



# Furlough leave under the Coronavirus Job Retention Scheme

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*Updated as of 4 June 2020*

On 20<sup>th</sup> March the Chancellor launched the Coronavirus Job Retention Scheme (CJRS) with the intention to support businesses whose operations have been severely affected by the coronavirus crisis by underwriting the employment costs for the employees they would otherwise need to make redundant or to lay off temporarily without pay. This scheme supports the arrangement of 'furlough leave' during which the employer is reimbursed 80% of the employee's wage costs up to a cap of £2,500 per month, plus support with National Insurance contributions and pension contributions, crucially enabling the employee to remain in employment and to continue receiving income.

The Government published guidance to this scheme on 26<sup>th</sup> March, which has gone through numerous subsequent revisions.

On 29<sup>th</sup> May the Chancellor set out details of major changes to the furlough scheme, including the implementation of "flexible furlough" from 1<sup>st</sup> July and a gradual tapering of HMRC support, and the introduction of employer contributions towards furlough costs. The furlough scheme is due to end on 31<sup>st</sup> October 2020.

## **Which businesses are covered by the scheme?**

All organisations with a UK payroll for their employees are eligible to receive support under the scheme, provided they had an operative PAYE payroll on or before 19<sup>th</sup> March 2020, are enrolled for PAYE online and have a UK bank account.

There are restrictions on public sector organisations using the scheme and other organisations which receive public funding for staffing costs.

The scheme closes to new entrants from 30<sup>th</sup> June. From this point, employers will only be able to furlough employees that they have previously furloughed for a minimum period of 3 weeks. In practice this means that 10<sup>th</sup> June 2020 is the deadline for furloughing any employee for the first occasion.

## **Which staff can be supported under the scheme?**

The scheme applies to any employees of the business, and to other workers who are paid through PAYE such as casual staff, so long as they were on the organisation's payroll on or before 19<sup>th</sup> March 2020 and the subject

of a Real Time Information (RTI) submission to HMRC by this date. Company directors and salaried members of a limited liability partnership (LLP) are also eligible. Foreign nationals are eligible to be furloughed irrespective of their visa category.

Employees hired since 19<sup>th</sup> March are not eligible.

The scheme does not cover consultants and contractors who are outside PAYE, who may be eligible for support under the separate Self-Employed Income Support Scheme.

The scheme supports both those employees whose employment might otherwise be terminated on redundancy grounds (or for other reasons), and those who would be temporarily laid off under contractual lay-off powers.

The scheme can also be used where an organisation chooses to re-hire employees who were dismissed on redundancy grounds from 1<sup>st</sup> March, or who otherwise stopped working for the organisation from this date – for example where an employee resigned to take up a job offer which has now been postponed or withdrawn. In the situation of redundancy dismissals the employer may require the repayment of any redundancy payments which have already been paid.

The scheme does not currently support employees who are put onto reduced hours and pay (short-time working), and both employer and employee may be better off financially if the employee is instead fully released from their work duties for the time being. An option to meet an ongoing need for reduced work activities is to rotate furlough leave between different employees or groups of employees. This aspect of the scheme will change however from 1<sup>st</sup> July 2020 when “flexible furlough” is introduced (see below).

The scheme cannot be used for employees who were already on unpaid leave before 28<sup>th</sup> February.

An employer can choose for business reasons to furlough an employee who is currently off sick. If so the employee should no longer receive sick pay.

Shielding employees can be put on furlough, as can employees unable to work because they have caring responsibilities resulting from the coronavirus crisis, such as needing to look after children.

### **How is the scheme accessed?**

In order to access the scheme, the business needs to designate affected employees as ‘furloughed workers,’ and communicate this change to the employees in writing. It needs to keep a record of this communication for a minimum of five years. The employer’s period of claim should start from the date that the employee finished work and started furlough.

Placing an employee on furlough is likely to require the consent from the employee under their employment contract, as generally the contract will not contain a power enabling the business to place an employee on leave at a reduced level of pay. It is best practice to set out in writing the furlough arrangements and the employee’s express consent to this temporary variation of their contractual terms.

### **What employment costs will the Government meet?**

Currently under the scheme, the Government will reimburse the business up to 80% of the wage costs of the employee who is on furlough, subject to a cap of £2,500 per month. The employer has to pay the whole of this grant to the relevant employees.

Wage costs means the employee's gross basic salary or basic pay. This can include regular payments which the employer is obliged to pay employees, such as contractual commission entitlements. This does not include non-contractual commission or discretionary bonuses.

For staff with variable pay, the business can reclaim the higher of their earnings for the same month in the previous year, or their average monthly earnings in the 2019/20 tax year.

The employer organisation is also be able to reclaim employer National Insurance contributions, and some employer pension contributions.

The current funding arrangements will run until 31<sup>st</sup> July 2020. However from 1<sup>st</sup> July where an employee is under flexible furlough HMRC's support will be proportionate to the employee's unworked hours, and the employer will be responsible for all employment costs in respect of the employee's worked hours. From 1<sup>st</sup> August 2020 the level of HMRC support will gradually decrease and the employer will gradually have to contribute towards furlough costs (see below).

### **How will these costs be reimbursed?**

The business needs to submit information to HMRC about the employees that have been furloughed and their earnings through HMRC's online portal. HMRC has set out details on the information required in further guidance for employers.

### **Does the employer need to make up the difference?**

Businesses are not obliged to make up the 20% difference (or higher, for employees paid over £37,500) or any part of this difference, although the expectation is that they will do so if they can. This may be a point of discussion and negotiation with the individual employees or their representatives.

### **How long can the furlough leave last?**

The current scheme supports furlough leave with effect between 1<sup>st</sup> March 2020 to 30<sup>th</sup> June 2020. The minimum period of furlough leave is three weeks.

See below for details of the flexible furlough scheme which comes into effect on 1<sup>st</sup> July.

### **Can an employee on furlough carry out any work duties?**

Under the current scheme, an employee placed on furlough leave cannot carry out any work duties for their employer or an associated employer. This rule is obviously designed to prevent abuse of the scheme by some unscrupulous employers. The employee should be encouraged (and could be required) to carry out online training.

An employee on furlough leave can however carry out other work for another employee – for example if they want to take up the temporary work which supermarkets and delivery companies are currently offering. As a rule the employee will under their contract require their employer's permission to undertake other employment. Equally an employee on furlough leave can undertake voluntary work.

This restriction on work during furlough will apply until 30<sup>th</sup> June 2020. Flexible furlough will be implemented from 1<sup>st</sup> July, which allows an employee to return to work part-time and to be paid furlough pay for their unworked hours (see below).

## **How will furlough leave impact other rights and obligations?**

Employees that have been furloughed have the same rights as they did previously. That includes Statutory Sick Pay entitlement, maternity rights, other parental rights, rights against unfair dismissal and rights to redundancy payments.

If a furloughed employee becomes ill, the employer can choose whether to keep the employee on furlough or to move the employee onto Statutory Sick Pay.

An employee on furlough continues to accrue holiday leave, and is able to request and take paid holiday during this period in the normal way. Holiday pay for any holiday leave taken should be paid at the employee's normal rate of remuneration.

## **What is flexible furlough?**

A new flexible furlough scheme comes into effect on 1<sup>st</sup> July 2020. This new scheme enables businesses to bring furloughed employees back to work for any period of time or shift pattern, while still able to claim CJRS grant for their normal hours not worked. This is viewed as crucial to helping the economy to recover post-lockdown while also supporting income levels for employees.

The employer needs to agree any new flexible furloughing arrangements with their employees and confirm this agreement in writing. As part of its claim to the CJRS the employer will need to report hours worked, and the usual hours worked in a claim period, so it needs to have suitable systems in place for the recording of working hours.

The minimum claim period will be one week, allowing businesses to test the water with staffing levels, though employers can adopt longer claim periods such as fortnightly or monthly cycles. Claim periods however may no longer straddle calendar months, in view of the forthcoming changes to the scheme funding.

Initially level of HMRC grant will stay at 80% of wages for unworked hours, up to the cap of £2,500 per month. The cap will be proportional to the hours not worked; for example, the cap will be £1,500 in the case of a full-time employee who works two days a week.

## **When will employers have to contribute towards furlough costs?**

From 1<sup>st</sup> August 2020 employers will have to pay the employer NICs and pension contributions for the hours the employee does not work. In the typical case this will represent about 5% of total gross employment costs.

From 1<sup>st</sup> September 2020 the HMRC support will be reduced to 70% of wages, up to a cap of £2,187.50 per month, and employers will have to pay 10% of wages as well as NICs and pension contributions. Typically this will represent about 14% of total employment costs.

From 1<sup>st</sup> October 2020, until the scheme ends on 31<sup>st</sup> October 2020, the HMRC support will decrease in October to 60% of wages, up to a cap of £1,875 per month. Employers will have to pay 20% of wages, plus NICs and pension contributions, which will typically represent 23% of total employment costs.

Please contact our [Employment team](#) for advice and support on any of these issues or if you have any queries.

