

The Coronavirus Job Retention Scheme (CJRS) And Furlough

We're here to help and advise...

All of your Furlough questions answered here...

Key policy objectives of the scheme

On 20 March 2020 the Government announced the Coronavirus Job Retention Scheme (the Scheme). The key objective of the Scheme is to help employers retain employees during the Coronavirus pandemic in the hope that the economy will be able to quickly bounce back at the end of the national emergency.

Overview

Employers who find it necessary to lay employees off temporarily on furlough can apply to HMRC for a grant to help retain those staff. The grant will cover up to 80% of the employee's usual monthly gross pay up to a maximum of £2,500 per employee per calendar month, plus the associated employer's NIC and minimum automatic enrolment employer pension contributions on that pay. This help is available to any business or organisation that had a PAYE scheme established before 28 February 2020 and needs to furlough employees who were on the payroll at 28 February 2020.

What does furlough mean?

Furlough is not a recognised concept in employment law but, in essence, it means sending employees home, where there is no expectation or requirement for them to work, whilst retaining them on payroll.

Furloughed employees will be placed on furlough leave and will continue to be employed for the duration of such leave. These employees will continue to accrue continuous service (relevant for future redundancy exercises) and holiday (both statutory and contractual) as if they had been at work.

Summary of current guidance

1. Furloughed members of staff must not work for the employer during the period of furlough.
2. Furlough is from 1 March 2020, so is to be backdated. It will last for at least 3 months and will be extended if necessary. While the scheme is backdated to the beginning of March as it is intended to support all those employed then, a firm will only be eligible to claim the grant once they have agreed the furlough with their staff and staff have stopped working for the employer. This will be subject to employment law in the usual way.
3. It is available to employees on the payroll at 28 February 2020.
4. All UK businesses are eligible, 'any employer in the country, small or large, charitable or non-profit'.
5. The scheme pays a grant (not a loan) to the employer.
6. The grant will be paid to the employer through a new online system which is currently being built by HMRC for this purpose. This is expected to be completed by the end of April.
7. The employer will pay the employee through payroll, using the Real Time Information (RTI) system, such that PAYE and national insurance will continue to be deducted as normal from furloughed employees.
8. The Scheme will be administered by HMRC
 - Relevant employees must be designated as furloughed employees
 - Employers will submit information to HMRC through a new online portal
 - As this will take time to build, businesses may need to look for support with cash flow during the interim period. The Coronavirus Business Interruption Loan Scheme is likely to be an avenue for support for many businesses.

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9. Maximum grant will be calculated per employee and is the lower of

- 80% of 'an employee's regular wage' and
- £2,500 per month

Plus the associated employers' national insurance contributions (NIC) on this amount and the minimum automatic enrolment employer pension contributions on that wage.

Fees, commission and bonuses should not be included.

FAQ's

Which businesses are eligible?

Any UK organisation with employees can apply, including:

- businesses
- charities
- recruitment agencies (agency workers paid through PAYE)
- public authorities

You must have created and started a PAYE payroll scheme on or before 28 February 2020 and have a UK bank account.

Where a company is being taken under the management of an administrator, the administrator will be able to access the Job Retention Scheme.

Which employees can be furloughed?

Furloughed employees must have been on the employer's PAYE payroll on 28 February 2020, and can be on any type of contract, including:

- full-time employees
- part-time employees
- employees on agency contracts
- employees on flexible or zero-hour contracts

In respect of employees on fixed-term contracts, it is assumed that their eligibility would cease on the date their fixed term is due to end. However, further clarification on this is required from the Government.

It is assumed that agency workers who are employed by the agency will be furloughed by the agency and not by their hirer. Agency workers who are not employees are outside scope.

Employees on unpaid leave (e.g. those who have been laid off without pay) cannot be furloughed unless they were placed on unpaid leave after 28 February.

If an employee is working, but on reduced hours, or for reduced pay, they will not be eligible for this scheme and you will have to continue paying the employee through your payroll and pay their salary subject to the terms of the employment contract you agreed.

What about employees who have already left the business?

You can use the Scheme to furlough employees whom you have made redundant since 28 February 2020, if you re-hire them (effectively as if the redundancy hadn't taken place). You would need to contact the relevant employees, seek their agreement to be re-employed and then their consent to being furloughed. Their furlough leave can be backdated to the later of the date their employment terminated, or 1 March 2020. This would involve putting the employees back on the payroll and, if you choose to, 'unpicking' any termination payment arrangements.

At the end of the furlough period, these individuals would remain employed by you. If redundancies are necessary at that point, you would need to start a new redundancy process.

What about directors and shareholders pay in owner managed companies?

Many owner managed company directors/shareholders pay small salaries and the balance of income as dividends. The scheme does not extend to dividends. Only the salary is relevant to the scheme. Such companies must have been paying a salary through a payroll to be eligible for a grant.

How do you calculate pay for a furloughed employee and what can you claim under the Scheme?

Employers will receive a grant from HMRC to cover the lower of 80% of an employee's regular wage or £2,500 per month, plus the associated Employer National Insurance Contributions (ENICs) and minimum automatic enrolment employer pension contributions on that subsidised wage.

For full-time and part-time salaried employees (i.e. those whose pay does not vary), the employee's actual salary

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before tax, as of 28 February should be used to calculate the 80%. Fees, commission and bonuses should not be included.

For employees with variable pay, if the employee has been employed for a full twelve months prior to the claim, the employer can claim for the higher of either:

- the same month's earnings from the previous year; or
- average monthly earnings from the 2019-20 tax year.

If the employee has been employed for less than a year, the employer can claim for an average of their monthly earnings since they started work.

If the employee only started work in February 2020, the employer should claim based on their pro-rata earnings so far.

Do employers have to continue to pay normal salary to furloughed staff?

Employers have a choice. Employers can elect to apply a voluntary 'top-up' of pay and so operate their normal payroll for furloughed staff, in the knowledge that they will only recoup 80% of the cost via HMRC.

What about the National Living Wage / National Minimum Wage for furloughed employees?

Individuals are only entitled to the National Living Wage (NLW)/National Minimum Wage (NMW) for the hours they are working.

Therefore, furloughed workers, who are not working, must be paid the lower of 80% of their salary, or £2,500 even if, based on their usual working hours, this would be below NLW/NMW.

However, if workers are required to for example, complete online training courses whilst they are furloughed, then they must be paid at least the NLW/ NMW for the time spent training, even if this is more than the 80% of their wage that will be subsidised.

Can workers be moved in and out of being furloughed?

The scheme is being designed to allow for flexibility so that furloughed staff can be brought back to work. An employee must remain on furlough for a minimum period of three weeks, although a further period may immediately follow the previous furlough if agreed. This will ensure flexibility and permit furloughed employees being brought back to cover, for example, sickness of others.

It is important to remember that for an employer to qualify for the payment under the Scheme, the employee must have been furloughed for a minimum of three weeks. There is nothing in the guidance which prohibits rotating furlough leave amongst employees if each employee is off for a period of at least three weeks

Employees with more than one employment

If your employee has more than one employer they can be furloughed for each job. Each job is separate, and the cap applies to each employer individually. It should be noted that this relates to more than one employment already held on 28th February.

Any employees on furlough leave can do volunteering or training, providing it does not generate any money for their employer and does not contradict their current contract of employment and any contractual obligations therein between themselves and their employer.

What about those on zero-hour/flexible contracts/ agency workers?

This scheme aims to support all those employed through the PAYE system regardless of their employment contract, including those on zero-hour contracts.

Zero-hour and flexible contracts can cover a whole range of working arrangements.

The 80% grant is applied to the higher of:

- the earnings in the same pay period in the previous year; or
- the average earnings in the whole previous 12 months (or fewer if they have worked for less time than this, including a part month calculation if they were taken in February).

Can a business furlough someone after hearing the announcement and then claim back to March 1st even though they had been working that whole time?

No, the scheme is backdated to March 1st with a view to covering those who have already been made redundant as a result of the coronavirus.

What about employees taken on after 1 March?

They are excluded from the scheme.

What if my employee is on Statutory Sick Pay?

Employees on sick leave or self-isolating should get Statutory Sick Pay, but can be furloughed after this.

Employees who are shielding in line with public health guidance can be placed on furlough.

What happens if a member of staff who is furloughed becomes ill?

Employees that have been furloughed have the same rights as they did previously – this includes employees' entitlement to SSP where they are eligible.

How will furlough leave affect those on maternity leave or due to go on maternity leave?

If your employee is on Maternity Leave, contractual adoption pay, paternity pay or shared parental pay their statutory rights remain the same in regard to leave and pay, however, if you offer enhanced (earnings related) contractual pay to women on Maternity Leave, this is included as wage costs that you can claim through the scheme.

Employees who are on maternity leave already, and in receipt of SMP could potentially be better off if they were placed on furlough leave instead and receiving 80% pay. In order to do this, they would have to give notice to end their maternity leave. Normally 8 weeks' notice of return is required, but this can be reduced by agreement. The employer could then agree with the employee that she would be furloughed, but it would be sensible to make sure she understands that once she has ended her maternity leave she can't restart it at the end of furlough leave.

The same principles apply where your employee qualifies for contractual adoption, paternity or shared parental pay.

Income tax and Employee National Insurance

Wages of furloughed employees will be subject to Income Tax and National Insurance as usual. Employees will also pay automatic enrolment contributions on qualifying earnings, unless they have chosen to opt-out or to cease saving into a workplace pension scheme.

Employers will be liable to pay Employer National Insurance contributions on wages paid, as well as automatic enrolment contributions on qualifying earnings unless an employee has opted out or has ceased saving into a workplace pension scheme.

Do employers have to go through a selection process, like for redundancy, when furloughing individuals?

Yes. When an employer furloughs an employee they are still subject to relevant employment and equalities laws. This includes proper consultation with employees and notification that they will be put on furlough.

Does an employer need to reach an agreement with an employee before being 'on furlough', as is the usual process for any reduction in pay?

Yes. Both the employee and employer must agree before an individual can be put 'on furlough' – usual consultation and notification processes apply.

Can employees insist on being placed on furlough leave?

It is the employer's decision who to furlough. Employers can choose to accept voluntary requests from employees for furlough leave, but are not required to do so, particularly if there is still work to be performed.

What happens to annual leave that an employee cannot take by the end of their leave year due to the Covid-19 outbreak?

The Government has announced that workers who have not been able to use their entitlement to annual leave due to Covid-19, will be able to carry over up to 4 weeks of unused leave into the next two leave years. Regulations dealing with this are expected.

Can employers compel employees to take annual leave while they are on furlough leave?

If employees have pre-booked annual leave which coincides with a period of furlough leave, they should still take that holiday and be paid holiday pay, at their normal rate, for those days' holiday. Employers cannot force employees to take additional holiday while they are on furlough leave, but equally some employees may want to designate some of their furlough leave as holiday, to take advantage of the 20% increase in pay, and help mitigate the impact of being furloughed.

Can employment be terminated whilst an employee is furloughed?

Yes, an employee can still be made redundant while on furlough or immediately after. There is no requirement to bring the employee back to work after the period of furlough. If an employee is made redundant during the period of furlough then grant payments will cease. However, in both cases normal redundancy rules and protections will apply.

Where a business feels that redundancy is the only option, this must still follow the rules which include giving a notice period and consulting staff before a final decision is reached.

What you'll need to make a claim

Employers should discuss with their staff and make any changes to the employment contract by agreement. Employers may need to seek legal advice on the process. If sufficient numbers of staff are involved, it may be necessary to engage collective consultation processes to procure agreement to changes to terms of employment.

To claim, you will need:

- your PAYE reference number
- the number of employees being furloughed
- the claim period (start and end date)
- amount claimed (per the minimum length of furloughing of 3 weeks)
- your bank account number and sort code
- your contact name
- your phone number

You can only submit one claim at least every 3 weeks, which is the minimum length an employee can be furloughed for. Claims can be backdated until the 1 March if applicable.

HMRC will retain the right to retrospectively audit all aspects of your claim.

The online service for submitting a claim is not yet available.

Tax Treatment of the Coronavirus Job Retention Grant

Payments received by a business under the scheme must be included as income in the business's calculation of its taxable profits. Businesses can deduct employment costs as normal when calculating taxable profits.

Useful links

- <https://www.gov.uk/guidance/claim-for-wage-costs-through-the-coronavirus-job-retention-scheme>
- <https://www.gov.uk/government/publications/guidance-to-employers-and-businesses-about-covid-19/covid-19-guidance-for-employees>
- <https://www.gov.uk/government/publications/guidance-to-employers-and-businesses-about-covid-19/covid-19-support-for-businesses>

Note - HMRC has changed the dedicated phone number for the coronavirus helpline targeted at businesses and the self employed to 0800 024 1222 to increase load capacity