

JobKeeper Payment: Eligibility and further details

SUMMARY

On Monday 30 March the Prime Minister and the Treasurer announced a new JobKeeper Payment (JKP) to support employment in businesses and other organisations.

The JKP will be paid to eligible employers and the wage subsidy will be \$1,500 per fortnight for each eligible employee. Generally, businesses will be eligible if they have experienced a reduction in turnover of 30 per cent or more. Businesses with an annual turnover of more than \$1 billion will be eligible if they experience a reduction in turnover of 50 per cent or more. Tests using criteria other than turnover may be developed.

Full-time and part-time employees are eligible as are casual employees who have been employed by the business on a regular and systematic basis for 12 months or more. The first step however is that their employer needs to be eligible. Regardless of the level of wage paid, the subsidy will be \$1,500 per fortnight and employers will be obliged to pay the employees at least this amount (which is a pre-tax amount).

The JKP will be available for six months from 30 March. Payments are expected to be made to employers from the first week in May to reimburse employers for wage payments made before then. The Government's original announcement is available [here](#). Legislation is expected to be tabled and passed by the Parliament on Wednesday 8 April.

What EMPLOYERS are eligible?

While further clarification will be available later and will be set out in updated Member Advices, the [Treasury Fact Sheets and FAQs](#) set out eligibility requirements for employers and other information.

The broad rules around employer eligibility are that an employer will be eligible for the JKP on behalf of their employees if:

- their business has a turnover of less than \$1 billion and their turnover has fallen, or is likely to fall by 30 per cent or more; or
- their business has a turnover of \$1 billion or more (or is part of a consolidated group with turnover of \$1 billion or more) and their turnover has fallen, or is likely to fall by 50 per cent or more; and
- the business is not subject to the Major Bank Levy.

An employer can be a self-employed person, a sole trader or structured through a company, partnership or trust. Not for profits are also eligible. Some charities will be eligible if their turnover falls by 15 per cent.

The Treasury Fact Sheets and FAQs contain further guidance on the eligibility of employers:

To establish that a business or not-for-profit has, or is likely to, face the relevant fall in their turnover, most would be expected to establish that their turnover has or will likely fall in the relevant month or quarter (depending on their Business Activity Statement reporting) relative to their turnover in a corresponding period a year earlier. Turnover is calculated as it is for GST purposes, and is reported on Business Activity Statements. It includes all taxable supplies and all GST free supplies but not input taxed supplies.

Where a business or not-for-profit 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 or not-for-profit can provide to establish that they have been significantly affected by the impacts of the Coronavirus. The payment cannot be paid to businesses that are in liquidation.

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 curtails its operations). There will be some tolerance where employers, in good faith, estimate a 30 per cent or more or 50 per cent or more fall in turnover but actually experience a slightly smaller fall.

If a business is part of a consolidated group for income tax purposes, with a turnover of \$1 billion or more, the 50 per cent or more turnover test will apply to each business in that consolidated group. If the consolidated group has turnover of less than \$1 billion, the 30 per cent or more turnover test is applied to each business in that consolidated group. Individual businesses within a consolidated group may be eligible for the JobKeeper payment while other businesses in the group may not be eligible.

HABA's workplace relations partner, Ai Group is seeking further clarification about eligibility, about the guidance the Taxation Commissioner will receive from the Government in the exercise of discretion and about further guidance to be provided to employers and employees.

What EMPLOYEES are eligible?

For an employee to be eligible, they must be employed by an eligible employer. *This is not currently widely appreciated, and members are strongly encouraged to discuss this requirement with their staff.*

Full-time and part-time employees are eligible as are long-term casuals (a casual employed on a regular and systematic basis for longer than 12 months as at 1 March 2020).

In addition, employees must be at least 16 years of age; have been on the employer's books on 1 March 2020; and, be retained or continue to be engaged by that employer.

Employees who meet other requirements and who are stood down before or after 1 March will be eligible. Employees made redundant since 1 March and subsequently re-engaged will be eligible.

This appears to mean that new employees of the business (i.e. those first employed after 1 March 2020) will not be eligible employees.

This also appears to exclude from eligibility employees who are converted from casual to permanent after 1 March 2020 (unless they were employed as a casual on a regular and systematic basis by the business for more than 12 months before 1 March 2020).

Eligible employees include Australian residents, New Zealand citizens in Australia who hold a subclass 444 special category visa, and migrants who are eligible for JobSeeker Payment or Youth Allowance (Other). The employee also must have been a resident for Australian tax purposes on 1 March 2020.

Employees receiving Parental Leave Pay from Services Australia are not eligible for the JKP. However, employees on parental leave from their employer will be eligible. Employees receiving workers compensation will be eligible for the JKP if they are working, for example on reduced hours, but will generally not be eligible if they are not working.

Employees can only receive the payment from one employer. Self-employed people will be eligible to receive the JKP where they have experienced or expect to experience a 30 per cent decline in turnover relative to a comparable a period a year ago (of at least a month).

Ai Group is seeking to have these arrangements refined in a number of ways based on the feedback we have received from members.

How much will eligible employers need to pay eligible employees? What about superannuation?

The JKP is a flat \$1,500 per fortnight paid, in the first instance, to eligible employers for each of their eligible employees. The relevant payments from the employer to employees are set out below.

For an eligible employee who continues to work and who, in the absence of the JKP, would be *entitled to a wage of at least \$1,500 per fortnight*:

- the employer would pay the employee the amount they are entitled to receive under the agreement between them;
- the employer would retain the \$1,500 JKP as partial reimbursement; and
- superannuation would be payable on the wage.

For an eligible employee who continues to work and who, in the absence of the JKP, would be *entitled to a wage of less than \$1,500 per fortnight*:

- the employer would pay the employee the amount they are entitled to receive under the agreement between them PLUS the difference between this amount and \$1,500 per fortnight (both amounts are pre-tax);
- the employer will be reimbursed for the wage they pay the employee and the rest of the \$1,500 is paid to the employee (the top-up component); and
- superannuation is only paid on the wage component (not the top-up component) unless the employer wants to pay more super than required.

If the *employee is stood down* and was on the eligible employer's books on 1 March 2020, the employer would pay the stood down worker the full \$1,500 per fortnight. No super is payable on the JKP paid to stood down employees.

Several members have raised questions and concerns about how these arrangements will work in practice. Ai Group has already obtained a large number of clarifications which are reflected in this Member Advice. We are continuing to make representations and seek clarification in relation to ongoing areas of uncertainty. We encourage members to email jobkeeper@aigroup.com.au with their concerns and issues so we can make representations and help refine and clarify the measures.

What if an employee is on leave?

We are seeking to have clarified how an employee on leave would be treated. In the absence of direct reference to this, *our sense* is that if a person is on leave, they would remain an employee and be treated like any other employee.

The clarification above relating to an employee on parental leave from their employer is, hopefully an indication of the eligibility of employees on other forms of leave. We will update this and other parts of this Member Advice as more information becomes available.

How will it work for employers?

The JKP will be administered through the Australian Tax Office. Employers must elect to participate in the scheme if they want to be considered as eligible. Employers are strongly encouraged to register their interest at www.ato.gov.au. The ATO will contact each business that registers an interest.

Employers will need to make an application to the Australian Taxation Office (ATO) and provide supporting information demonstrating a downturn in their business. In addition, employers must report the number of eligible employees employed by the business on a monthly basis. Employers are required to include all eligible employees in the scheme.

Employers will receive a payment from the ATO equal to \$1,500 per fortnight per eligible employee. The first payment to employers will be made from the first week in May. The ATO payments will reimburse amounts paid by eligible employers to eligible employees (the Government's initial announcement referred to forthcoming increases in cash flow support for businesses and the Australian Bankers Association has announced that Australia's banks will make additional short-term credit in relation to the timing of the JKP (see [here](#)).

The JKP commences in respect of wages paid from 30 March and will continue for six months.

Further details about the timing of JPK payments to employers and employees are available in the Treasury's [JobKeeper Payment — Frequently Asked Questions document](#).

HABA is advising employers not to pay the JKP at least until they are confirmed as eligible by the ATO.

We are seeking further clarification about the timing of JKPs to stood down employees and employees who are entitled to a wage of less than \$1,500 per fortnight (pre-tax).

Look out for updates to this Advice

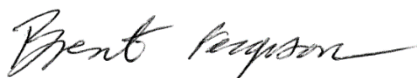
There is a clear need for further clarification over the coming days. HABA will update this Advice as further information becomes available.

Do you require further advice?

HABA has set up a COVID-19 folder in our members only section. Please log on to: <https://members.askhaba.com.au/index.php> which will provide access to advice and assistance relating to the COVID-19 pandemic.

As mentioned above, HABA encourages members to email jobkeeper@aigroup.com.au with their JKP concerns and issues.

Treasury's Fact Sheets are being regularly updated and can be accessed [here](#).



Brent Ferguson,
National Manager – Workplace Relations Advocacy & Policy

FURTHER INFORMATION

For further information or assistance, please contact HABA's Workplace Advice Line on (02) 9221 9911