

Topic	What's New?
<p>Extending the period of operation</p>	<p>The JobKeeper scheme and the provisions which permit an employer to temporarily vary the working arrangements (by way of JobKeeper enabling directions or agreements under Part 6-4C of the FW Act) will now end on 28 March 2021 rather than 28 September 2020 (with the exception of annual leave pursuant to s 789GJ of the FW Act).</p>
<p>New payment rates</p>	<p>The current JobKeeper subsidy rate of AU\$1,500 a fortnight will drop to AU\$1,200 from 28 September 2020 and then to AU\$1,000 a fortnight from January 2021, with a lower payment in place for those employees who worked on average less than 20 hours a week in the relevant reference period (being the four week pay period before either 1 March 2020 or 1 July 2020).</p>
<p>Who does this legislation apply to?</p>	<p>Qualifying employers are those employers who are eligible for JobKeeper payments after 28 September 2020.</p> <p>Legacy employers are those employers who did qualify for JobKeeper prior to 28 September 2020, but no longer qualify after 28 September 2020 (see related article here) but can still demonstrate their turnover has <i>declined by at least 10% in the relevant quarter this year compared to last year.</i></p> <p>Legacy employers will have access to flexibility measures and will be able to utilise the provisions under Part 6-4C of the FW Act from 28 September 2020 to issue JobKeeper enabling directions albeit in a slightly more limited capacity, and subject to more onerous obligations.</p>
<p>How does an organisation demonstrate its Legacy status?</p>	<p>Legacy employers will need to satisfy the 10% decline in turnover test (defined in the new section 789GCD) as well as obtain a "10% decline in turnover" certificate in order to utilise Part 6-4C of the FW Act.</p> <p>A certificate must be issued by an <i>independent</i> financial services provider, or if the employer is a small business employer with fewer than 15 employees, can be self-certified.</p> <p>Legacy employers with a JobKeeper enabling direction or agreement in place, must obtain a certificate for each and every quarter. If a subsequent certificate is not obtained, any directions or agreements in place cease to operate. Further no new directions or agreements can be issued for that quarter (unless a certificate is later obtained and the employer satisfies all other criteria).</p>
<p>JobKeeper Enabling Directions?</p>	<p><i>In relation to employee duties, location and days of work</i></p> <p>Qualifying employers and Legacy employers can continue to give an employee a JobKeeper enabling direction in relation to duties and location of work and can reach agreements with that employee around days and time of work.</p>

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	<p>However, for Legacy employers such direction/agreement cannot result in the employee working less than two consecutive hours in a day.</p> <p>Stand down (reduction in ordinary hours, including to zero)</p> <p>No change for Qualifying employers.</p> <p>Legacy employers cannot reduce an employee's hours of work below 60% of the employee's ordinary hours of work (as at 1 March 2020).</p> <p>Annual leave</p> <p>Until 28 September 2020, employers who qualify for JobKeeper can request an employee to take annual leave so long as at least two weeks of annual leave remain after the leave is taken. An agreement can also be made for an employee to take annual leave at half pay until 28 September 2020.</p> <p>The provisions regarding annual leave will be repealed on 28 September 2020 and have not been extended under this new legislation.</p> <p>This means there is no need for an employee to comply with a request that has been made in relation to annual leave, if that request relates to paid annual leave after 28 September 2020.</p>
<p>Expanded consultation and notice requirements for Legacy Employers</p>	<p>A Legacy employer must now provide seven days (or can be lesser if the employee agrees) rather than three days' written notice of its intention to issue a direction. During this time an employee can appoint a representative (e.g. union representative) which must be recognised by the employer.</p> <p>During the consultation period, a Legacy employer must:</p> <ol style="list-style-type: none"> 1. provide the employee, or their representative, information about proposed direction which may include: <ul style="list-style-type: none"> (a) information about the nature of the direction (b) information about when the direction is to take effect (c) information about the expected effects of the direction 2. invite the employee, or their representative, to give their views, and provide them prompt and genuine consideration.
<p>Further consideration must be given to whether a JobKeeper Enabling Direction is reasonable</p>	<p>Currently a JobKeeper enabling direction does not apply if it is <i>unreasonable</i> in all of the circumstances.</p> <p>Under the current law, it is noted that a direction may be unreasonable depending on the impact the direction may have on any caring responsibilities of the employee.</p> <p>This new legislation provides that for both Qualifying and Legacy employers a direction to <i>reduce hours given by an employer to a</i></p>

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	<i>category of employees may be unreasonable if it has an unfair effect on some employees compared to others.</i>
Penalty	<p>The legislation includes a penalty: up to AU\$13,320 for individuals, and AU\$66,600 for body corporates or employers, where an employer does not meet the 10% decline in turnover test and: knowingly or recklessly tries to use the provisions, or fails to notify employees that a JobKeeper enabling direction or agreement is not continuing or ceasing each quarter due to not having met the 10% decline in turnover test nor obtaining the relevant certificate.</p>
Disputes about whether employer is a Legacy Employer?	<p>A dispute can be brought before the Fair Work Commission about whether an employer holds a 10% decline in turnover certificate for the relevant period, including a dispute about whether a certificate is in fact valid.</p> <p>The Federal Court of Australia may also make an order to terminate a JobKeeper enabling direction given by a Legacy employer in certain circumstances upon application by an employee, employee organisation or FWO inspector.</p>