



JOBKEEPER ALERT

JobKeeper 1.0 Employee Eligibility Changes

Action required before Friday, 21 August 2020

The Federal Government has expanded the eligibility criteria for employees to qualify for JobKeeper 1.0, to make it easier for more employees to qualify for JobKeeper payments.

As a result, employers must **before Friday 21 August 2020** urgently revisit their employee's eligibility for JobKeeper 1.0 to ensure your business stays eligible under the one-in-all-in rule and to maximise your JobKeeper entitlements.

The new changes are retrospective, meaning employers with newly eligible employees will be able to take advantage of the new change from the JobKeeper Payment fortnight commencing 3 August 2020.

Employers current enrolled in JobKeeper 1.0 need to action the following things as a matter of urgency:

- Review and identify any newly eligible employees (employees who did not satisfy the basic employee eligibility criteria at 1 March 2020 but do now satisfy the criteria under the new amended rules).
- Provide all newly eligible employees with a JobKeeper nomination notice by **Friday, 21 August 2020**.
- Check you have paid the minimum amounts to all eligible employees, including newly eligible employees and make any necessary 'top up' payments where required by **Monday, 31 August 2020**.
- Notify the ATO Commissioner in the approved form, of information about the newly nominated individuals.

Details around newly eligible employees and the new rules around re-nominating and re-employing employees are covered in this information sheet.

For further detail around qualifying, eligibility and JobKeeper payment rates we recommend reading ACCI's [JobKeeper Payment Employer Guide](#).

1. One in, All in

The JobKeeper scheme has been extended so that eligible employers can qualify for JobKeeper payments in respect of more recently engaged employees or existing employees that now meet eligibility requirements.

Under the one-in, all-in rule you must provide JobKeeper payments to all employees that meet the requirements and have provided the necessary nomination forms. If you have any employees that meet the new eligibility requirements, you **MUST** now add them to your JobKeeper declarations to remain eligible for any JobKeeper payments.

The following section provides a general overview of the changes to eligibility for the JobKeeper fortnights beginning on or after **3 August 2020**.

1.1 Newly eligible employees (change in reference date to 1 July 2020)

From 3 August 2020, the date for assessing eligible employees currently employed by an eligible employer has changed from 1 March 2020 to **1 July 2020**. This means you may now be able to nominate new employees as eligible employees for the JobKeeper scheme. These new employees must have been employed by you on 1 July 2020 and meet the other employee eligibility criteria. This can include employees that:

- you employed after 1 March 2020.
- were employed by you on 1 March 2020 but were not eligible employees (e.g. a regular and systematic casual who had worked less than 12 months).

This change will particularly affect the following groups of employees:

- ✓ employees as at 1 July 2020 that were not employed as at 1 March 2020 (full-time, part-time or fixed-term employees).
- ✓ employees who were not eligible at 1 March 2020 because they did not satisfy the definition of long-term casual, however have since become a long-term casual at 1 July 2020 (still also need to be employed on a regular and systematic basis and not a permanent employee of any other employer).
- ✓ employees that turned 18 years of age between 1 March 2020 and 1 July 2020 (if employees were 16 or 17 they can also still qualify if considered 'independent' or not undertaking full time study between 1 March 2020 and 1 July 2020).
- ✓ employees who became an Australian resident under the Social Security Act definition between 1 March 2020 and 1 July 2020.
- ✓ employees who between 1 March 2020 and 1 July 2020 became an Australian resident for income tax purposes that also holds a Subclass 444 [Special Category] visa.



Example: New employees since 1 March 2020 & long-term casuals

James runs a business called Jungle Jym. In March 2020 he and five of his employees qualified for the JobKeeper Scheme. However, James' Jungle Jym did not qualify for JobKeeper payments with respect to one of his employees, Ginia, who is employed on a casual basis. Ginia did not qualify as she did not meet the definition of long-term casual employee, as she had only been employed at Jungle Jym for nine months on 1 March 2020.

In April 2020, two of James' part-time gym instructor employees resigned from Jungle Jym to take up other job opportunities with Yolanda's Yoga Studio. When Jungle Jym is allowed to reopen in May with the easing of COVID restrictions, James decides to employ a new permanent ongoing yoga instructor, Kristy to replace one of his departed staff.

With the recent change in eligibility rules James reassesses the eligibility of both Ginia and Kristy who both had not previously qualified for JobKeeper.

By 1 July 2020, Ginia has been employed on a regular and systematic basis for over 12 months and meets all of the other employee eligibility criteria. Accordingly, James can now qualify for JobKeeper payments in respect of Ginia for the JobKeeper fortnight starting on 3 August 2020 and later fortnights.

Although Kristy was not an eligible employee for the JobKeeper fortnights ending on or before 2 August 2020 (as she was not employed by James' Jungle Jym on 1 March 2020), Kristy is also now an eligible employee because in addition to meeting the other employee eligibility requirements, Kristy had an ongoing employment relationship with Jungle Jym on 1 July 2020. Kristy can start to receive JobKeeper payments from the fortnight commencing 3 August 2020 and later fortnights.

1.2 Employees re-nominating with a new employer (new employment by 1 July 2020)

Previously employees were not allowed to re-nominate under the JobKeeper Scheme with a new employer.

Under the changes to employee eligibility criteria this has been somewhat relaxed, with the rules now providing a limited exception around re-nominating employees, so that an individual who has previously nominated as an eligible employee with one employer can now renominate as an eligible employee with a new employer in certain circumstances.

Employees can re-nominate with a new employer for the JobKeeper fortnights beginning on or after **3 August 2020** so long as they:

- ✓ were employed by their new employer between **1 March 2020 and 1 July 2020**;
- ✓ between 1 March 2020 and 1 July 2020 their relationship with their previous JobKeeper qualifying employer ceased and **has not restarted**. In other words, the eligible employee is no longer employed by their previous employer; and
- ✓ they can meet the remainder of the other employee eligibility criteria (for 1 July 2020).

The reason the employee ceased their relationship with their initial employer does not matter, for example, they could have had their employment terminated, they could have resigned, or their employer may have ceased to exist.

For clarity, an employee is not eligible for renomination if they have stayed in employment with their first employer, and then attempt to switch their eligibility to another employer if they have not ceased their employment with the first between 1 March 2020 and 1 July 2020.

Example: New employee who joins from a former employer who was eligible for JobKeeper payments

James decided in June 2020 that his Jungle Jym needs to employ another new part-time staff member. He advertises for the role and Bev applies and gets the job commencing on 27 June 2020. Bev had previously been working as a long-term casual for her previous employer, Stuart's Spin Cycle Centre, who had qualified for JobKeeper in respect of Bev since 30 March 2020 until she left in June. Since Bev left Stuart's Spin Cycle Centre in June, they have no longer qualified for JobKeeper payments in respect of Bev as an eligible employee.

For the JobKeeper fortnights beginning on or after 3 August 2020, Jungle Jym can qualify for JobKeeper payments for Bev as a re-nominating employee as she was employed by James' Jungle Jym between 1 March 2020 and 1 July 2020, she has ceased working for her former employer by 1 July 2020 and has not restarted and she satisfies the remainder of the employee eligibility requirements for 1 July 2020.

1.3 Re-employing a former employee (who had qualified at 1 March 2020)

Under the eligibility changes, employees who are re-employed by a former eligible employer under certain circumstances may be eligible for JobKeeper payments under what is called the preservation of the 1 March 2020 test.

A re-employed former employee can requalify for JobKeeper with their same employer so long as the following conditions are satisfied:

- ✓ The employee must have qualified for JobKeeper payments at 1 March 2020 and nominated with their employer.
- ✓ The employee ceased employment with their employer between 1 March 2020 and 1 July 2020.
- ✓ The employee was re-employed by the same employer after 1 July 2020.
- ✓ The employee continues to satisfy the employee eligibility conditions that applied at 1 March 2020.
- ✓ The employee has not at any point nominated for JobKeeper payments with a different employer (including during the period where they had ceased employment with the initial employer).

Example: Eligible re-employed former employee

One of James' former employees who had qualified for JobKeeper payments at 1 March 2020, Sarah, resigned in April 2020 to take up another job opportunity with Yolanda's Yoga Studio which offered work doing online classes during the COVID shutdown.

After James' Jungle Jym reopened, on 28 July 2020 Sarah left the Yolanda's Yoga Studio and was re-employed as an ongoing part-time employee. Sarah did not receive JobKeeper at Yolanda's Yoga Studio as she was not eligible to nominate as an eligible employee.

For JobKeeper fortnights beginning on or after 3 August 2020, despite Sarah not being employed at the new assessment date of 1 July 2020, James' Jungle Jym can still qualify for JobKeeper Payment for Sarah as she was employed as at 1 March 2020, ceased employment in April, has been re-employed after 1 July, continues to meet the employee eligibility criteria that applied at 1 March 2020, and did not nominate for JobKeeper with a Yolanda's Yoga Studio.



2. Notification Requirement

Employers must notify any newly eligible employees (including employees renominating with them as a new employer) by **Friday, 21 August 2020** and detail the steps they need to take to agree to be nominated for JobKeeper payments including getting the employee to complete a [JobKeeper Employee Nomination Notice](#) to acknowledge JobKeeper is being claimed by you as their employer and that they are not claiming JobKeeper from any other employer. You do not need to send this form to the ATO however you are required to keep it as part of your record keeping obligations. A failure to provide a required notice to an employee may constitute an offence or give rise to penalties.

For clarity, employers only have to notify new eligible employees, they do not have to give a notice to the following employees:

- Employees that the employer has previously given a notice in writing advising that the business has elected to participate in the JobKeeper scheme;
- Employees that have previously provided the employer with a nomination form in relation to the JobKeeper Scheme;
- Individuals who the employer reasonably believes does not satisfy the JobKeeper eligibility requirements; and
- For employers that are ACNC-registered charities that have elected to disregard certain government and related supplies and the individual's wages and benefits are funded from such government and related sources.

Employers must also provide notice to the ATO Commissioner, in the approved form, of information about the employee and their nomination. Within 7 days of providing this notification to the ATO Commissioner, the employer must also notify the employee.

2.1 Specific notification requirements for re-employing a former 1 March 2020 employee after 1 July 2020

There are specific notification requirements for employees who had qualified as at 1 March 2020 and are re-employed after 1 July 2020. Under these requirements a re-employed employee must provide their employer with a notice if the following conditions are satisfied:

- The individual was previously an eligible employee of the employer as at 1 March 2020;
- The individual ceased being an employee of the employer between **1 March 2020 and 1 July 2020**; and
- The individual is re-employed by the employer **after 1 July 2020**.

The notice must be provided to the employer within seven days of being re-employed by the entity and it must state whether or not the employee has given a nomination notice to another employer. This notice will enable the re-employing employer to determine if they are able to rely on the original nomination notice provided to them by the employee before they ceased their employment for the purpose of re-qualification. Individuals who provide a false or misleading statement may be liable for penalties.

If the employee has provided a nomination notice to another employer in the period between ceasing and recommencing employment with the original employer, they will not be eligible for the JobKeeper payment from the re-employing employer.

3. Turnover Test

Please note that the above changes DO NOT require you to retest the required employer drop in turnover. If you currently qualify for JobKeeper, you will continue to qualify until 28 September 2020 with this round of changes, you just need to update to include any newly eligible or requalifying employees.

4. JobKeeper 2.0

Please note that the other announcements made in July around the extension of JobKeeper past 28 September 2020 and reducing the JobKeeper payment amounts (initially to \$1,200 and \$750 a fortnight), are separate to these changes relating to the new eligibility date of 1 July 2020.



The content of this information sheet has been prepared based on material available to date (17 August 2020). The material is of a general nature and should not be regarded as legal advice or relied on for assistance in any particular circumstance or situation. In any important matter, you should seek appropriate independent professional advice in relation to your own circumstances. The Australian Chamber of Commerce and Industry accepts no responsibility or liability for any damage, loss or expense incurred as a result of the reliance on information contained in this guide.