

MANAGING THE IMPACT OF CORONAVIRUS:

WHAT IS 'FURLOUGH LEAVE'?

BRIEFING PAPER 4.0

Updated: 26 March

The Government has introduced a Coronavirus Job Retention Scheme (CJRS) as part of a package of measures to alleviate the impact of COVID-19 on businesses across the UK.

In this briefing paper, the fourth in our series, 'Managing the Impact of Coronavirus', we summarise the Coronavirus Job Retention Scheme with the additional guidance provided on 26 March 2020.

What is the Coronavirus Job Retention Scheme?

The Coronavirus Job Retention Scheme (CJRS) is a temporary scheme which will enable employers to recover 80% of wage costs for employees who are furloughed.

'Furlough leave' is a new classification of indefinite leave where the government will reimburse the employer for wage costs.

The scheme has been introduced as an alternative for employers who might have otherwise implemented redundancies, lay-offs, unpaid leave or other measures for their employees.

The scheme will last for at least three months starting from the 1 March 2020 and is expected to be operation by the end of April.

The scheme allows employers to claim for 80% of furloughed employees' usual monthly wage costs, up to £2,500 a month, plus the associated Employer National Insurance contributions and minimum automatic enrolment employer pension contributions on that wage.

Employers will be able to use this scheme anytime during this period.

Who is eligible for the scheme and who can claim?

All UK businesses with employees can apply for the scheme 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.

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

Employees you can claim for:

Furloughed employees must have been on your PAYE payroll on 28 February 2020 and be on any type of contract, including:

- Full-time employees
- Part-time employees
- Employees on agency contracts (who are not working)
- Employees on flexible or zero-hour contracts

The scheme also covers employees who were made redundant since 28 February 2020, if they are rehired by their employer.

Employees placed on furloughed leave cannot undertake work for you or on behalf of the organisation. This includes providing services or generating revenue.

Employees placed on furloughed leave will still be subject to income tax and other deductions on their wages.

Employees you cannot claim for:

- Employees who are working for you (including those on reduced hours or for reduced pay are not eligible)
- Employees hired after 28 February 2020 cannot be furloughed or claimed for
- Employees on unpaid leave before 28 February

What about employees on Statutory Sick Pay (SSP) or being shielded?

Employees on SSP due to sick leave or self-isolation should continue to receive SSP for the agreed period of leave. They can be furloughed after this.

Employees who are shielding (12 weeks or more for serious underlying health conditions) in line with public health guidance can also be furloughed.

What if an employee does volunteer work or training?

Furloughed employees can compete volunteer work or training as long as it does not provide services or generate revenue for, or on behalf of your organisation.

If furloughed employees are required to complete online training while they are furloughed then they must be paid at least the National Living Wage or National Minimum Wage for the time spent training, even if this is more than 80% of their wage that will be subsidised.

What about Maternity Leave, contractual adoption pay, paternity pay or shared parental pay?

Employees who are on or plan to take Maternity Leave must take a minimum of 2 weeks off work (4 weeks for factory or workshop workers) immediately following the birth of their baby.

Employees eligible for Statutory Maternity Pay (SMP) or Maternity Allowance are entitled to claim up to 39 weeks of statutory pay or allowance.

Employees eligible for SMP are still eligible for 90% of their average earnings in the first 6 weeks, followed by 33 weeks of pay paid at 90% of their average weekly earnings or the statutory flat rate (whichever is lower).

Employees on enhanced (earnings related) contractual pay while on Maternity Leave can also be claimed through the scheme as a wage cost.

What costs can employers recover and how do I work out what I can claim?

Employers will need to make a claim for wage costs through this scheme.

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

Fees, commission and bonuses should not be included.

Employers must pay their employee the lower of 80% of their regular wage or £2,500 per month. Employers have the option to fund the difference between furloughed leave payments and employee's salary but does not have to.

There is no limit on the number of employees or the duration.

<p>Claiming for full time and part time employees:</p> <p>The employee's actual salary before tax, as of 28 February should be used to calculate the 80%.</p> <p>Fees, commission and bonuses should not be included.</p>	<p>Claiming for employees whose pay varies:</p> <p>For employees whose pay varies, if the employee has been employed (or engaged by an employment business) for a full 12 months prior to the claim you can claim for the higher of either:</p> <ul style="list-style-type: none">• The same month's earnings from the previous year• Average monthly earnings from the 2019-20 tax year. <p>If the employee has been employed for less than a year you can claim for an average of their monthly earnings since they started work.</p> <p>If an employee only started in February 2020, use a pro-rate for their earnings so far to claim.</p> <p>Calculate how much of an employee's salary you can claim for including the amount of Employer National Insurance Contributions and minimum automatic enrolment employer pension contributions you are entitled to claim.</p>
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What about Employer National Insurance and Pension Contributions?

Employers remain liable for associated Employer National insurance and auto enrolment pension contributions for their employees on furloughed leave.

You can choose to top-up salaries in addition to the grant, however national insurance and pension contributions on this additional top-up will not be funded through the scheme.

Voluntary automatic enrolment contributions above the minimum employer contribution of 3% of income will also not be funded through this scheme.

What about employees on National Living Wage (NLW) or National Minimum Wage (NMW)?

Employees are only entitled to the NLW or NMW for the hours they are working.

Furloughed workers are not working and should 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.

What do employers need to do?

Employers will need to:

- determine the members of staff being designated as 'furloughed workers'
- Notify those employees you wish to furlough. You could do this informally to begin with, but you will need to write or email each employee concerned and begin consulting them to agree the change in status formally in writing.
- You will need to consider any pre-existing contractual arrangements and terms which apply to your employees (you may have a right to withdraw work from your employees already).
- Once you have designated and agreed with your employees who is to be furloughed employers will then need to submit details to Her Majesty's Revenue and Customs (HMRC) through a new online portal confirming the details of those employees and their pay arrangements (note the HMRC Portal has not been established yet).

Can employees choose to be furloughed?

Employees cannot elect to be a furloughed worker without their employer's agreement.

What if an employee wants to be on Furlough Leave but as an employer, I need them working or they are a key worker?

The initial decision for furloughed leave is the employers. You may wish to reach an agreement with your employees as some may elect to be furloughed with the employer's consent.

What if an employee refuses to be furlough because they want redundancy payments?

Redundancy can be attractive option for some employees.

An employee cannot simply request a redundancy payment and employer's will need to discuss all options with their employees about both redundancy and furlough leave.

What will I need to make a claim?

To claim, you will need:

- Your ePAYE 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 will need to calculate the amount you are claiming, HMRC will retain the right to retrospectively audit all aspects of your claim.

Are there any restrictions around the claim?

You can only submit on claim at least every 3 weeks. Employees on this scheme must be furloughed for a minimum of 3 weeks.

What do I do once I have claimed?

Once HMRC has received your claim and you are eligible for the grant, this will be paid via BACS payment to a UK bank account.

Your claim should be in accordance with actual payroll amounts at the point at which you run your payroll or in advance of an imminent payroll.

You must pay the employee all the grant you receive for their gross pay, no fees can be charged from the money that is granted to you.

What about when the government ends the scheme?

When the government ends the scheme, you must decide, depending on your circumstances, as to whether employees can return to their duties or do you need to make redundancies.

What do employees need to consider/do?

As a furloughed employee you will remain on the employer's payroll and will continue to accrue holiday and service. You will continue to have the same rights as you did previously.

HMRC will:

- Reimburse to your employer, by way of a grant, up to 80% of your wage including all employment costs.
- This is capped at £2,500 per month (further clarification and guidance is needed on how the £2,500 is to be applied or calculated).

This may create resentment with your co-workers as.

- Some employee's will still be at work getting either full or reduced pay, while others will be on furlough leave getting paid at least 80% for not working, and those who are off sick - as they are ill or self-isolating - may only be getting statutory sick pay (SSP), which at around £95 per week is likely to be less than 80% of full pay.

Does the employer have to top up my pay to 100%?

No, they do not. Some employers may wish to make up the shortfall, while others may not be able to. This just needs to be made clear to all employees concerned.

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