



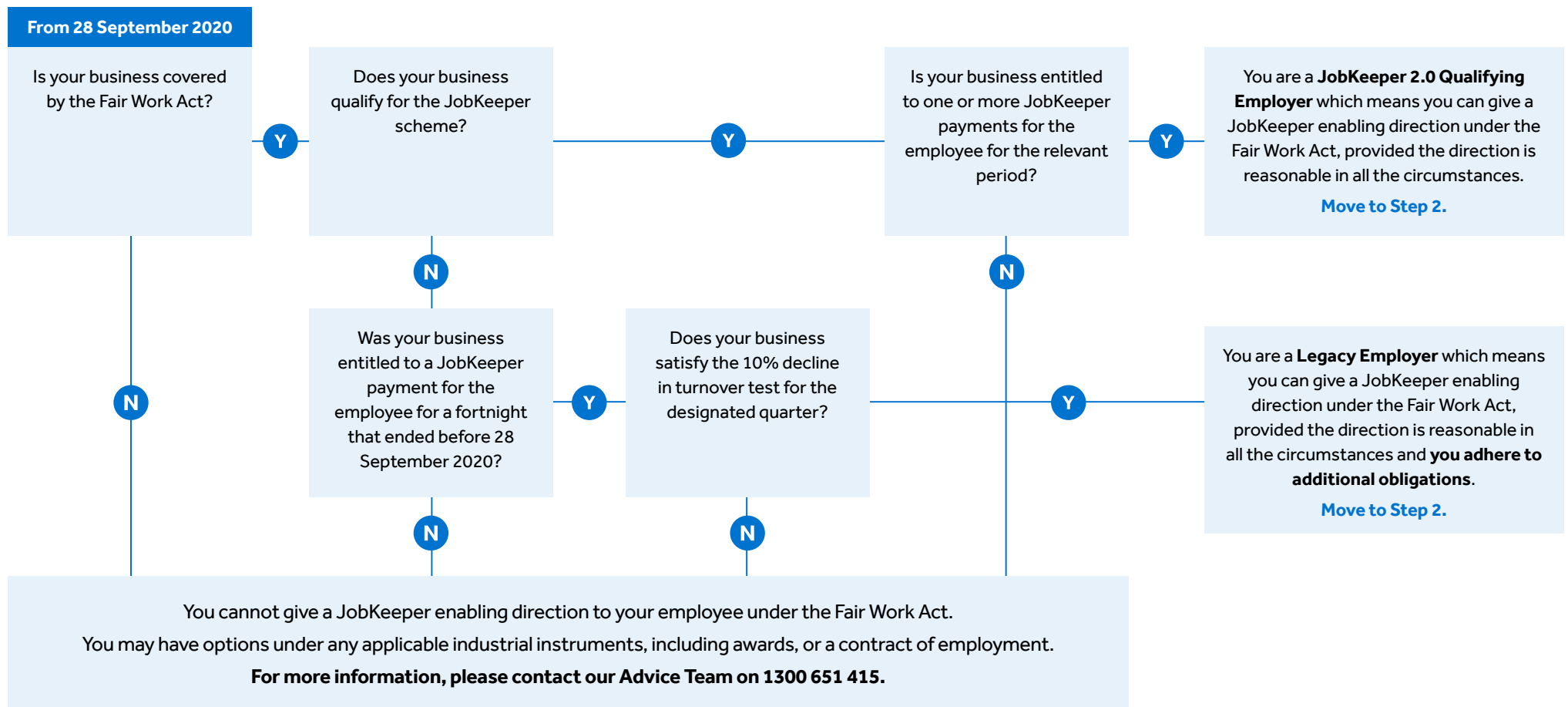
Step by step guide to JobKeeper enabling directions.

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STEP 1 - Determine if you can give a JobKeeper enabling direction.

As a result of the JobKeeper scheme being extended to 28 March 2021, the FairWork Act has been temporarily amended to reflect this extension. From 28 September 2020, employers can continue to give eligible employees JobKeeper enabling directions which result in changing the employee's hours, duties and/or location of work, subject to certain conditions being met. To determine if you can give a JobKeeper enabling direction to an employee, follow the below steps.



STEP 2 - Decide which JobKeeper enabling direction/s best suit your circumstances.

Your obligations will depend on whether you are a JobKeeper 2.0 Qualifying Employer or Legacy Employer.

Reduce hours of work, as long as:

- Your employee cannot usefully be employed for their normal hours due to changes in the business as a result of COVID-19
- The direction is safe
- The employee's hourly rate of pay is not reduced

If you are **Legacy Employer**, you can reduce an employee's hours of work as long as (in addition to the above):

- the employee is not working less than 60% of what their ordinary hours of work were at the start of:
 - 1 March 2020, or
 - if the employee was not employed on 1 March, their employment, or
 - if the employee's hours of work have changed for a reason not related to COVID-19, the date their new hours took effect
- the employee is not working less than 2 hours in a day
- at the time when the direction was given, you held a 10% decline in turnover certificate that covers you for the designated quarter applicable to that time (speak to or a qualified tax practitioner about this)
- The employee is paid their wages in the required method and frequency

Change duties, as long as:

- The duties are within the employee's skills or competency
- Your employee holds any relevant licence or qualification for the duties
- The duties are safe and reasonably within the scope of your business operations
- The employee is paid their usual base rate, or the base rate that applies to the duties they are performing (whichever is higher)
- You have information leading you to believe the direction is necessary to continue the employment of one or more employees

If you are a **Legacy Employer**, you can change an employee's duties as long as (in addition to the above):

- at the time when the direction was given, you held a 10% decline in turnover certificate that covers you for the designated quarter applicable to that time (speak to a qualified tax practitioner about this)

STEP 2 - Decide which JobKeeper enabling direction/s best suit your circumstances.

Change location, as long as:

- The location is suitable for the employee's duties
- The employee doesn't have to travel an unreasonable distance
- Performing the duties is safe and reasonably within the scope of your business operations
- You have information leading you to believe the direction is necessary to continue the employment of one or more employees

If you are a **Legacy Employer**, you can change an employee's location as long as (in addition to the above):

- at the time when the direction was given, you held a 10% decline in turnover certificate that covers you for the designated quarter applicable to that time (speak to a qualified tax practitioner about this)



Harsh penalties for Legacy Employers

Significant penalties apply if you give a direction knowing, or were reckless in knowing, that you did not meet the 10% decline in turnover test.

STEP 3 - Follow the process to ensure your direction is valid.

You are a JobKeeper 2.0 Qualifying Employer

- Provide three days' written notice of intention to give a direction
- Consult with the employee (or their representative) about the direction, and keep a written record of this
- Confirm the direction in writing

You are a Legacy Employer

- Provide seven days' written notice of intention to give a direction. This includes providing to the employee (or their representative) information about the proposed direction which may include the nature of the direction, when the direction is to take effect and expected effect of the direction on the employee
- Consult with the employee (or their representative) about the direction by inviting the employee (or their representative) to give their views, and keep a written record of this
- Provide prompt and genuine consideration to any views provided by the employee within 7 days of the direction intending to start
- Confirm the direction in writing

STEP 4 - Consider other options under the Fair Work Act JobKeeper amendments.



In addition, under the Fair Work Act temporary amendments, you can also request that an employee work different days and/or times, subject to certain criteria being met and the employee cannot unreasonably refuse. All agreements must be in writing.

Please note that from 28 September 2020, the Fair Work Act amendments will no longer allow you to request an employee to take paid leave which the employee cannot unreasonably refuse or annual leave at half pay. If you have an agreement to this effect in place with an employee, that agreement will cease to have effect on or after 28 September 2020.

However, you may have options under the relevant award or industrial instrument, so please contact our Advice Team on 1300 651 415 for specific advice.



STEP 5 - Ensure you understand when a JobKeeper enabling direction ends.

You are a JobKeeper 2.0 Qualifying Employer

- The direction will apply until the start of 29 March 2021, unless you revoke, withdraw, or replace it earlier
- If you cease to qualify for JobKeeper, then the direction will end when you cease to be entitled to receive the JobKeeper payment for the employee, unless:
 - you hold a 10% decline in turnover certificate, and
 - your employees received a JobKeeper payment in a fortnight before 28 September 2020

You are a Legacy Employer

- There are 2 test times that you need to pass to keep a direction in place
- At 28 October 2020 or 28 February 2021 (**the test times**), if you do not hold a 10% decline in turnover certificate that covers you for the designated quarter applicable to that time and you have a direction in place, the direction will cease immediately at the relevant test time
- You must notify your employee in writing **before** the test time if the direction will continue or end, and if it is ending, the date on which it will end
- The Federal Court also has the power to give an order terminating a direction if they are satisfied you did not meet the 10% decline in turnover test for the designated quarter applicable to that time



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Since the introduction of the Fair Work Act in 2009, workplace obligations have become more complex and difficult to manage, especially for overstretched small business owners.

EmploySURE was established in response to these challenges. It is our aim to ensure Australian business owners have access to cost-effective, professional advice on all employment relations and work health and safety matters.

What we offer

EmploySURE provides customised documentation, unlimited advice, policy and procedure review, protection and legal representation for small business owners.

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EmploySURE has given me the freedom to run my business in a way that I need to. It's given me the time and it's actually taken away a lot of worry that I previously had.

Kieran Syme | **DentFree AutoTree**



Google can only help you so far. Sooner or later you need to actually talk to somebody who is an expert in the field and that's where I found EmploySURE.

Ursula Zajaczkowski | **The Source Bulk Foods**



Biggest thing from EmploySURE, it gives us certainty. Where we have guidance and help of what we need in place, how to put it in place, and how to implement the systems for HR.

Jonathon Grealy | **Niche Reform**