



COVID-19 claims: JobKeeper payments and workers compensation

The JobKeeper package

The Federal Government has introduced the JobKeeper payment scheme to support businesses significantly affected by COVID-19 and help keep more Australians in jobs.

The JobKeeper payment is open to eligible employers to enable them to pay their eligible employee's salary or wages per fortnight. Eligible employers will be reimbursed a fixed amount per fortnight.

Employers must pay their eligible employees the applicable fixed amount in each JobKeeper fortnight. This will be paid to the employer in arrears each month by the ATO.

The first payments to eligible employers commenced in the first week of May 2020. The JobKeeper payments start from 30 March 2020 and will end on 28 March 2021. The amount of the JobKeeper payment reduced on 28 September and will reduce further on 4 January 2021.

Eligibility of injured workers

The Federal Government's JobKeeper payment includes eligibility rules restricting when it may be claimed when a worker has an ongoing Workers Compensation claim.

For more information on eligibility and JobKeeper payment rates please go to the Federal Treasury's website and their [JobKeeper FAQs](#).

Assessing an injured worker's entitlement to weekly payments

Following consultation, the State Insurance Regulatory Authority (SIRA) has confirmed that for the purposes of assessing an injured worker's entitlement to weekly payments of compensation (under Division 2 of Part 3 of the *Workers Compensation Act 1987*):

1. Only payments for work performed (including paid leave entitlements) are considered earnings for the purposes of calculating a worker's pre-injury average weekly earnings. Any additional payment subsidised by the JobKeeper scheme are not considered earnings (that is, any 'top-up' component of the JobKeeper Scheme payment).
2. JobKeeper payments made to an injured worker by an employer are to be treated as 'earnings' for the purposes of assessing their entitlement to **weekly payments of compensation**.

Methods of calculation for JobKeeper payments

Below is information on the relevant method to calculate pre-injury average weekly earnings or weekly payments of compensation where JobKeeper payments are involved.

1. Calculating pre-injury average weekly earnings

The method for calculating pre-injury average weekly earnings (PIAWE) is outlined in the current version of the *Workers Compensation Act 1987* (for injuries on or after 21 October 2019): the weekly average of their gross earnings (including JobKeeper payments received for work performed) in the 52 weeks before their injury unless an adjustment applies.

2. Calculating weekly payments of compensation

The method for calculating the amount of weekly payments is outlined in sections 36 to 38 of the *Workers Compensation Act 1987* (set out below) and where JobKeeper payments are paid, it is to be included as earnings when applying E.

Entitlement period	Legislation	Calculation method (with current work capacity)
First 0 to 13 weeks	Section 36 of the <i>Workers Compensation Act 1987</i>	$PIAWE \times 95\% - E$ or $MAX - E$
Second 14 to 130 weeks	Section 37 of the <i>Workers Compensation Act 1987</i>	If working more than 15 hours a week: $PIAWE \times 95\% - E$ or $MAX - E$; If working less than 15 hours a week: $PIAWE \times 80\% - E$ or $MAX - E$
After second 130 weeks+	Section 38 of the <i>Workers Compensation Act 1987</i>	$PIAWE \times 80\% - E$ or $MAX - E$

In practice this will mean that the 'top up' required to be paid to an injured worker under either calculation method will be:

- reduced to zero where their pre-injury average weekly earnings are less or equal to the JobKeeper payment
- less than the amount they were being paid before JobKeeper payments if they were working because E will include both the earnings they are receiving for work performed on reduced hours (if made available) or assessed as capable of earning and the JobKeeper payment.

Scenarios for calculating JobKeeper payments

The following scenarios provide practical examples on how the JobKeeper payments are calculated in different circumstances.

Scenarios for the period 28 September 2020 to 3 January 2021

Scenario 1

Marie is a retail assistant and has been receiving weekly payments for four weeks.

- She normally works 20 hours per week.
- Her pre-injury average weekly earnings (PIAWE) are \$500 a week.
- She has capacity to work 10 hours a week and is working in suitable duties with her pre-injury employer.
- A work capacity decision assessing suitable employment has not been made.
- Up until recently she had been receiving \$250 per week in wages and 'top up pay' of \$225 through workers compensation weekly entitlements: $\$500 \text{ (PIAWE)} \times 95\% - \$250 \text{ (E)} = \$225$.
- While the employer is unable to offer her any hours because of COVID-19 restrictions, Marie is paid JobKeeper payments by her employer of \$600 a week.
- Because JobKeeper payments are to be treated as 'current weekly earnings' (and not an amount they could earn in suitable employment as required for a work capacity decision) for the purposes of the calculation method outlined in section 36 of the 1987 Act, Marie's entitlement to weekly payments through the application of section 36 of the 1987 Act reduces to \$0 (the JobKeeper payment of \$600 exceeds her pre-injury average weekly earnings).

Before JobKeeper:

$(\text{PIAWE } \$500 \times 95\%) \$475 - (\text{E}) \$250 = \225

With JobKeeper:

$(\text{PIAWE } \$500 \times 95\%) \$475 - (\text{E}) \$600 = \0
(algorithm returns a result less than \$0)

Scenario 2

Craig is a butcher and has been receiving weekly payments for 36 weeks.

- He normally works 38 hours per week.
- His pre-injury average weekly earnings (PIAWE) are \$2,000 a week.
- He has capacity to work 15 hours a week and has returned to work on suitable duties with his pre-injury employer.
- A work capacity decision assessing suitable employment has not been made.
- Prior to JobKeeper he had been receiving \$500 per week in wages and 'top up pay' of \$1400 through workers compensation weekly entitlements.
- His employer is then claimed JobKeeper.
- Craig continues on his 15 hours a week in suitable employment and is paid JobKeeper payments by his employer of \$600 a week. Prior to 28 Sept 2020 Craig was also being paid JobKeeper at the higher rate of \$750 a week.
- Because both his actual earnings and the JobKeeper payments are to be treated as 'current weekly earnings' for the purposes of the calculation method outlined in section 36 of the 1987 Act, Craig's entitlement to weekly payments through the application of section 36 and 37 of the 1987 Act reduces from \$1400 a week to \$1150 a week (during initial period of JobKeeper entitlements) and \$1300 a week (during second period of JobKeeper entitlements).

Before JobKeeper:

$(\text{PIAWE } \$2000 \times 95\%) \$1900 - (\text{E}) \$500 = \1400

With JobKeeper 30 March 2020 to 27 September 2020:

$(\text{PIAWE } \$2000 \times 95\%) \$1900 - (\text{E}) \$750 = \1150

With JobKeeper 28 September 2020 to 3 January 2021:

$(\text{PIAWE } \$2000 \times 95\%) \$1900 - (\text{E}) \$600 = \1300

Scenario 3

John is a kitchen hand and has been receiving weekly benefits for six weeks. Due to COVID-19 John's employer has been unable to offer John shifts even though John has capacity for suitable duties.

- He normally works 24 hours per week.
- His average weekly earnings are \$700 per week.
- He remains in the employment of his employer despite not being offered any duties.
- His employer had been claiming JobKeeper during the previous effective dates of 30 March 2020 to 27 September 2020.
- John was being paid JobKeeper of \$750 per week however this has now dropped to \$600 a week.

While John was paid JobKeeper payments by his employer of \$750 a week which is higher than his pre-injury earnings even though he is working less hours than normal, his entitlement to weekly benefits was assessed as nil.

John continues to be paid JobKeeper post 27 September 2020 when there was a change in the JobKeeper entitlement rate. John is now being paid at a rate of \$600 a week by his employer. This amount is now lower than John's 'determined weekly benefit amount and therefore John will now have an entitlement to weekly payments.

With JobKeeper 30 March 2020 to 27 September 2020:

$(PIAWE \$700 \times 95\%) \$665 - (E) \$750 = \0
(algorithm returns a result less than \$0)

With JobKeeper 28 September 2020 to 3 January 2021:

$(PIAWE \$700 \times 95\%) \$665 - (E) \$600 = \65

Scenarios for the period 4 January 2020 to 28 March 2021

Scenario 1

Alicia is a florist and has been receiving weekly payments for 15 weeks

- She normally works 38 hours a week and is currently certified for 20 hours a week.
- Before COVID-19 she was working suitable duties 20 hours a week and earning \$530 a week.
- Because of COVID-19 her employer was unable to continue to offer these suitable duties.
- She remains in the employment of her employer despite not being offered any duties.
- A work capacity decision assessing suitable employment has not been made.
- Her pre-injury average weekly earnings are \$1,000 a week.
- Her employer is now claiming JobKeeper.
- Alicia is paid JobKeeper payments by her employer of \$500 a week.

Before JobKeeper:

$(PIAWE \$1000 \times 95\%) \$950 - (E) \$530 = \420

With JobKeeper:

$(PIAWE \$1000 \times 80\%) \$800 - (E) \$500 = \300

Scenario 2

Sophie is an administration assistant and has been receiving weekly payments for 40 weeks

- She normally works 25 hours per week.
- Her pre-injury average weekly earnings are \$500 a week.
- At the time she had capacity to work for 15 hours a week and was receiving \$300 a week working in suitable employment with her pre-injury employer, the insurer made a work capacity decision confirming an ability to earn of \$300 a week.
- Following the work capacity decision, the insurer was making weekly payments of \$175 a week.
- Sophie has since been upgraded to having a capacity to work of 20 hours a week in suitable employment.
- Due to COVID-19 her employer is unable to provide any further duties beyond what she is currently being provided with on a 15 hour a week basis.
- Her employer is now claiming JobKeeper.
- Sophie is paid JobKeeper payments by her employer of \$500 a week. This is in line with her pre-injury earnings even though she is working less hours than normal.

Sophie's weekly entitlements reduce to \$0 because the JobKeeper payment of \$500 exceeds her applicable weekly benefit rate (determined weekly benefit amount) based on a PIAWE of \$500.

Despite the previous work capacity decision confirming her ability to earn of \$300 a week, Sophie's actual current weekly earnings of \$500 are taken into the calculation of weekly payments being the greater of her actual gross earnings in respect of a week and the weekly amount that Sophie was assessed to be able to earn in suitable employment.

Before JobKeeper:

$(PIAWE \$500 \times 95\%) - (E)\$300 = \$175$

With JobKeeper:

$(PIAWE \$500 \times 95\%) - (E) \$500 = \$0$ (algorithm returns a result less than \$0)

Scenario applicable to either extension period of Job Keeper payments

Mark is a courier and has been receiving weekly payments for 30 weeks but due to COVID-19 his employer was unable to provide him with any work.

- He is currently partially incapacitated.
- He remains in the employment of his employer.
- His normal hours of work are 40 a week and he is fit for 40 hours a week.
- His pre-injury average weekly earnings are \$1,200 a week.
- At the time of being stood down, he was working suitable employment and a Work Capacity Decision was in effect that ceased benefits.
- Mark's employment was terminated due to COVID-19. He was then assessed via a work capacity decision as capable of earning \$1,500 a week in suitable employment, is re-engaged by the employer and is now earning less than \$1,500 per week. Due to the work capacity decision previously made, Mark's entitlement to weekly payments has been assessed as nil. While Mark's circumstances have changed (i.e. re-engaged and now earning), the assessment of what he can earn in suitable employment is confirmed by an updated labour market analysis.

Further information

If you have any questions in relation to JobKeeper payments, please speak with your Case Manager. Alternatively, you can contact the icare Complaints Resolution Team on 13 99 22.