

EMPLOYER
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JOBKEEPER AMENDMENTS TO FAIR WORK ACT

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22 APRIL 2020

WE WILL COVER

1. JOBKEEPER ENABLING STAND DOWN DIRECTIONS
2. DIRECTION TO CHANGE USUAL DUTIES
3. DIRECTION TO CHANGE LOCATION OF WORK
4. AGREEMENT TO WORK DIFFERENT DAYS AND TIMES
5. AGREEMENT TO TAKE ANNUAL LEAVE (INC. AT HALF PAY)
6. ALTERNATIVES (IF YOU DON'T QUALIFY FOR JOBKEEPER)

NEW FAIR WORK JOBKEEPER PROVISIONS

New provisions:

- apply from **9 April 2020**
- for employers who **qualify for the JobKeeper scheme** and their eligible employees
- end on **28 September 2020**
- are **not retrospective**

JOBKEEPER ENABLING STAND DOWN DIRECTION

- Direction to **reduce hours (including to nil) and/or days of work** - i.e. temporary full or partial stand down.
- Used when an employee cannot be **usefully employed for their normal days or hours** because of changes to the business **attributable to the the COVID-19** pandemic, or **government initiatives** to slow its transmission.
- Direction must be **implemented safely** having regard to the nature and spread of COVID-19.
- Separate to the stand down provisions in section 524 of the Act.

DIRECTION TO CHANGE USUAL DUTIES

- Duties must be **within the employee's skill and competency**.
- The employee must have the **required licence or qualification** to perform the duties.
- The duties are **within the scope of the employer's business** operations.
- Duties **must be safe** having regard to the nature and spread of COVID-19.

DIRECTION TO CHANGE LOCATION OF WORK

- Direction to perform duties at a **different location** from the normal place of work.
- Location must be **suitable for the employee's duties**.
- Employee must not be required to travel an **unreasonable distance** in the circumstances.
- Must be reasonably **within the scope of the employer's business** operations.
- Must be a **safe location** for the employee to perform their duties.

RULES FOR JOBKEEPER ENABLING DIRECTIONS

- Must be **reasonable** in all of the circumstances
- Directions regarding duties and location of work **must be necessary** to continue the employment of one or more employees
- Employer must give **at least 3 days written notice** of their intention to give the direction (or lesser period if genuinely agreed by the employee)
- Before giving the direction, the employer **must consult** with the employee (or representative of the employee) about the direction
- The employer must keep a **written record of the consultation**
- **Direction must be in writing**
- Direction continues in effect until it is withdrawn or revoked by the employer or replaced by a new JobKeeper enabling direction but **ceases to have effect from 28 September 2020**
- The employee **must comply** with the direction.

JOBKEEPER ENABLING DIRECTIONS

OTHER IMPORTANT CONSIDERATIONS

- Continuous service.
- Employee continues to accrue leave entitlements.
- Not stood down during a period of leave or other authorised absence.
- Base rate of pay can't be reduced.
 - Employee paid higher of the JobKeeper payment or usual pay (or higher duty pay) for hours worked.

AGREEMENT TO WORK DIFFERENT DAYS

- Employer can request the employee to **work different days/times by agreement**.
- The employee **must consider** the request and **not unreasonably refuse** it.
- Must be **safe** having regard to the nature and spread of COVID-19.
- **Cannot reduce hours** (see stand down directions).
- Must be in **writing**.

AGREEMENT TO TAKE ANNUAL LEAVE

- Employer can request the employee **take annual leave by agreement** provided the employee will have a balance of at least 2 weeks after taking the leave.
- The employee **must consider** the request and **not unreasonably refuse** it.
- Must be **safe** having regard to the nature and spread of COVID-19.
- Can agree to **take twice as much paid annual leave at half pay.**
- Must be in **writing.**

ALTERNATIVES

IF NOT ELIGIBLE FOR JOBKEEPER SCHEME

- Agreement with employees to vary hours/days of work.
- Agreement with employees to take leave (paid or unpaid) for a period.
- Directions to take leave in accordance with Award, EBA or Act.
- In limited circumstances, Stand Down provisions under s524(c) of the FWA.
- Termination (redundancy)

Q&A



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