

April 2020

A VISION IN THE WORKPLACE

This special COVID-19 update edition includes:

- Our overview of the JobKeeper Program;
- Casual employee eligibility for the JobKeeper Program; and
- Unpaid pandemic leave.



The Latest COVID-19 Updates in Employment Law

The Federal Government is introducing urgent amendments to the Fair Work Act 2009 (Cth) (FW Act), to deliver JobKeeper benefits by way of wage subsidies and increased employment flexibility, in the wake of the COVID-19 pandemic.

[In case you missed our full JobKeeper update, read here for more information on payment, standing down and general eligibility for the JobKeeper Program and its implementation.](#) We now specifically explore the eligibility of casual workers...



Are your casual workers eligible for JobKeeper payments?

The explanatory Statement to accompany the Coronavirus Economic Response Package (Payment and Benefits) Act 2020 (Cth) (Act) and the Coronavirus Economic Response Package (Payment and Benefits) Rules 2020 (Cth) (Rules) sets out which employees are eligible employees of the purposes of the JobKeeper payment.

An “eligible employee” is defined to include a “long term casual employee”.

Subsection 9(5) of the Rules provides that a long-term casual employee is an employee who has been employed by the employer on a regular and systematic basis during the period of 12 months that ended on 1 March 2020.

This definition is based on the same term in the FW Act. A casual employee is likely to be employed on a “regular and systematic basis” **where the employee has a recurring work schedule or a reasonable expectation of ongoing work.**

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Employment arrangements with casuals who experience large gaps in work or irregular hours over an extended period may not be eligible, depending on the circumstance.

The Explanatory Statement specifically provides “that casual employees that have not been employed on this basis between 1 March 2019 and 1 March 2020 therefore cannot be an eligible employee for the purposes of the JobKeeper scheme”.

It also states that the intention of the JobKeeper payment is for employers to apply an “all in, all out” approach to eligibility. This means that, if the employer chooses to participate in the scheme, the JobKeeper payment should be paid to all eligible employees. For that reason, it will important that any decisions by an employer as to an employee’s eligibility are properly and accurately assessed and documented.

Unpaid Pandemic Leave

On 1 April 2020, the Full Bench of the Fair Work Commission made a decision to make additional temporary variations to 103 modern awards.

In the accompanying statement, the Full Bench outlined the introduction of two weeks’ unpaid “pandemic leave” that will apply to millions of award covered workers until 30 June 2020.

The changes aim to cover workers who perhaps are not showing symptoms or have not tested positive to COVID-19 but are nonetheless required to self-isolate or are unable to attend work due to government measures

rolled out in response to the virus. The unpaid leave will provide coverage to a wider range of workers who otherwise may not have other leave entitlements available.

The unpaid pandemic leave will:

- Be available immediately and not require accrual over a year’s service;
- Be available to full-time, part-time and casual employees (not pro-rated); and
- Provide workers with the option of opting to take the unpaid pandemic leave even if their paid leave entitlements have not been exhausted.

If you have any questions in relation to whether your employees may be eligible for the JobKeeper Program or COVID-19 related leave, please do not hesitate to contact [Nick Stevens](#), [Jane Murray](#) or [Angharad Owens-Strauss](#).

Stay tuned for more updates and detail on the above, when we will also unpack the new enabling direction provisions, and employers’ rights, obligations, and risks when making those directions.