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WHAT IS THE JOBKEEPER PROGRAM?

Under the JobKeeper program, businesses and not-for-profits affected by COVID-19 will receive fortnightly payments to help cover the costs of wages of their employees. The JobKeeper program starts on 30 March 2020 and ends 27 September 2020.

WHICH BUSINESSES ARE ELIGIBLE?





Eligible

- Employers whose turnover has declined relative to a comparable period in the prior year by at least:
 - 30% if turnover is less than \$1 billion
 - 50% if turnover is over \$1 billion
 - 15% for ACNC-registered charities.
- Where the business has been impacted by COVID-19, but is not able to satisfy the relevant test above (eg start-ups or Businesses not in operation a year ago), the business may be entitled to access an alternative decline in turnover test. The Commissioner of Taxation has been empowered to issue guidelines for these alternative tests, **but has not yet issued any**.
- Self-employed individuals, including sole traders, company directors, partners in partnerships and beneficiaries of trusts

Ineligible

- All levels of Australian government and foreign governments as well as their agencies
- Wholly-owner corporations of any of the above and their agencies
- A business subject to the Major Bank Levy
- A company that is in liquidation
- A partnership, trust or sole trader in bankruptcy

ONLY ONE INDIVIDUAL working in each of the following business entities can be nominated for the JobKeeper payment.

-  **Sole trader** > The individual
-  **Partnership** > One individual partner
-  **Trust** > One individual beneficiary
-  **Company** > One director or individual shareholder

Similar restrictions to those for eligible employees apply to the self-employed, including that they must not be entitled to the JobKeeper payment through any other businesses entity and they mustn't be on paid parental leave or an incapacitated worker.

How do I determine my decline in turnover?

If your business is not in a GST group and it has not been a member of a GST group since at least 31 March 2019, you will need to determine your projected GST turnover for the relevant tax period and that will need to demonstrate at least the minimum percentage decline (ie 15%, 30% or 50%, as relevant) over the comparison period, per the following table ----->

Comparing the current turnover for the period ending...	Against the projected turnover for the period ending...
If the business has monthly tax periods	
30 April 2019	30 April 2020
31 May 2019	31 May 2020
30 June 2019	30 June 2020
31 July 2019	31 July 2020
31 August 2019	31 August 2020
30 September 2019	30 September 2020
If the business has quarterly tax periods	
30 June 2019	30 June 2020
30 September 2019	30 September 2020

For quarterly BAS lodgers, it may be possible to use a calendar month within a quarter as the test period. For example, a business which lodges quarterly and would have a lodgement due in relation to the quarter ending 30 June 2020 may be able to use a test period of 1 April to 30 April 2020 to compare against the revenue for 1 April 2019 to 30 April 2020.

Are there alternative tests?

The Commissioner is expected to issue a separate legislative instrument setting out alternative tests for certain "classes of entities". Treasury's earlier fact sheet suggests that alternative tests could be applied to businesses that were not in operation a year earlier or where their turnover a year earlier was not representative of their usual or average turnover (eg start-ups).

We will provide updates once more information on the Commissioner's alternate tests are made available.

What if I am a sole trader, a partner or self-employed?

If you are a sole trader or self-employed, you may be entitled to the JobKeeper payment.

Broadly, a sole trader and self-employed individual working in a business (known as a business participant) can receive the JobKeeper payment when their business is experiencing the requisite decline in turnover and they meet all of the following additional criteria:

- the business entity held an ABN on 12 March 2020
- on or before 12 March 2020 (or such later time allowed by the Commissioner) they lodged one of the following:
 - 2018-19 tax return showing assessable business income;
 - or
 - an activity statement showing GST taxable, GST-free or input-taxed supplies in any of the tax periods commencing on or after 1 July 2018 and ending before 12 March 2020.
- the individual working in the business:
 - was not employed by the business entity (or any other entity); and
 - on 1 March 2020:
 - » they were aged 16 years or over; and
 - » were an Australian citizen, the holder of a permanent visa or Special Category (Subclass 444) Visa.

ARE MY EMPLOYEES ELIGIBLE?

Basic eligibility criteria

An eligible employee includes an employee who was in your employment at 1 March 2020, and:

- Is currently directly employed by you (including those stood down, or re-hired by you)
- Is a full-time or part-time employee
- Is a casual employee who has been employed on a regular and systemic basis for longer than 12 months as at 1 March 2020
- Was aged 16 years or older at 1 March 2020
- Was an Australian citizen, holder of a permanent visa, or Special Category (Subclass 444) Visa at 1 March 2020.
- Continues to be employed by you during the period you claim the JobKeeper payment

Addition eligibility criteria

Eligible

- An eligible employee who is on annual or sick leave
- A fixed term contractor who meets the basic eligibility criteria
- An eligible employee who is receiving support under a worker's compensation scheme but you are still under an obligation to pay some component of their salary and wages
- Holders of Special Category (Subclass 444) Visa's must also be a resident of Australia for Income Tax purposes – it is not sufficient they merely hold the relevant Visa

Ineligible

- An eligible employee to whom you do not pass on the full \$1,500 per fortnight (before tax) JobKeeper payment
- An employee not directly employed by you (eg labour hire arrangement)
- An employee who is fully incapacitated, unable to work and being supported by a worker's compensation scheme
- An employee who is fully compensated under your Workcover insurance
- An employee in receipt of Government Paid Parental Leave or Dad and Partner Pay
- An employer who receives an Australian Government wage subsidy (eg. Supporting Apprentices and Trainees wage subsidy or Australian Apprentice Wage Subsidy) in respect of an eligible Australian apprentice or trainee
- An eligible employee who resigns

WHAT ARE MY SUPERANNUATION OBLIGATIONS?

Compulsory superannuation applies

- Where the employee usually earns more than \$1,500 per fortnight (before tax) in salary and wages and are currently working in the business
- Where the employee usually earns less than \$1,500 per fortnight (before tax) – compulsory superannuation will apply to the amount of salary and wages that employee would have been paid had they not received the JobKeeper payment

Compulsory superannuation doesn't apply

- Where the JobKeeper payment has been paid to an employee who is stood down and not working in the business
- Where the employee's usual salary and wages are less than \$1,500 per fortnight (before tax) – the gap between the JobKeeper payment and the employee's usual salary and wage.

How do I pay JobKeeper payment to my employees?



- Your employee will need to provide you with a nomination notice in the approved form (yet to be released) advising you of their eligibility
- You will need to process the payment through single touch payroll and you will be reimbursed by the ATO monthly, in arrears
- You can only claim the JobKeeper payment if you pay the minimum \$1,500 per fortnight (before tax) to each eligible employee. This means if your employee's salary and wages are usually less than \$1,500 per fortnight (before tax) you will have to increase the amount you pay to them to be eligible for the JobKeeper payment
- If you have not paid the employee the minimum \$1,500 per fortnight (before tax), you will not receive the JobKeeper payment for this employee
- If your employee resigns, you may need to repay part of the JobKeeper payment

How will I get paid by the ATO?

- The ATO will process JobKeeper payments within 14 days of the end of the month in which the JobKeeper fortnight falls
- It is very important to have a bank account nominated into which the payment will be received
- The ATO will pay the JobKeeper payment using the bank account details they have either on the Portal, or that were reported in the last lodged tax return
- The ATO may apply the JobKeeper payment to the business running balance account while they determine eligibility
- In general, the ATO will not apply JobKeeper payments against pre-existing tax liabilities, however the Commissioner does have the power
- to do so

WHAT ARE MY EMPLOYER OBLIGATIONS?

Employers are advised to seek appropriate advice on employment law obligations, particularly where they are considering changing employee work arrangements or rehiring an employee who has been terminated or made redundant.

ATO integrity rules

- There may be substantial penalties (including criminal penalties in certain circumstances) if an entity enters into a contrived scheme for the sole or dominant purpose of accessing or increasing entitlement to the JobKeeper payment
- If an entity deliberately alters its business arrangements to reduce its turnover in order to meet the turnover requirements, this may be considered to be a scheme for the purposes of the integrity rules
- Entities (including related parties, advisers, employees etc) may be joint and severally liable to repay the JobKeeper payment if they breach the integrity rules and are subsequently denied eligibility for the payment