



Overpayment of JobKeeper and wage deductions

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Previously, Hall Payne Lawyers published an [article explaining the operation of the JobKeeper scheme](#) that was introduced in April 2020. JobKeeper provided for payment of a subsidy of \$1,500 (per fortnight, per employer) to qualifying employers to pay eligible employees during the coronavirus pandemic. Eligible payments commenced from 30 March 2020.

Since the introduction of the JobKeeper scheme, over 750,000 employers have applied and were approved for the scheme.

A quick recap: eligible employers

For an employer to qualify for the JobKeeper scheme, they must be able to show their business has experienced a decline, or be able to prove a projected decline in turnover of at least 30% when compared to a comparable period in 2019.

The percentage of decline in turnover is different in circumstances where the employer is:

- a charity registered under the Australian Charities and Not-For-Profits Commission. The employer will need to prove that there has been at least a 15% decline in turnover; and
- a large business (with a turnover exceeding \$1 billion). The employer will need to prove that there has been at least a 50% decline in turnover.

What happens if the employer finds out that they were incorrect in determining the projected decline in turnover and was not eligible for the JobKeeper scheme in the first place?

If the employer has been found to be ineligible and has incorrectly claimed for payments under the JobKeeper scheme, the employer will be required to repay the money to the Australian Taxation Office.

This is regardless of whether the employer has already paid those monies onto its employees.

Can the employer take back the JobKeeper payments made to the employee through future pay deductions?

The *Fair Work Act 2009* (Cth) provides that an employer may be permitted to deduct an amount from the employee's pay only if:

- the employee authorises for the deduction in writing and is principally for the employee's benefit;
- the employee authorises for the deduction in accordance with an enterprise agreement;
- the deduction is authorised under a modern award or an order of the Fair Work Commission; or
- the deduction is authorised under a law of the Commonwealth, a State or Territory; or
- an order of a court.

If deductions are not authorised under an agreement, award or under a Fair Work Commission or court order, the employer must seek authorisation from the worker in writing. An employer cannot make deductions from your pay without that agreement.

However, if you refuse to agree, that will not necessarily be the end of the story.

It is also important to recognise that monies incorrectly paid to you by your employer through JobKeeper can potentially be recovered through the courts as a debt.

Whether that will be the case will depend on a number of factors, for example:

- whether the overpayments were made as a genuine mistake;
- whether there has been unjust enrichment; and
- whether the employee has relied on the overpayment to their financial detriment.

If you find yourself in those circumstances, it is important to [urgently seek legal advice from a specialist employment lawyer](#).

If you've had monies deducted from your pay which are not related to JobKeeper, you should read our article "[Can my employer deduct money from my wages?](#)" for more information about whether or not it is valid or legal.

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We continue to provide our client services during the coronavirus outbreak.

Most of our teams have now returned to their respective offices with others remaining fully equipped to work remotely, where necessary.

You can contact us by phone or email to arrange your consultation; either face-to-face at one of our offices, by telephone or by videoconference consultation.

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