test. The consequence of claiming but not being entitled to claim is that the entity will be required to repay the amount, plus penalties and interest.

Q: *What happens if you registered for May but then realised April is going to be lower than you thought - can you still claim the JobKeeper payments for April, assuming you have paid the minimum wages?*

A: The enrolment process has been confusing and originally you were not able to select the quarter. If eligible on the Basic Test for April, you should submit a claim for April when the formal claim process starts on 4 May.

Q: *How will we know whether the ATO has accepted our alternative testing measurement e.g.: April P&L for Job Keeper? Will the ATO notify us if we are accepted?*

A: There is not a process as part of the enrolment process where you nominate the way you have tested for eligibility. We do not yet know whether the formal claim process will include a question regarding this. The system is based on self-assessed eligibility. This means that you should consider closely how you believe your business is eligible and document any process and or assumptions you have made if you are ever asked by the ATO on review to justify.

Q: *If we were to forecast a certain amount and then we go over this because of a job that has been won do they then have to pay the monies back.*

A: If you intend to test based on forecast, you should document fully your assumptions and projections.

The guidance notes suggest the following in relation to projected turnover:

Projected turnover includes the value of all supplies that an entity has made or is likely to make in a period. A supply is likely to be made where, on the balance of probabilities, it can be predicted that the supply is more likely than not to be made. The likelihood of a supply being made must be based on a reasonable expectation and considered in the context of the facts and circumstances of a particular business, such as by reference to the terms of a particular contract which requires supplies to be made over a certain period.

JobKeeper Explored for Borderline Business - FAQs

Q: *Should we be billing all wages to a "Job Keeper" code - do we do the whole wages or just \$750.00 per week and the remainder into normal Wages code? Do you suggest coding wages to split amounts paid to make it clear?*

A: Splitting will make it clear however the majority of software and payroll packages have modified their systems to ensure the amounts can be accurately recorded and reported.

Q: *When does the Job Keeper finish? (is it when your revenue returns to 'under' 30% or is there a particular date?)*

A: The end date is 27 September 2020. Based on the current rules once a business is eligible for JobKeeper they are eligible for the period to 27 September 2020. Currently there is no guidance of when and if a business may become ineligible based on a return a less than 30% reduction.

Q: *How close to the 30% is 'close'?*

A: If testing using actual numbers, there is no 'shade in' i.e. 30% is eligible and 29% is not. If using forecasted numbers, it will depend on how well documented your workings and reasonings are for being under by > 30%. If at the time of making them these reasons and assumptions are based on reasonable expectation of performance, it can be expected that a small variance will be OK.

Q: *In the property industry March and April will be good months with settlements etc however the reality is that this will more so affect us in the months coming i.e. June, July and maybe for months thereafter. How do we forecast in this instance?*

A: You can become eligible for JobKeeper in any month March 2020 to September 2020 using actual results. Eligibility in a later month does not allow you to go back and receive a JobKeeper payment for a previous month only that month and future months.

Q: *If a company went into voluntary administration mid-March, will the newly restructured company (new) still be eligible?*

A: No, all entities will need to test in their own right.

Q: *In a husband and wife trust/company structure, can one or both of also be eligible for JobKeeper?*

A: If both were registered as full time or part time employees on 1 March 2020 then both would be eligible. If neither were registered as an employee, then only 1 could be enrolled as the business participant.

Q: *If a permanent full-time employee resigned or was let go, do we have to reinstate them to 38 hours a week if we reemploy them with JobKeeper? Can we reemploy them as casuals or part time? Do we have to pay their full wage prior to them leaving (\$2000 a fortnight)? (Business is currently closed)*

A: This may depend on specific circumstances, but based on the information in the question, if they ceased employment and were paid out all entitlements, it appears that the business would have the option to offer them any type of re-engagement (casual, part-time or fulltime). As long as that employee was still engaged on 1 March 2020, they would be eligible for JobKeeper. If an employee has resigned, it indicates that the employment relationship is at an end as a result of the decision of the employee.

JobKeeper Explored for Borderline Business - FAQs

- Q:** *Could you please define one of the eligibility conditions for casual staff that says the employee is employed on a regular and systematic basis for at least 12 months. We are a wedding venue and our staff are employed on a needs basis as and when we have a wedding. This could be from once a week to once a month depending on the number of weddings that we have during the month.*
- A:** Fair Work states that it is the employment that must be on a regular and systematic basis, not the hours worked. However, a clear pattern or roster of hours is strong evidence of regular (repetitive pattern not necessarily frequent, often, uniform or constant) and systematic (something that could be seen as a system, method or plan) employment. If there is no clear pattern or roster, they may still be regular and systematic where the employer offered suitable work when it was available at the times the employee made themselves available and work was offered and accepted regularly enough that it could no longer be regarded as occasional or regular ([reference](#)).
- Q:** *What if you do not have access to the \$3000 to pay your employees before the end of April?*
- A:** We recommend talking with your bank and financial advisors – while cannot provide specific advise on this, our understanding is that financial institutions are giving consideration to eligibility for JobKeeper Payments when considering requests for financial support to be able to pay wages.
- Q:** *We have several casual employees and we have asked them all to work their normal hours of approx. 24 pwk. One staff member wishes to have next week off - which is causing dissention from other staff who are working their 24 hours....can we reasonably ask the employee to work the missed 24 hours in following weeks?*
- A:** Please refer to the question above relating to reasonably requiring employees to work additional hours. We suggest applying normal considerations on what is reasonable. A casual can advise that they are unavailable at certain times/days. Communication with your workforce is crucial and perhaps consider having a discussion with your team around what the mutual expectations are during this period the JobKeeper Payments are available to ensure that it is fair for everyone.
- Q:** *Stand down directive/enabling – does this apply to long term casuals?*
- A:** Yes, so long as both the employer and employee are eligible.
- Q:** *In relation to staff who were on stand-down or were not earning \$1500/fortnight, what is the recourse if you pay staff JobKeeper Payment for April and later find out your business is ineligible to receive this payment from the ATO? Is the employee obligated to pay this back to the employer?*
- A:** If the payment was made as a gratuity with no obligation or expectation to repay the monies, then (depending on all of the circumstances) it may be that you cannot recover this payment from the employee. However, if it was made in contemplation of the employer being an ‘eligible employer’ for the purposes of the JobKeeper program, then you are encouraged to discuss with your employee about either repaying the monies owed and / or agreeing to an arrangement whereby the employee has been paid in advance of working the relevant hours.
- Q:** *If all employees are IN! What do we do for staff who are currently on maternity leave?*
- A:** If an employee is on parental leave and is receiving government prescribed parental leave payments, then they are not an eligible employee for JobKeeper. If the employee were receiving paid parental leave from the employer (i.e. not the govt paid parental leave scheme), the employer would be entitled to the JobKeeper subsidy to offset the payment (similar to an employee being on annual leave).

JobKeeper Explored for Borderline Business - FAQs

Q: *If an employee is currently receiving Workcover payments but is still on light duties at work, if they are included in the JobKeeper scheme will they stop receiving Workcover payments?*

A: If an employee is in receipt of a worker's compensation payment for a *total* incapacity for work, then they are not an eligible employee for the purposes of the JobKeeper program. Otherwise, the employee would be eligible, meaning that an employee on light duties does appear to be an eligible employee for the purposes of the program.

Disclaimer

- Being general information, the information in this presentation should never override any Covid-19 advice provided to you by the state or federal governments.
- We strongly encourage you to keep updated on all Covid-19 information provided by the state and federal government. Where it requires your action, we encourage you to take immediate action.