



## GUIDE TO NEW JOBKEEPER PROVISIONS IN THE FAIR WORK ACT

This table outlines what employers can and cannot do under the new JobKeeper provisions which have been inserted into the *Fair Work Act 2009* (Cth) as a result of the *Coronavirus Economic Response Package Omnibus (Measures No.2) Bill 2020*.

Note that these provisions apply to employers and employees eligible to participate in the JobKeeper scheme. For details on eligibility requirements, see our article here: [\[JobKeeper - What you need to know\]](#)

JobKeeper Provision	<input checked="" type="checkbox"/>	<input type="checkbox"/>
JobKeeper payment	The employer receives a JobKeeper payment of \$1,500 (gross) per fortnight for each eligible employee	The employer cannot pay less than \$1,500 (gross) per fortnight The employer cannot pay employees monthly
Pay guarantee	The JobKeeper payment must be passed on to the employee and may be sufficient to cover an employee's wages or salary where the JobKeeper payment exceeds the employee's wage or salary (for example, if there are no hours of work); Or, the JobKeeper payment may be used to offset the cost of an employee's wages or salary (and the employee continues to work their usual hours)	The employer cannot pay less than \$1,500 (gross) per fortnight  The employer must not reduce an employee's hourly rate, wage or salary (including incentives, loadings, allowances, overtime and penalty rates and leave payments)
<b>Direction</b> to stand-down	An employee may be directed to reduce days or hours of work if: <ul style="list-style-type: none"><li>• The employee cannot be usefully employed because of changes due to the coronavirus; and</li><li>• The stand-down direction is safe</li></ul>	The employer can reduce hours and/or days of work, but must not reduce the employee's hourly or daily <u>rate</u> of pay.
<b>Direction</b> to change duties or location of work	An employee may be directed to change duties and/or location of work (including the employee's home) if the duties are within the skills and capacity of the employee, and the location is suitable	An employer may not change duties or location of work if: <ul style="list-style-type: none"><li>• The change is not safe</li><li>• The change does not involve unreasonable travel</li><li>• The employee is not qualified</li><li>• That change is not within the normal scope of the employer's operations</li></ul>
<b>Request</b> to change days of work	An employee may be requested to change the days and times of work by written agreement	An employer may not change duties or location of work if: <ul style="list-style-type: none"><li>• The change is not safe</li><li>• The change does not reduce working hours</li></ul>



JobKeeper Provision	<input checked="" type="checkbox"/>	<input type="checkbox"/>
<b>Request</b> to take Annual leave	An employee may be requested to agree in writing to take a period of annual leave, including annual leave at half pay. The employee must not unreasonably refuse this request.	The direction to take annual leave must not result in the employee's annual leave balance falling below 2 weeks. Annual leave payments must be calculated on employee's normal rate of pay (including loadings) unless this payment would be less than the minimum JobKeeper payment.
Requirements of directions (reasonableness, consultation)	A direction to an employee will be lawful where: <ul style="list-style-type: none"><li>• it is reasonable and necessary to continue employment</li><li>• the employee is given at least 3 days' written notice of the direction and followed a consultation process</li></ul>	The employer must keep written records of consultations and directions.
Service and entitlements	Any period where a direction applies (even a direction to perform no work) will count as service by the employee. Employees who receive a direction to reduce hours or days of work will continue to accrue entitlements as if their previous hours had not been changed. For agreements to take leave at half pay, the length of leave will be halved for the purposes of: <ul style="list-style-type: none"><li>• accruing paid leave, and</li><li>• calculating redundancy pay and notice</li></ul>	A direction to reduce hours of work will not affect an employee's accrual of leave entitlements, or the calculation of redundancy pay or notice pay entitlements.
Employee request for secondary employment or training	If a stand-down direction is issued (reducing hours of work), an employee can request: <ul style="list-style-type: none"><li>• to engage in other work, or</li><li>• to engage in training or professional development</li></ul>	The employer can only refuse a request on reasonable grounds (eg an employer may be able to refuse secondary employment if this is with a direct competitor)
Disputes	If an employee refuses a direction or disputes a JobKeeper provision, an employer can apply to the Commission to resolve the dispute.	An employee may apply to the Commission to resolve a dispute if the employee believes a direction or a request is unreasonable or if there is a dispute about a JobKeeper provision.

This information is intended to be a summary of information which is current at the time of publication. It is not intended to form legal advice.

Some aspects of these new provisions are still uncertain, and their interaction with other obligations under the Fair Work Act and other legislation can be complex. Call us if you would like specific advice and recommendations on your options.