

14 April 2020

# JobKeeper Scheme FAQs

## **The Big Question – I have done my best but am not sure I have completed all the paperwork, notified all my employees correctly, received my employee notifications, paid everything perfectly, completed all the nominations correctly etc. Am I still eligible?**

Fortunately, there are transitional rules for the first two JobKeeper fortnights. The ATO may pay an entity a JobKeeper payment for a fortnight without being satisfied that the entity and employee has completed all things necessary to be eligible to participate and is entitled to receive the JobKeeper payment if:

- The relevant fortnight is the first or second JobKeeper fortnight; and
- The entity has notified the ATO in the approved form that they wish to participate in the JobKeeper scheme; and
- The ATO is satisfied, on the basis of information provided in the approved form, that it is reasonable in the circumstances to pay the JobKeeper payment.

If the ATO pays an entity a JobKeeper payment under the above criteria and the entity was found not to be entitled to the payment, the ATO may request the payment be repaid.

## General Employee Eligibility Criteria

### **Are my contractors eligible for the JobKeeper payment?**

Contractors will not be eligible for the JobKeeper payment through the business they are contracted to. However, they may be eligible to register via their own ABN directly for the JobKeeper payment as a self-employed person, provided they meet the eligibility criteria for a self-employed person including the reduction in turnover test.

### **We have a new hire that either started with us after 1 March 2020 or is due to start with us after 1 March 2020. Are they eligible?**

No, all employees must have been employed with the business on 1 March 2020 to be eligible.

### **If our business hires a new person now and our turnover drops, will we receive the JobKeeper payment for the new employee?**

No, all employees must have been employed with the business on 1 March 2020 to be eligible.

### **Can I pick and choose which employees I offer the JobKeeper payment to?**

No, the employer cannot select which eligible employees will participate in the scheme. This 'one in, all in' rule is a key feature of the scheme.

### **Can an employee change nominated employers if they've received the JobKeeper payment in relation to employer A?**

Once an employee has nominated an employer and the employer has received JobKeeper payments in respect of the employee and has paid the employee, they cannot nominate a different employer. If, for any reason, the employment relationship between an eligible employee and their nominated employer ends, the employee will not be able to have another employer qualify for the JobKeeper payments in respect of their new employment. Such a person may become entitled to receive other government support, including the JobSeeker payment.

## **Casual Employee Eligibility Criteria**

### **Which casuals are eligible for the JobKeeper payment?**

Individuals must be considered a long-term casual employee, which means they have been employed by the entity on a regular and systematic basis during the period of 12 months prior to 1 March 2020.

A casual employee is likely to be employed on a regular and systematic basis where the employee has a recurring work schedule or a reasonable expectation of ongoing work.

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 and systematic employment.

The term 'regular' implies a repetitive pattern and does not mean frequent, often, uniform or constant. The term 'systematic' requires that the engagement be 'something that could fairly be called a system, method or plan'.

Where there is no clear pattern or roster, evidence of regular and systematic employment can be established where:

- the employer offered suitable work when it was available at times that the employee had generally made themselves available, and
- work was offered and accepted regularly enough that it could no longer be regarded as occasional or irregular.

### **We've had casuals who have worked in one company for two years, then we transferred them to a new company in February when we opened a new site. Are they eligible?**

Yes, provided the new and old entities are part of the same wholly owned group.

### **What if a casual has worked for different entities within our group?**

If a casual was employed for a period of 12 months prior to 1 March 2020 in different entities but each entity was part of the same wholly owned group, they will be eligible.

### **What if a casual worked for the same business but it was involved in a restructure or sale so now, they are employed in the same business but in a new entity?**

A casual employee is eligible if they were employed in the original business and continue to work in the same business despite it being a different entity due to a sale or restructure.

#### **Example 1: Long term casual employees**

On 1 March 2019, Sam commences employment as a casual employee at Annie's Bakery. Sam has a regular work schedule - working between 3 and 4 days each week. On 1 July 2019, ownership of Annie's Bakery changes hands. Sam continues to be employed as a casual employee of Annie's Bakery and continues to work according to their regular work schedule from that date until 10 March 2020, when Sam is stood down.

For the purposes of determining whether Sam is a long-term casual employee and an eligible employee, the fact that the business has changed hands will not disadvantage Sam. Sam is able to demonstrate regular and systematic employment at Annie's Bakery for over 12 months. He is therefore a long-term casual employee for the purposes of the JobKeeper scheme.

## **Non-Employee Eligibility Criteria (Sole Traders, Directors, Shareholders, Partners in Partnerships and Trust Beneficiaries)**

### **I am not an employee of my business. Am I still eligible?**

The entity or individual must have held an ABN on 12 March 2020.

In relation to an entity that has an ABN, it is additionally required that:

- an amount was included in the entity's assessable income for the 2018-19 income year in relation to it carrying on a business and the Commissioner had notice on or before 12 March 2020 (or a later time allowed by the Commissioner) that the amount should be so included; and
- the entity made a taxable supply in a tax period that applied to it that started on or after 1 July 2018 and ended before 12 March 2020 and the Commissioner had notice on or before 12 March 2020 (or a later time allowed by the Commissioner) that the entity had made the taxable supply.

The individual for whom a business is entitled to the JobKeeper payment must be an individual that is an eligible business participant. An individual is an eligible business participant where the individual:

- is not employed by the business at any time in the fortnight (that is, because the individual is the owner of the business i.e. a nominated business participant not an employee of the business);
- satisfies the business participation requirements at any time in the fortnight;
- satisfies the 1 March 2020 requirements; and
- satisfies the nomination the requirements.

The business participation requirements are that, at any time in the fortnight, the individual is actively engaged in the business carried on by the entity. The individual must be actively engaged in the operations and activities of the body.

Further, depending on the type of entity the business is, the individual must have a particular role within the business. In the case of an entity that is a:

- sole trader—the individual must be the entity;
- partnership—the individual must be a partner in the partnership;
- trust—the individual must be an adult beneficiary of the trust; and
- company—either a director or shareholder in the company.

## Business Eligibility Criteria

### What is the basic turnover test?

For an entity with turnover less than \$1billion – An entity satisfies the decline in turnover test if the entity's projected GST turnover for the test period this year is expected to be 30% lower than the comparison period.

For an entity with turnover more than \$1billion – An entity satisfies the decline in turnover test if the entity's projected GST turnover for the test period this year is expected to be 50% lower than the comparison period.

For an entity with turnover less than \$1billion – An entity satisfies the decline in turnover test if the entity's projected GST turnover for the test period this year is expected to be 30% lower than the comparison period.

For charities registered with the Australian Charities and Not-for-profits Commission – They satisfy the decline in turnover test if the entity's projected turnover has fallen or will likely fall by 15 per cent or more relative to a comparable period last year.

### What is the turnover test period?

The turnover test period must be a calendar month that ends after 30 March 2020 and before 1 October 2020; or a quarter that starts on 1 April 2020 or 1 July 2020.

If a one-month turnover test period is being used, it must be one of the following months: March 2020, April 2020, May 2020, June 2020, July 2020, August 2020 or September 2020.

If a three-month period is being used it must be one of the following periods: the quarter that starts on 1 April 2020 or the quarter that starts on 1 July 2020.

### What is the comparison period?

The relevant comparison period must be the period in 2019 that corresponds to the turnover test period. For example, if your turnover test period is the month of April 2020, the comparison period is the month of April 2019. If your test period is the quarter April-June 2020, your comparison period is the quarter April-June 2019.

### Example: Satisfying the basic decline in turnover test

Burke Industries assesses its eligibility for JobKeeper payments on 11 May 2020 based on a projected GST turnover for May 2020 of \$10 million from its business activities. The corresponding period is the month of May 2019 for which it had a current GST turnover of \$20 million. The May 2020 turnover falls short of the May 2019 turnover by \$10 million, which is 50% of the May 2019 turnover. This exceeds the specified percentage of 30% that applies to business entities with less than \$1 billion aggregated annual turnover, so the decline in turnover test is satisfied.

### What is the alternative turnover test?

This test is available where there is not an appropriate relevant comparison period in 2019. This might be the case for a new business, started, for example, in January 2020 or a business that made a major business acquisition in 2020. In both examples, the basic test may not accurately reflect the downturn in activity that the business has suffered.

#### Example 1: Satisfying the alternative decline in turnover test

Camille's Farms carries on a farming business and retail flower sales in Australia. It was subject to a severe drought from 2018 until September 2019 that reduced the number of flowers it could grow. It returned to normal crop output in January 2020. Its retail flower sales became significantly affected in March 2020.

It assesses its eligibility for JobKeeper payments on 3 July 2020 based on a projected GST turnover from its farming activities for the quarter beginning on 1 July 2020 of \$2,000,000. The corresponding period is the quarter beginning on 1 July 2019 – a period in which Camille's Farms was severely affected by drought. Because of the effects of the drought, Camille's Farms had a much lower than usual current (2019) GST turnover of \$2,500,000. The July 2020 quarter turnover falls short of the July 2019 quarter turnover by \$500,000, which is 25% of the July 2019 quarter turnover. This does not exceed the specified percentage of 30%, so the decline in turnover test is not satisfied.

However, because of the effects of the drought on farming businesses, the Commissioner is satisfied that there is not an appropriate relevant comparison period for an entity that carried on a farming business. Instead, for these entities, the Commissioner determines an alternative test for which the relevant comparison period is the corresponding quarter in 2017. The Commissioner determines that the alternative test will be satisfied in these circumstances where the entity can show a 30% shortfall in turnover (for entities with less than \$1 billion aggregated annual turnover) when compared to one of these alternative periods.

In the quarter beginning on 1 July 2017, Camille's Farms had a current GST turnover of \$4,000,000. This represents a shortfall of 50% when compared to its projected GST turnover for the quarter beginning on 1 July 2020. This exceeds the specified percentage of 30%, so the alternative decline in turnover test is satisfied.

#### Example 2: Satisfying the alternative decline in turnover test

Seb Tech is a start-up technology company that began carrying on a business on 1 October 2019 selling its product to a range of businesses including cafes and restaurants. Despite strong initial sales, its sales declined substantially from March 2020. It assesses its eligibility for JobKeeper payments on 15 April 2020 based on a projected GST turnover for April 2020 of \$15,000 from its technology business. However, because Seb Tech did not begin to carry on a business until 1 October 2019, there is no corresponding period in 2019 that applies.

As there is no corresponding comparison period in 2019, the Commissioner determines an alternative test under which the relevant comparison period is the average of the actual GST turnover in all of the months in which the business was being carried on prior to the turnover test period.

In October 2019 to March 2020, Seb Tech had an average monthly current GST turnover of \$30,000. This represents a shortfall of 50% when compared to its projected GST turnover for April 2020 of \$15,000. This exceeds the specified percentage of 30%, so the alternative decline in turnover test is satisfied.

### **If my business passes the decline in turnover test for April 2020, do I need to keep testing later months?**

No, once an entity becomes eligible for the JobKeeper payment by passing the reduction in turnover test for one month, there is no requirement to retest in later months.

### **What happens if my business fails the decline in turnover test for April but I expect it will pass the reduction moving forward?**

If an entity does not qualify for the month of April 2020 because its turnover has not been sufficiently affected, it can test in later months to determine if the test is met. This allows entities that only become affected part-way through the six-month period of operation of the JobKeeper scheme to continue to monitor for any decline in turnover until they qualify for the scheme in a later period.

### **My business is not 12 months old yet. How is the 30% turnover reduction then assessed for my business?**

Please see the alternative turnover test outlined above.

### **I lodge my BAS on a cash basis, not accruals, so my income for April will still look quite strong due to the collection of my debtors, while my billing will actually be down 30%. Am I eligible?**

Under these circumstances you may need to test your figures in relation to May as the legislation uses your BAS reporting basis, being cash basis for the test.

### **My new business was due to launch in April and now we can't operate. Is our business eligible?**

No, it is a condition that an employer begin carrying on a business in Australia on 1 March 2020. If a business commenced after that date, it is not a qualifying employer for the purposes of the JobKeeper scheme.

## Sole-Trader Queries

### **I just lodged my March 2020 BAS, which shows my turnover similar to my March 2019 BAS; however, as of 1 April my income has reduced by more than 30% and I expect it to stay that way for a while. Is my business still eligible?**

If your forecast revenue is expected to reduce for the month of April by more than 30% you will likely be eligible for the JobKeeper payments in April provided you meet the other criteria.

### **I am a sole trader and lodge an annual GST return. How do I show my income has reduced to the ATO?**

Please see information the employer needs to provide under 'Procedures & Paperwork' which also applies to sole traders.

### **I operate as a sole trader. Is it necessary for me to "pay myself" during the fortnight to be eligible for the JobKeeper reimbursement?**

No, it is not necessary for a sole trader to pay themselves for the fortnight.

### Payment Queries

#### When will I receive the reimbursement from the ATO?

The ATO must pay the JobKeeper payment no later than 14 days after the end of the calendar month in which the fortnight ends.

#### If my employee normally earns more than \$1,500 per fortnight, can I just pay them the \$1,500 per fortnight?

If the employee's ordinary days or hours have been reduced to nil under a 'JobKeeper enabling stand down direction', the employer must pay the employee \$1,500 per fortnight before tax.

If the employee's ordinary days or hours have been reduced under a 'JobKeeper enabling stand down direction', the employer must pay the employee an amount equivalent to those reduced hours or days worked in the fortnight by the employee. If:

- the reduced hours or days equate to less than \$1,500 per fortnight before tax, the employer must pay the employee \$1,500 per fortnight before tax; or
- the reduced hours or days equate to more than \$1,500 per fortnight before tax, the employer must 'top up' the payment to the employee for anything above \$1,500. This means an employer must pay an employee in full for work undertaken in that fortnight and cannot simply pay \$1,500 before tax.

#### My business can't afford to fund the JobKeeper \$1,500 payments in advance of them being reimbursed. Can I pay half to the employees upfront and then the other half once the ATO reimburses our business?

No, it is a condition of the JobKeeper payment that the full amount is paid to the employee in the relevant fortnight. The payment is a reimbursement of the amount already paid to the employee.

#### Given all the subsidies are payments in arrears, how can I fund the JobKeeper payments to my employees?

No doubt this is a big concern of many business owners. Some options may include:

- speaking with your existing business banker to see if they can provide access to a temporary overdraft or temporary arrears arrangement.
- applying for a loan facility or ongoing overdraft facility (our BlueRock Finance team can assist with these)
- applying for the Coronavirus SME Guarantee Scheme loan of up to \$250,000 (our BlueRock Finance team can assist with these).

#### My employees have accrued annual leave. Can I direct them to take the annual leave and utilise the JobKeeper payments toward these payments?

Yes, an eligible employer may request that an employee take paid annual leave and can request the employee to take annual leave at half pay.

An employee must not unreasonably refuse an employer's request to take annual leave, provided the leave arrangement does not result in reducing the employee's leave balance to less than 2 weeks.

The JobKeeper payments can be utilised to pay leave.

### **Do I have to pay the staff in advance of receiving the JobKeeper payments from the ATO?**

It is a condition of the entitlement that the business has paid salary and wages of at least the \$1,500 before tax in the fortnight.

### **If my employees are on annual leave, sick leave or long service leave can the JobKeeper payments subsidise these payments?**

Yes, the JobKeeper payment can be used to pay leave entitlements.

### **I have already paid my employees for the past fortnight but have paid them less than \$1,500 before tax as they worked only a few hours. Do I need to pay them more to top them up?**

Yes, it is a requirement that each employee is paid the \$1,500 before tax in order to be eligible for the JobKeeper payment.

### **Is there GST on the payments coming in from the ATO?**

GST does not apply in relation to the JobKeeper payments made to employer.

### **We don't pay our employees fortnightly. How does this work?**

If there is a regular period the employer usually pays employees in relation to the performance of work by the employees and that period is longer than a fortnight, then the payments are to be allocated to a fortnight or fortnights in a reasonable manner.

## Timing Queries

### **When do I need to notify the ATO that we elect for our business to participate in the JobKeeper scheme?**

For an entitlement arising in the first (30 March –12 April) or second JobKeeper fortnight (13 April – 26 April) you must notify the ATO by the end of the second JobKeeper fortnight (fortnight ended 26<sup>th</sup> April 2020).

For an entitlement arising in any other fortnight, you must notify the ATO by the end of that fortnight.

### **When does an employer need to notify an employee they will be entitled to the JobKeeper payment?**

The employer must notify an individual employee in writing within 7 days of notifying the ATO that the employee and employer are eligible.

## Tax, Super & Entitlements Queries

### **Do employees continue to accrue leave while under a JobKeeper stand down direction?**

Yes, all entitlements continue to accrue, and all continuity of service continues as if the JobKeeper stand down direction did not exist.



### Is the employer required to pay superannuation on the JobKeeper payments?

An employer will only need to make superannuation contributions for any amount payable to an employee in respect of their actual employment, disregarding any extra payments made by the employer to satisfy the wage condition for getting the JobKeeper payment.

For example, if the work actually done by an employee over a period entitled them to be paid \$1,000, but the employer instead paid them \$1,500 to satisfy the wage condition for a JobKeeper fortnight, then the employer will only be required to make superannuation contributions in relation to \$1,000. Similarly, any liability to superannuation guarantee charge that the employer would have for not making sufficient superannuation contributions would be calculated by reference to that \$1,000 base.

An employer will still be required to make the same superannuation contributions for an employee whose pay exceeds the JobKeeper payment. For example, if an employee is entitled to be paid \$2,000 for their work, the employer will continue to be required to make contributions in relation to that amount, irrespective of whether they were eligible to receive the JobKeeper payment in relation to the employee.

An employer will not be required to make superannuation contributions for an employee who is stood down. This is because employers have no obligation to pay stood down employees. If an employer pays a stood down employee \$1,500 to satisfy the wage condition for receiving the JobKeeper payment, then the entire amount will be disregarded for superannuation guarantee purposes.

### What tax needs to be withheld on the \$1,500 payment?

As the payments are based on a fortnightly period, it will be as per the fortnightly tax withheld tables.

### What does the employer need to report to the ATO and when?

If an entity has qualified for the JobKeeper scheme, they must notify the ATO in the approved form (please note the form is yet to be released) within 7 days of the end of a calendar month if the entity is entitled to a JobKeeper payment for a fortnight that ends in the month.

The information to notify the ATO of is:

- The entity's current GST turnover for the reporting month (the month just ended); and
- The entity's projected GST turnover for the following month

For example, the employer must notify the ATO by 7 May 2020:

- if they were eligible for the JobKeeper payment for the fortnights ended 12 April and 26 April; and
- of their GST turnover for the month of April 2020; and
- of their expected GST turnover for the month of May 2020.

### What does the employee need to do?

The individual must provide a nomination notice stating:

- that they satisfy the eligibility criteria; and
- that they agree to be nominated by the entity as an eligible employee for the JobKeeper scheme; and
- they have not nominated themselves for another business; and
- they are not excluded from being an eligible employee due to the receipt of government paid parental leave, in receipt of WorkCover and they are fully incapacitated.

### What does the employer need to do?

The employer must notify all employees in writing that they have elected to participate in the scheme and that their eligible employees will all be covered by the scheme.