

JobKeeper – the 'One in, All in' Rule is now law

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On 1 May 2020, the *Coronavirus Economic Response Package (Payments and Benefits) Amendment Rules (No. 2) 2020* (Cth) (the **Amending Rule No. 2**) was registered.

"One in, All in" Rule

The Amending Rule No.2 codifies the requirement for eligible employers to ensure that all eligible employees are given the choice to participate in the JobKeeper payment scheme.

If an entity notifies the Commissioner of its election to participate in the JobKeeper scheme as an employer, it must also provide written notice to each of its relevant employees within 7 days of notifying the Commissioner of its election, or at any later time that the Commissioner allows. A *relevant employee* is an individual who is an employee of the entity on the election date, unless the entity reasonably believes that the individual does not meet the eligibility requirements for employees on 1 March 2020. In the case of a charity, an individual whose wages are externally funded will not be a relevant employee.

The notice must inform the individual of the requirement to give the entity a nomination notice if the individual agrees to be nominated as an eligible employee of the entity, and the steps to provide that nomination notice to the employer.

Comment

The Amending Rule No. 2 provides a transitional rule regarding notifications to employees. For an entity that had notified the Commissioner of its election to participate before the commencement of the Amending Rule No. 2 on 1 May 2020, the entity must notify its relevant employees no later than 7 days after the commencement of the Amending Rule No. 2, being 8 May 2020. Where an employer had already notified an employee of their eligibility and asked them to return the ATO form, this requirement should already have been satisfied.

Comment

The notifications do not apply to eligible business participants or religious practitioners.

Employer Entities

The Amending Rule No.2 provides a modified decline in GST turnover test for "employer entities", where the employer entities have not met the basic test. The modified test looks at the decline in GST turnover of the trading entity or entities to which the employer entity supplied employee labour services, referred to as a "test member" under Amending Rule No.2.

An "employer entity" is an entity that has satisfied all of the following:

1. it is a member of a consolidated group, consolidatable group, or a GST group;
2. its principal activity is the supply of employee labour services to other members of the group; and
3. the Commissioner has not made a determination that the modified decline in turnover test does not apply to the employer entity.

An employer entity would satisfy the modified test in a turnover test period if:

1. it supplied employee labour services to 1 or more members of the group (each a "test member") that predominately undertakes transactions with external entities;
2. disregarding supplies that are merely incidental to the principal activity of the employer entity, it has not supplied employee labour services to entities that are not members of the group; and
3. using the test members' collective current GST turnover and projected GST turnover, the employer entity satisfies the decline in turnover test. Where a test member is eligible to use an Alternative Test, the alternative current GST turnover will apply for that test member.

If an entity is a member of more than one consolidatable group, a consolidated group or a GST group, it satisfies the modified test if it satisfies that test in relation to its membership of any of those groups.

Comment

The modified test is not available for labour hire companies that provide employee labour services to clients at large.

Comment

The modified test not only counts external turnover within a group, but can also count transactions within a group, but not with the employment entity.

Employees aged 17 and younger

The Amending Rule No.2 has clarified that full-time students who are 17 years old and younger, and who are not financially independent, will not be eligible for the JobKeeper Payment unless they were on 1 March 2020, either:

1. independent within the meaning of the *Social Security Act 1991* (Cth); or

2. not undertaking full-time study within the meaning of the *Social Security Act 1991* (Cth).

Eligible employees who are 17 years old and younger must in their nomination notice to the employer provide a statement that they meet one of the above 2 requirements.

This amendment will apply prospectively, meaning that eligible employers that have met the wage conditions in relation to employees aged 17 and younger will obtain JobKeeper payments for those employees for JobKeeper fortnights that began before 1 May 2020.

Religious Practitioners

The Amending Rule No.2 provides that a registered religious institution that has satisfied the decline in turnover test and wage conditions will be eligible for JobKeeper payments in respect of "religious practitioners" (excluding students), who might not otherwise be engaged as "employees" of the religious institution.

A "religious practitioner" is a minister of religion or a full-time member of a religious order who broadly:

1. is not employed by the religious institution or any other entities;
2. was undertaking activities or a series of activities in pursuit of their vocation as a religious practitioner as a member of a registered religious institution on 1 March 2020;
3. meets the age, residency requirements and is not otherwise excluded for receiving parental payment or worker compensation payments; and
4. meets the nomination requirements.

Charities and International Aid Organisations

The Amending Rule No.2 expands the eligibility of the JobKeeper payments to public funds that are declared to be developing country relief funds and developing country disaster relief funds. Employees will still have to meet the residency requirement to be eligible for the JobKeeper payment.

The Amending Rule No. 2 also provides a modified GST turnover rule for ACNC-registered charities to disregard consideration from supplies to Australian government agencies, local governing bodies, the United Nations or an agency of the United Nations. When a charity chooses to use the modified test, the choice will be irrevocable.

Universities

The Amending Rule No.2 clarified that subsection 9-17(3) of the A New Tax System (Goods and Services Tax) Act 1999 (Cth) is disregarded when calculating the decline in turnover test for universities. This is to ensure that the Commonwealth Government financial assistance provided to universities will be included in the decline in turnover test.

w <https://www.legislation.gov.au/Details/F2020L00546>

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