Federal Government JobKeeper payment - frequently asked questions

By Neil Cahir
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Fordham answer your frequently asked questions about the Federal Government JobKeeper wage subsidy payment that is designed to help keep approximately 6 million Australian's employed through the COVID-19 crisis.

Question 1:

My March turnover will not be more than 30% down on March last year – can I use a different period (eg. April 2020 vs April 2019, or another period) to assess my eligibility? Does that mean we will only receive the subsidy for the period from May onwards (and not April)?

Answer:
Businesses with a turnover of less than $1 billion must be able to show that their turnover has decreased by more than 30% over a comparable period from the prior year (if your turnover is above $1 billion, your turnover must have fallen by more than 50%.

The comparable period must be a minimum of 1 month. Therefore if your business' turnover for the month of March itself will not decrease by more than 30%, but you can show that your turnover for the period 1 March 2020 – 30 April 2020 has decreased by more than 30% compared to the same two month period in 2019, then you would still be eligible for the JobKeeper Payment (JKP) subsidy effective from 30 March 2020.

We note that the specifics of these turnover tests are still not entirely clear. Whilst Treasury's updated fact sheets have provided some additional detail – refer below, we will likely need to see draft legislation to fully understand the mechanics.

Question 2:

If I have acquired other businesses in the past 12 months, which has resulted in an inorganic increase in my turnover – but the turnover of those individual businesses have declined year on year (or where I have no comparable period from last year), am I still eligible?

Answer:
What we know so far:

In addition to the previously announced turnover thresholds for business over or under $1bn in turnover, Treasury has advised:

To establish that a business has faced either a 30 (or 50) per cent fall in their turnover, most businesses would be expected to establish that their turnover has fallen in the relevant month or three months (depending on the natural activity statement reporting period of that business) relative to their turnover a year earlier.

Where a business was not in operation a year earlier, or where their turnover a year earlier was not representative of their usual or average turnover, (e.g. because there was a large interim acquisition, they were newly established or their turnover is typically highly variable) the Tax Commissioner will have discretion to consider additional information that the business can provide to establish that they have been significantly affected by the impacts of the Coronavirus.

The Tax Commissioner will also have discretion to set out alternative tests that would establish eligibility in specific circumstances (e.g. eligibility may be established as soon as a business has ceased or significantly curtailed its operations). There will be some tolerance where employers, in good faith, estimate a greater than 30 (or 50) per cent fall in turnover but actually experience a slightly smaller fall.

On this basis, for those businesses in this situation, the application process will require the presentation of data that supports a business' assessment that their turnover has declined by more than 30% (or 50%). Business owners will need to seek advice on the best way to present relevant supporting data as part of their application.

Question 3:

The $1,500 per fortnight figure has been described as a before tax payment – am I then required to withhold tax on this payment when paying it to employees?

Answer:
Whilst not yet confirmed by legislation, the payment is described as a subsidy of $1,500 per fortnight, before tax.

From this we can assume that employers are required to withhold PAYG Withholding on any payments made to employees as part of their payroll, as they normally would.

The business will then be reimbursed via the JKP in the following month.

Question 4:

Is the receipt of the JKP subsidy from the Government taxable income for my business?

Answer:
Again, this is not yet confirmed, however given that the payment that businesses will receive is a subsidy to wages, which are generally a deductible expense, it is likely that the JKP payment that businesses receive will be assessable income.

Question 5:

If I have to increase what I pay a particular employee to ensure they receive the minimum $1,500 per fortnight before tax, am I required to pay super guarantee on the full $1,500?

Answer:
No. The Treasury announcements have stated that the Employer has an obligation to pay Superannuation Guarantee on the employee's usual wages; however for any additional top up that the employer must pay to their employees to get to the minimum $1,500 per fortnight, payment of any Super Guarantee is at the employer's discretion.

Example:
John currently earns $1,000 per fortnight from his employer, before tax. On this amount, the business pays $95 (9.5%) to John's superannuation fund.

As part of the JKP, the business increases John's wages to $1,500 per fortnight. The business has the discretion as to whether they pay the 9.5% Super Guarantee on the additional $500 in wages paid to John.

Question 6:

If I have employees who ordinarily earn more than $1,500 before tax per fortnight, can I reduce their role (eg – convert them to part time), such that their wage becomes $1,500 per fortnight before tax, and then simply pay them at the JKP rate?

Answer:
There are two parts to this question. The Treasury Fact Sheets advise that where an employee ordinarily earns more than $1,500 before tax per fortnight, they will continue to receive their regular income according to the prevailing workplace arrangement.

This term – "prevailing workplace arrangement" – is currently unclear.

If an employer and the employees agree to reduce their hours and pay accordingly, then this may be considered the prevailing workplace arrangement. Whether an employer can reduce an employee's working hours and pay, is dependent on the employee's workplace agreements, be it an Award, the Fair Work Act, or an individual employment contract.

We would recommend that a business seeks appropriate legal advice on their employment law obligations before implementing any such actions. We would also caution employers from arranging a "contrived" situation where arrangements with their employees reduce their wages to the $1,500 before tax per fortnight level.

There will likely be integrity measures introduced into the enacting legislation that will penalise employers who contrive such outcomes.

Where employees have been stood down, or their hours of work reduced in line with the current needs and operations of the business, but continue to be employed by the business, you must pay them at a minimum, $1,500 before tax per fortnight, to be eligible for the JKP.

Question 7:

If I have employees who take annual leave, or public holidays, am I required to pay them in addition to the $1,500 before tax per fortnight?

Answer:
The JKP is designed as a reimbursing subsidy to businesses for their normal wages paid to employees. With the exception of those employees currently earning less than $1,500 before

tax per fortnight, there should be no change in the way you currently pay your employees where they are working normally. This includes the normal taking of approved Annual Leave, as well as Public Holidays.

The JKP is simply a funding mechanism that will reimburse some or all of the costs of keeping your workforce employed during this pandemic crisis.

For further details, contact your Fordham Partner.

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