

Latest JobKeeper Amendments Dissected



Entitlement Based on Employees

The major change is the admission into the JobKeeper scheme of employees who were on the books as at 1 July 2020, from JobKeeper fortnight 10 (3-16 August).

The rules as amended not only enable individuals who may be new into the workforce after 1 March 2020 to join JobKeeper, but also enable individuals who were employees of an entity (the “old entity”) as at 1 March 2020 (“1 March employee”) but who have subsequently left the old employer and found new employment on or before 1 July 2020, to give a nomination notice to, and join JobKeeper, through that new employer.

The individual must have ceased to be employed by the old entity after 1 March 2020 but before 1 July 2020. The reason they ceased their relationship does not matter (for example, they could have had their employment terminated, they could have resigned, or their employer may have ceased to exist). By satisfying the requirements with reference to the 1 July 2020 date, it does not matter whether the individual had previously been an eligible individual of another qualifying entity.

Additionally, if an employer qualified for JobKeeper payments for an eligible employee for a JobKeeper fortnight ending on or before 2 August 2020, that individual may still be an eligible employee for JobKeeper fortnights beginning on or after 3 August 2020 even if they terminate their employment and are later re-employed by that employer.

Provided that these individuals have not become an eligible individual (whether as an employee, business participant, or religious practitioner) under the JobKeeper scheme for another entity at any time, they do not need to retest their eligibility with reference to the new 1 July 2020 date since their eligibility under the former 1 March 2020 requirements and nomination requirements continues to be preserved.

This ensures that the JobKeeper scheme can provide support to employers that have re-employed their former employees who had been let go because of the effects of COVID-19.

Under the amendments, there are new notification requirements for 1 March 2020 employees where their employment ceased before 1 July 2020 and they are re-employed by an entity after 1 July 2020. As qualifying entities are not entitled to claim the JobKeeper payment in relation to returning eligible employees that have at any time been eligible individuals of another entity, the amendments require individuals to provide a notice to the re-employing entity if all of the following circumstances apply:

- The individual was an eligible employee of the qualifying entity (as a 1 March employee of the entity);
- The individual had ceased to be employed by the qualifying entity after 1 March 2020 but before 1 July 2020; and
- The individual was re-employed by the qualifying entity after 1 July 2020.

The notice must clarify if the individual had provided a nomination notice to another entity under the new 1 July 2020 reference date. The notice must be in the approved form and provided within seven days of being re-employed by the entity (or, if that was before the current amendments commenced, within seven days of the amendments).

This notice will enable an employer that re-employs a 1 March 2020 employee to determine whether or not they are able to rely on the original nomination notice that was provided to them before the individual ceased their employment. Individuals who provide a false or misleading statement may be liable to criminal and administrative penalties.

Further, the eligibility of existing employees is preserved for employees who are already covered by the JobKeeper scheme under the original 1 March 2020 arrangements. In practical terms, for JobKeeper fortnights beginning on or after 3 August 2020, individuals that were already eligible employees for their employer for any JobKeeper fortnight under the former rules do not need to retest their eligibility with reference to the new 1 July 2020 date under the 1 July 2020 requirements or satisfy any new nomination requirements.

The amendments do not allow an individual to be eligible if they either stay in employment or continue to actively engage in the business as a business participant in respect of another entity, and attempt to switch their eligibility with reference to a second employer if they have not ceased their employment or business engagement with the first qualifying entity. The requirement that the relationship must have ceased after 1 March 2020 but before 1 July 2020 prevents this from occurring.

Accordingly, where all other eligibility criteria are met, for JobKeeper fortnights beginning on or after 3 August 2020, the JobKeeper scheme can apply if an employer:

- Employed a new employee by 1 July 2020, even if that employee has previously been an eligible individual for another entity under the JobKeeper scheme (whether as an employee or business participant) provided that the employee was not employed or actively engaged in the business of the other entity by 1 July 2020;
- Had existing employees who were not eligible due to the former reference date of 1 March 2020, but become eligible employees under the new 1 July 2020 reference date;
- Had existing employees who were eligible prior to the commencement of the instrument and they continue to be employed without any termination in employment and are not excluded from being eligible employees; or
- Qualified for JobKeeper payments in respect of an eligible employee prior to the amendments commencing, and the employee ceased to be employed after 1 March 2020 but was later re-employed by the same employer. However, this only applies if no other entity qualified for JobKeeper payments in respect of that individual for any JobKeeper fortnight.

However, for a qualifying entity to claim the JobKeeper payment in respect of an eligible employee for a JobKeeper fortnight:

- The employee must continue to meet other eligibility criteria including being in the required employment relationship with the entity and not be excluded from eligibility; and
- The entity must continue to meet other eligibility criteria including meeting the wage condition requirements.

The existing notification requirements for entities that first start to participate in the JobKeeper scheme continue to apply. Similar to the existing requirements to give notice to employees, the amendments require employers that have already elected to participate in the JobKeeper scheme to give a notice to all employees other than:

- Employees that the entity has previously given a notice in writing advising that the entity has elected to participate in the JobKeeper scheme;
- Employees that had previously provided the employer with a nomination form in relation to the JobKeeper scheme;
- Individuals who the entity reasonably believes does not satisfy the 1 July 2020 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.

All other requirements under the JobKeeper 1.0 rules remain unchanged. For instance, although the eligible employee test has moved to 1 July 2020, the carrying on a business in Australia test, to determine an eligible employer, has not. Consideration must still be given to all the former requirements when determining employer eligibility.

The 'One in all in' Principle

Under the amendments, for JobKeeper fortnights beginning on or after 3 August 2020, an individual can be an eligible employee if:

- They meet the eligibility requirements with reference to the new 1 July 2020 date; or
- Their eligibility from 1 March 2020 was preserved as a 1 March 2020 employee under the amendments.

Accordingly, a qualifying entity that has some eligible employees that were in an employment relationship with the entity on 1 March 2020 and other employees that are newly eligible by applying the 1 July 2020 requirements cannot choose to exclude any eligible employees if the entity participates in the JobKeeper scheme.

Entitlement Based on Business Participation

The eligible business participant rules remain largely unchanged. There was a minor amendment to the rules around eligible business participants, clarifying that the same individual could not be the eligible business participant of two entities in the same fortnight. Previously there was no timeframe on this condition.

However, the rules still require that the nomination notice provided by an eligible business participant stipulates that, at the time the individual gives the entity the nomination notice:
The individual has not given any other entity, or the Commissioner, a nomination notice; and
No other individual has already given a nomination notice to the entity.

JOBKEEPER 1 JULY 2020 EMPLOYEE TYPES

1. Existing employees who qualified under the 1 March 2020 tests

- Defined as a “1 March 2020 employee”
- 1 March 2020 eligibility preserved
- Must continue to meet the normal eligibility criteria
- Employers must continue to meet the monthly reporting obligations
- Otherwise, no additional action is required.

2. Existing employees who did not satisfy the 1 March 2020 tests (eg casual employee, age, residency etc.) but satisfy the 1 July 2020 tests.

- Employees need to provide the employer with a **Nomination Notice**
- Employers need to notify employees of their intention to obtain JobKeeper on the employee’s behalf by Friday 21 August
- Must meet the wage condition for the newly eligible employees (by 31 August 2020)
- Employers must continue to meet the monthly reporting obligations and include the newly eligible employees in the August report (due 14 September 2020)

3. Employees employed after 1 March 2020 but on or before 1 July 2020 (not previously nominated by any entity)

- Employees need to provide the employer with a **Nomination Notice**
- Employers need to notify employees of their intention to obtain JobKeeper on the employee’s behalf by Friday 21 August
- Must meet the wage condition for the newly eligible employees (by 31 August 2020)
- Employers must continue to meet the monthly reporting obligations and include the newly eligible employees in the August report (due 14 September 2020)

4. Employees employed on or before 1 July 2020, who had previously nominated with a different employer (“old entity”) under the 1 March 2020 tests, but left that employer after 1 March 2020 but before 1 July 2020, and commenced with the new employer *on or before 1 July 2020*.

- Cannot continue to be an eligible employee or eligible business participant of the old entity by 1 July 2020 (ie, if left old employer on or after 1 July 2020, but before 3 August 2020 – not eligible);
- These employees are included in JobKeeper by the new employer
- Employees need to provide the employer with a **Nomination Notice**
- Employers need to notify employees of their intention to obtain JobKeeper on the employee’s behalf by Friday 21 August
- Must meet the wage condition for the newly eligible employees (by 31 August 2020)
- Employers must continue to meet the monthly reporting obligations and include the newly eligible employees in the August report (due 14 September 2020)

5. Employees who:

> Were previously eligible employees of the employer

> Left that employer after 1 March 2020

> Did not nominate (and were not eligible to nominate) with another employer at any time

> Rejoined the employer *after 1 July 2020*

- Defined as a “1 March 2020 employee”
- 1 March 2020 eligibility is preserved where the employee has not provided a Nomination Notice to another entity under the 1 July 2020 reference date.
- Employers must receive a **Nomination Notice** from employee clarifying whether they have provided a nomination notice to another entity under the 1 July 2020 reference date.

- Note the following:
 1. Returning employees that have been eligible individuals in respect of another entity cannot be eligible employees of the re-employing entity.
 2. Returning employees that rejoined the re-employing entity on or before 1 July 2020 will be in the same position as employees described in “4” above.
 3. Employers should not claim JobKeeper for this class of employee prior to receiving the Nomination Notice from the employee and confirming the employee’s eligibility.

- If the employee has not provided a nomination notice to another entity under the 1 July 2020 reference date, the re-employing entity can rely on the original nomination notice provided before the employee left their employment.

What Employers Should Do Now

1. *When considering which employees may now be eligible for JobKeeper assistance, bear in mind that the “one in all in” principle applies to the newly eligible 1 July 2020 employees, just as it did to the 1 March 2020 employees;*
2. *Consider which employees are now eligible to bring into the JobKeeper scheme, not forgetting:*
 - *Employees who may have joined the business after 1 March 2020 but are currently stood down;*
 - *Casuals who may qualify as long-term casuals as at 1 July 2020;*
 - *Employees who may not have met the age condition as at 1 March 2020, but do as at 1 July 2020;*
 - *Employees who may not have met the residency condition as at 1 March 2020, but do as at 1 July 2020;*
3. *Immediately obtain Nomination Notices from the newly eligible employees (including former employees now re-engaged, as discussed above);*
4. *By **Friday, 21 August 2020**, notify those newly eligible employees in writing of the business’s intention to apply for JobKeeper on their behalf;*
5. *By **Monday, 31 August 2020**, ensure that the newly eligible employees are paid \$1,500 per fortnight for JobKeeper fortnight 10 (3-16 August) and JobKeeper fortnight 11 (17-30 August);*
6. *Add the new employees into the JobKeeper monthly reporting for August 2020 (due 14 September).*

Further Information

Further Information and assistance can be obtained by contacting Stones Sharp on 03 | 9853 0641.