The JobKeeper Payment

On 8 April 2020, the Federal Government passed a package of Bills through both Houses of Parliament (which received Royal Assent on 9 April 2020) to give effect to (amongst other things) the **JobKeeper Scheme**. Subsequent to this, a Legislative Instrument was released by the Treasurer containing the detailed rules of the JobKeeper Payment.

Refer to the *Coronavirus Economic Response Package Payments and Benefits) Act 2020,* the *Coronavirus Economic Response Package Omnibus (Measures No. 2) Act 2020* and the *Coronavirus Economic Response Package (Payments and Benefits) Rules 2020* (being the Legislative Instrument released by the Treasurer).

Following is a broad summary of the key aspects of the JobKeeper Payment, based on the above package of Bills, the Treasurer's Legislative Instrument and updated information currently available on the Treasury website (refer to https://treasury.gov.au/coronavirus/jobkeeper)

1. What is the JobKeeper Payment?

The JobKeeper Payment is a **wage subsidy** that will be paid through the tax system (i.e., it will be administered by the ATO) to eligible businesses impacted by the Coronavirus.

Under the scheme, eligible businesses will receive a payment of **$1,500 per fortnight per eligible employee** and/or for **one eligible business participant** (i.e., an eligible sole trader, partner, company director or shareholder or trust beneficiary).

The subsidy will be paid for a maximum period of **six months (i.e., from 30 March 2020 up until 27 September 2020**). It will be paid to eligible businesses monthly in arrears, with the first payments to employers commencing from the **first week of May 2020**.

The JobKeeper Payment will ensure that eligible employees (and, where applicable, eligible business participants) receive a gross payment (i.e., before tax) of **at least $1,500 per fortnight** for the duration of the scheme.

2. When is an employer eligible for JobKeeper?

An employer will **only** be eligible to receive a JobKeeper Payment in respect of an **'eligible employee'** (refer below) if, at the time of applying:

- for employers with an aggregated annual annual **turnover of $1 billion or less** - the employer estimates that their projected GST turnover has fallen (or is likely to fall) by **30% or more**; or
- for employers with an aggregated annual **turnover of more than $1 billion** - the employer estimates that their projected GST turnover has fallen (or is likely to fall) by **50% or more**; and
- the employer is **not** specifically excluded from the scheme (e.g., one that is subject to the Major Bank Levy, one that is in liquidation, etc.).

Where an employer is a **charity** registered with the Australian Charities and Not-for-profit Commission ('ACNC'), the employer will be eligible for the JobKeeper Scheme if they estimate that their turnover has fallen, or is likely to fall, by **15% or more** relative to a comparable period.

However, universities and non-government schools registered as charities, remain subject to the 30% or 50% decline in turnover tests, as outlined above.

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PRACTICAL TIP – Gathering information on decline in turnover

One of the primary tests for determining whether a business qualifies for the JobKeeper Scheme and, hence JobKeeper Payments, is the **decline in turnover test** (outlined above).

Ultimately, it is up to each business to self-assess whether it satisfies this test. In most cases, businesses will be required to make a reasonable estimate of their turnover for a month or a quarter. To assist with this process, the ATO (according to Treasury) will be providing guidance in this regard shortly.

In the meantime, it would be prudent for businesses to start collating relevant information (e.g., interim accounts, monthly sales reports and prior year BASs) to get ready for comparison calculations.

Importantly, eligible employers must actually **elect** to participate in the JobKeeper Scheme via an application to the ATO. In making such an application, an employer will also need to:

- Provide **information to the ATO on all eligible employees** (i.e., confirming the eligible employees were engaged as at 1 March 2020 and are currently employed by the business, including those who have been stood-down or re-hired). Treasury has indicated that for most businesses, the ATO will use Single Touch Payroll ('STP') to pre-populate these details.
- Continue to **provide information to the ATO on a monthly basis**, including the number of eligible employees employed by the business and details of its turnover.

The ATO has available on its website an **online form** which can be used by employers to register their interest in the JobKeeper Payment Scheme.

On 14 April 2020, the ATO released additional information on the formal enrolment process. In particular, tax agents will be able to **enrol** for the JobKeeper Payment Scheme on behalf of their clients from **20 April 2020** using the ATO's Online services for agents.

PRACTICAL WARNING – Employers must register for the scheme

An employer can only be entitled to a JobKeeper Payment where they are registered under the JobKeeper Scheme **before** the end of any relevant JobKeeper Payment fortnight.

Notably, an exception applies for the first JobKeeper fortnight (which ended on 12 April 2020) whereby an employer is required to be registered by **26 April 2020** (rather than 12 April 2020). In other words, an employer has until the end of the *second* JobKeeper fortnight to register in respect of the first JobKeeper fortnight.

For example, in order to be eligible for a JobKeeper Payment in respect of the JobKeeper fortnight commencing 30 March 2020, the employer has until **26 April 2020** to register. Whereas for the JobKeeper fortnight commencing 11 May 2020, the employer must (if they are not already registered) register by 24 May 2020.

2.1 How to measure whether the turnover of a business is $1 billion or less?

When determining if the annual turnover of a business is $1 billion or less, for the purposes of working out whether the applicable decline in turnover threshold is 30% or 50%, it is the entity's **aggregated turnover** that must be considered.

In this context, an entity's **'aggregated turnover'** is the same as what is used when determining if an entity is a small business entity ('SBE'), which includes the **annual turnover** of an entity that is 'connected with' or an 'affiliate' of the entity. Broadly, an entity's annual turnover is the total ordinary income derived by the entity in the ordinary course of carrying on a business, excluding dealings between the entity and its connected entities and affiliates.

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Specifically, an entity will be subject to the higher decline in turnover threshold of **50%** if the entity's aggregated turnover is either:

- likely to exceed $1 billion for the *current* income year; ***or***
- actually exceeded $1 billion in the *previous* income year.

2.2 Establishing whether the projected GST turnover of a business has fallen or is likely to fall

In determining whether the turnover of a business has fallen (or is likely to fall) by at least 30% (or 50% as the case may be), the business would generally need to show a decline in its ***projected* GST turnover** in the current period (i.e., either a month or quarter) relative to its ***current* GST turnover** in the corresponding period in the 2019 income year.

The concept of 'projected GST turnover' and 'current GST turnover' for these purposes have been modified to apply to the **period** (i.e., either a month or a quarter) rather than the month, with the GST grouping provisions to be disregarded as well.

Specifically, the **modified 'current GST turnover'** is determined at the *end* of the period and takes into account the total value of all supplies made by the entity ***during that period***, excluding input taxed supplies, supplies that are not for consideration and supplies that are not made in connection with the enterprise that the entity carries on.

The **modified 'projected GST turnover'** is determined at a time *during* a particular period and takes into account the total value of all supplies made, or are likely to be made, by the entity ***during that period***, excluding input taxed supplies, supplies that are not for consideration and supplies that are not made in connection with the enterprise that the entity carries on.

PRACTICAL TIP – The ATO's discretion for JobKeeper eligibility

Where a business was not in operation a year earlier, or where the turnover of a business 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 Commissioner will have discretion to consider additional information that the business can provide to establish it has been significantly affected by the impact of the Coronavirus. Currently, the ATO has not released any information on what factors it will take into account when considering exercising this discretion.

The Commissioner also has the 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 also be some tolerance where employers have, in good faith, estimated at least a 30% (or 50%, as the case may be) fall in turnover, but actually experience a slightly smaller fall.

2.3 Identifying who is an 'eligible employee'

A business can only claim a JobKeeper Payment in respect of an employee who is an **'eligible employee'**.

Importantly, an employer that elects to participate in the JobKeeper Scheme is required to include **all** eligible employees in the scheme (unless the employee advises the employer they do not wish the employer to claim the JobKeeper Payment on their behalf).

An **'eligible employee'** is an employee who satisfies the following requirements:

(a) The employee is **currently employed** by the employer (which includes an employee who has been stood down or re-hired after they had already lost their job).

(b) The employee was **employed** by the employer **as at 1 March 2020**.

(c) The employee is a **full-time** or **part-time** employee, or a **long-term casual** employee (i.e., one who has been employed by the employer on a regular and systematic basis for longer than 12 months as at 1 March 2020).

(d) The employee was **at least 16 years of age** on 1 March 2020.

(e) The employee was, on 1 March 2020, either:

- a resident of Australia for *social security* purposes (e.g., an Australia citizen, a holder of a permanent visa or a holder of a protected special category visa); or
- a resident of Australia for *tax* purposes and was a holder of a Subclass 444 (Special Category) visa.

(f) The employee has **not** given any other employer a nomination notice (refer below).

(g) If the employee is a long-term casual employee – they are not a permanent employee of any other employer.

(h) The employee is **not** in receipt of a government-funded parental leave pay or dad and partner pay and nor are they fully supported by a workers' compensation scheme.

Additionally, before an entitlement to the JobKeeper Payment arises, the ATO requires an employer to complete a ***JobKeeper employee nomination notice*** to notify eligible employees that the employer intends to participate in the scheme, and ask the employees to agree to be nominated and receive payments from them as part of the scheme. The employee indicates on that same form whether they agree (or not) before returning the form to the employer, who must retain it for five years.

If an eligible employee has multiple employers who each send them a nomination form, they can only accept a nomination from one employer (such that only one employer is entitled to a JobKeeper Payment on their behalf).

2.4 Employers must pay eligible employees at least $1,500 per fortnight – the 'wage condition'

The JobKeeper Scheme will ensure that eligible employees receive a gross payment (i.e., before tax) of **at least $1,500 per fortnight** for the duration of the scheme. Employers are able to pay eligible employees more than this amount, based on the employees' usual pay arrangements.

PRACTICAL TIP – Satisfying the 'wage condition'

On this basis, the JobKeeper Payment scheme requires employers to pay their eligible employees a minimum of **$1,500 (before tax) in respect of each fortnight** covered by the scheme. The first fortnight under the scheme commenced on **Monday 30 March 2020 and ended on Sunday 12 April 2020**, with the final fortnight starting on Monday 14 September 2020 and ending on Sunday 27 September 2020. Where an employer pays their staff monthly, the monthly payment must be equivalent to the fortnightly amount of $1,500 per fortnight.

The minimum $1,500 (before tax) payment requirement will operate as follows:

(a) **If an employee has been receiving *at least* $1,500** in gross salary income per fortnight since 30 March 2020, they will continue to receive their regular income according to their prevailing workplace arrangements. In this case, the JobKeeper Payment will effectively subsidise the first $1,500 of the employee's gross fortnightly salary income.

(b) **If an employee has been receiving *less than* $1,500** in gross salary income per fortnight since 30 March 2020, the employer must pay the employee **a 'top-up' payment** to ensure the employee has been paid at least $1,500 per fortnight to be eligible to receive the JobKeeper Payment. This means some employees will receive more than their ordinary salary and wages derived from the employer.

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(c) **If an employee has been stood down** without pay after 1 March 2020 their employer must pay the employee a minimum gross fortnightly salary income of $1,500 from 30 March 2020, to be eligible to receive the JobKeeper Payment in respect of the employee.

(d) If an employee was **employed on 1 March 2020**, has subsequently **ceased employment** with their employer, and then has been **re-engaged** by the same employer, the employer must pay the employee a minimum gross fortnightly salary of $1,500 under the JobKeeper Scheme.

Note: the minimum payment must be made by the **last day of the fortnight**. However, the ATO has already exercised its discretion to allow employers to make the minimum payment for the first two fortnights **by the end of April 2020**. Going forward, the minimum payment will need to be strictly made by the end of the relevant fortnight.

2.5 More flexibility for employers receiving the JobKeeper Payment under the *Fair Work Act 2009*

Amendments have also been made to the *Fair Work Act 2009* to support the practical operation of the JobKeeper Scheme and to facilitate a range of flexible working arrangements designed to support the continued operation of businesses and the ongoing employment of employees.

2.5.1 JobKeeper enabling directions

Under these amendments, an employer who qualifies for JobKeeper Payments in respect of an eligible employee will be able to provide (subject to certain safeguards) the following directions (i.e., **JobKeeper enabling directions**) to the employee (provided the employee is initially consulted and the directions are not unreasonable in the circumstances):

(a) A **'stand down' direction**, which can be a direction for the employee to not work on particular days, to work for a lesser period or to work a reduced number of hours.

Such a direction can only be given if, amongst other things, the employee **cannot** be usefully employed for the employee's normal days or hours during the period the employer is eligible to receive JobKeeper Payments for the employee, because of:

- changes to the business (e.g., less patronage and/or the closure of stores) attributable to the Coronavirus pandemic; or
- government initiatives to slow down the transmission of the Coronavirus.

During the period to which such a direction applies, the employer is still required to pay the employee the fortnightly value of the JobKeeper Payment (i.e., $1,500 per fortnight). Furthermore, such a direction **cannot** reduce the employee's hourly base rate of pay, meaning an employer must ensure that the total amount payable to a particular eligible employee in respect of a fortnight is either:

- the amount of the JobKeeper Payment for the employee; or
- if a greater amount is payable to the employee for the performance of work during the fortnight, that amount (i.e., in full).

(b) A **direction** about the **duties** to be performed by the employee that are within the employee's skill and competency.

Again, such a direction **cannot** reduce the employee's hourly base rate of pay.

(c) A **direction** for the employee to work at a **location** that is different from the employee's normal place of work (including the employee's home).

This direction can only be given if, amongst other things, the new work location does **not** require the employee to travel a distance that is unreasonable in the circumstances (where the location is not the employee's home).

2.5.2 Employment agreements

Furthermore, in addition to the JobKeeper enabling directions (discussed above) the amendments to the *Fair Work Act 2009* will also generally allow an employer and its employees to enter into **agreements** relating to their ongoing employment.

Specifically, an employer (during the period that they are entitled to the JobKeeper Payment for an employee) can make a request to the employee (and the employee cannot unreasonably refuse) for the employee to agree to:

- perform their duties on different days or at different times (without a reduction in the employee's working hours); and/or
- take annual leave (including at half pay) that will **not** result in the employee having a balance of paid annual leave of fewer than two weeks.

2.5.3 How do these Fair Work changes affect an employee's existing terms and conditions of employment?

The above amendments have the effect of temporarily modifying employment rights and obligations to the extent specified in the relevant direction to, or agreement with, an employee. What this basically means is that the terms and conditions of an employee's employment beyond the scope of the above JobKeeper-related amendments will not be affected.

Furthermore, if no such direction or agreement is made under the JobKeeper Scheme, an employee's existing rights and obligations (which may be governed by the *Fair Work Act 2009*, a fair work instrument, a contract of employment or transitional instrument) continue to apply.

3. When can a business claim the JobKeeper Payment for a business participant?

The JobKeeper Scheme also recognises that certain participants in a business (such as a sole trader) have also been affected by the economic downturn caused by the Coronavirus. Accordingly, in order to provide a benefit to such business participants, payments can also be made to an entity in respect of what is referred to as an **eligible business participant** (i.e., generally controlling individuals who are not employees of their business).

Note that a non-profit body cannot receive a JobKeeper Payment in respect of an eligible business participant.

A 'business participant' is an individual who is **actively engaged** in the business carried on by the entity (i.e., in the operations and activities of the entity) and is either:

- a sole trader;
- an individual partner of a partnership;
- a director or individual shareholder of a company; or
- an adult beneficiary of a trust.

Importantly, however, while a business may have more than one business participant, it can only nominate **one** of these individuals (who becomes the 'eligible business participant') in respect of whom it can receive a JobKeeper Payment. Obviously, no nomination is needed where the individual is a sole trader.

Further, a JobKeeper Payment can only be claimed by an eligible business in respect of the nominated eligible business participant where **all** of the relevant conditions are satisfied, some of which include:

(a) The business meets the decline in turnover test (broadly, where its turnover has fallen, or is likely to fall, by at least **30%** or **50%**, as the case may be).

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(b) The business had an **ABN on or before 12 March 2020** (or such later time that the Commissioner allows) and either the business entity:

- had an amount included in its assessable income for the 2019 income year and it was included in their income tax return lodged on or before 12 March 2020 (or such later time as allowed by the Commissioner); or
- made a supply during the period 1 July 2018 to 12 March 2020 and provided this information to the Commissioner (i.e., in a BAS that was lodged) on or before 12 March 2020 (or such later time as allowed by the Commissioner).

(c) The relevant **business participant** was:

- **actively engaged** in the business (i.e., in the operations and activities of the entity) as at 1 March 2020;
- **not** entitled to another JobKeeper Payment, either as a nominated eligible business participant of another business (e.g., as a director or beneficiary) or as an eligible employee;
- **not** a permanent employee of any other employer;
- at least 16 years of age as at 1 March 2020; and
- on 1 March 2020, either:
  - a resident of Australia for *social security* purposes (e.g., an Australia citizen, a holder of a permanent visa or a holder of a protected special category visa); or
  - a resident of Australia for *tax* purposes and was a holder of a Subclass 444 (Special Category) visa.

A business seeking a payment for an eligible business participant can **register their interest** in the JobKeeper Scheme and will need to subsequently make a formal application to the ATO. It is understood that when making a formal application, they will be required to provide their ABN, as well as a single TFN for the eligible recipient of the JobKeeper Payment, and a declaration of business activity.

The ATO currently does not have a formal application for eligible business participants.

Common questions associated with the JobKeeper Scheme

Since the release of the Government's JobKeeper Scheme, the NTAA has fielded a number of queries from our tax agent members, looking to make an application for a JobKeeper Payment on behalf of their clients and, where applicable, their own practices. A number of these commonly asked questions are addressed below.

Question 1: Do businesses have to meet the decline in turnover test on an ongoing basis?

The answer is No. Whilst a business must satisfy the decline in turnover test in order to be entitled to a JobKeeper Payment, once it is satisfied, there is **no requirement to retest** in later JobKeeper Payment fortnights.

That is, the decline in turnover test **only needs to be satisfied once**. As a result, if a business can demonstrate that its turnover has been adversely impacted by at least **30%** (or **50%**, as the case may be), then it will continue to meet this requirement even if its turnover subsequently recovers in later JobKeeper fortnights.

Question 2: What if a business's turnover has not decreased (e.g., by 30%) but it is predicted to do so in the coming month?

An employer can apply for the JobKeeper Scheme where it is **reasonably expected** that its GST turnover will fall by **30%** or more (or 50% where applicable) relative to its GST turnover in a corresponding period a year earlier. Treasury has advised that the ATO will provide guidance about self-assessment of actual and anticipated falls in turnover.

Additionally, if a business does not meet the decline in turnover test as at 30 March 2020, the business can start receiving the JobKeeper Payment at a later time, once the decline in turnover test has been met. However, in this case, the JobKeeper Payment will **not** be backdated to the commencement of the scheme, although businesses can receive JobKeeper Payments up to 27 September 2020.

Question 3: Are employers required to continue to pay employees to qualify for the JobKeeper Payment?

The answer is Yes. Employers are required to satisfy the 'wage condition' in respect of an employee for the relevant JobKeeper fortnight in order to qualify for the JobKeeper Payment for that employee. As a reminder, the first JobKeeper fortnight commenced on **Monday 30 March 2020 and ended on Sunday 12 April 2020** (i.e., the first JobKeeper fortnight has already ended).

Broadly speaking, a payment under the scheme is meant to be a **reimbursement** to the employer of an amount **already paid** to an eligible employee (who is participating in the JobKeeper Scheme). Specifically, the 'wage condition' requires the employer to **pay each eligible participating employee *at least* $1,500 for each JobKeeper fortnight**, which can be represented by salary, wages, PAYG withholding, salary-sacrificed superannuation contributions and other amounts applied or dealt with on behalf of the employee (i.e., an add-back of any salary sacrificed in return for fringe benefits).

If employers have insufficient cashflow to make such payments, Treasury has encouraged such businesses to speak to their banks about using the upcoming JobKeeper Payment as 'collateral' to seek short-term finance to pay their employees.

TIP – ATO concession for the first two JobKeeper fortnights

In the event that an employer does **not** meet the 'wage condition' (i.e., they have not paid an eligible employee a minimum amount of $1,500 in the fortnight), then they have not met all the requirements to be entitled to the JobKeeper Payment.

However, the Commissioner does have the power to treat a particular event (e.g., a payment) that happened in a fortnight as having happened in a different fortnight if the Commissioner believes that it is reasonable to do so. In this regard, the ATO has advised that for the **first two fortnights** (i.e., the fortnights ending 12 April 2020 and 26 April 2020), it will accept the minimum $1,500 as being paid in each fortnight, even if it has been paid late, **provided it is paid by the end of April**. As such, the ATO has effectively granted businesses an extension of time to pay the required $1,500 per fortnight to their eligible employees for the purposes of meeting the JobKeeper Payment requirements.

Question 4: If employees have been stood down after 1 March 2020 does an employer need to pay them?

The answer is Yes. As discussed above, employers will need to make payments to eligible employees, including employees who have been stood down. This means the employer must pay the stood down employee a minimum of $1,500 per fortnight (before tax) in the relevant fortnight (subject to the concession in the TIP above).

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Where an employer pays their staff monthly, the monthly payment must be equivalent to the required fortnightly payments. For subsequent payment periods, an employer will need to continue to pay these employees who have been stood down a minimum of $1,500 (before tax) before the end of each relevant JobKeeper fortnight.

Question 5: Can employers select which of their eligible employees are covered by the JobKeeper Scheme?

The answer is No. Once an employer decides to participate in the JobKeeper Scheme, they must ensure that **all** of their eligible employees (who have agreed to be nominated for the scheme) participate in the scheme. This applies to all eligible employees (i.e., irrespective of whether they are still working for the employer or they have been stood down).

As the scheme is operated on an 'one in, all in' basis, employers **cannot** 'pick and choose' which eligible employees will be able to participate in the scheme.

Question 6: Are the JobKeeper Payments from the ATO assessable income to the business?

The answer is Yes. In the absence of any specific exemptions, the JobKeeper Payments received from the ATO by the business would be **assessable income** under either S.6-5 of the ITAA 1997 (as ordinary income) or S.15-10 of the ITAA 1997 (as a subsidy received by a business). However, salary or wage payments made by the business to their employees are allowable deductions.

Inevitably, a timing mismatch may arise in relation to the income year in which the assessable income is included and the income year in which the allowable deductions are claimed. This is because the salary and wages are required to be paid *before* a JobKeeper Payment is received from the ATO, however, this would generally work to the employer's advantage. Specifically, there would be a timing mismatch in deductions claimed for salary and wages paid in June 2020 (deductible in the 2020 income year), whilst the JobKeeper Payment would not be received until, and hence assessable to the business in, July 2020 (i.e., the 2021 income year).

Question 7: Are employers required to deduct PAYG withholding from the amounts paid to employees?

The answer is Yes. Broadly speaking, employers are required to make payments of at least $1,500 to each eligible employee every JobKeeper fortnight.

To the extent that these payments take the form of salary or wages, they would constitute assessable income to the employees, which means that employers would be required to deduct the appropriate amount of PAYG withholding. Therefore, on the basis that each eligible employee will receive at least $1,500 per fortnight, then at least **$192** of PAYG withholding will need to be deducted (based on a fortnightly payment cycle) where the employee is claiming the tax-free threshold (assuming no salary packaging arrangement is in place).

Question 8: Are employers subject to Superannuation Guarantee ('SG') in relation to any extra JobKeeper Payments?

The answer is No. The Government's intention is that employers will only be required to make SG contributions for amounts payable to an employee in respect of their actual employment, which would **not** include any **extra** payments made by the employer to satisfy the $1,500 JobKeeper Payment 'wage condition'. At the time of writing, the law is yet to be amended to reflect this.

For example, if an employee ordinarily earns $1,000 a fortnight and is 'topped-up' by $500 to $1,500 a fortnight, the employer will be required to pay SG in relation to the 'usual' $1,000 but may lawfully decide not to pay SG on the additional $500 payment, which is solely attributable to the JobKeeper Payment. In other words, in relation to the extra top-up amounts paid to the employee, it is up to the employer if they want to pay superannuation on these additional wages paid by the JobKeeper Payment.

An employer's superannuation obligations are broadly summarised in the following table.

Employee's actual wage	Subject to Superannuation Guarantee	
	Yes	No
Employee's wage is **$1,500 or more**	✓	
Employee's wage is **less than $1,500**:		
- Normal wage	✓	
- Top-up wage		✓
Employee is **not receiving any wages** (e.g., where employee is stood down)		✓

Question 9: Can businesses get the JobKeeper Payment in respect of workers who are engaged through a labour hire firm?

The answer is, unfortunately, No. Businesses will **not** qualify for a JobKeeper Payment in respect of workers engaged through a labour hire firm.

In order to qualify for the JobKeeper Payments, the individual must either be an eligible employee or an eligible business participant. In the case of workers who are engaged by the business through a labour hire firm, they do not generally have an employment relationship with the business, rather, the contractual relationship is between the business and the labour hire firm. As such, these workers are **not** employees of the business, which means the business will not qualify for JobKeeper Payments in respect of these workers.

TIP – Labour hire firms may qualify for JobKeeper Payments directly

Whilst these workers do not have an employment relationship with the business that they perform their services for, they may have an employment relationship with the labour hire firm that they are engaged through.

To the extent that these workers are 'employees' of the labour hire firm, then where the labour hire firm meets the relevant qualifying requirements, it may qualify for the JobKeeper Payment.

Question 10: Can a sole trader who has employees also qualify for the JobKeeper Payment?

The answer is Yes. On the basis that the sole trader's business has satisfied all the other requirements to qualify for the JobKeeper Payment, a sole trader can qualify for the JobKeeper Payment in relation to their eligible employees and **also** qualify for the JobKeeper Payment themselves (i.e., in their own capacity) as an eligible business participant.

In order words, a sole trader's entitlement to the JobKeeper Payment as an eligible business participant arises *independently* of their entitlement to the JobKeeper Payment in respect of their employees. Therefore, whether a sole trader has any employees or not will not impact on their ability to personally qualify for the JobKeeper Payment.

This document was released on 15 April 2020 and was current as at that date. It does not take into account any subsequent changes.

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