

CORONAVIRUS JOB RETENTION SCHEME

GUIDANCE ON FURLOUGHED EMPLOYEES

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On Friday 20th March 2020, The Chancellor announced that UK employers will be able to apply for funding of 80% of PAYE salaries for workers who would otherwise have been laid off due to the virus, up to a cap of £2,500/month per employee.

In this guide, the business specialists at Haggards Crowther answer the most commonly asked questions about the scheme and the process of 'furloughing' employees.

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What is furlough leave/the Coronavirus Job Retention Scheme?

A 'furloughed employee' is referred to in the guidance as an employee "on a leave of absence". Whilst a 'furloughed employee' is not a recognised term in UK employment law, the scheme will allow employers to place their employees on 'furlough leave' as an alternative to redundancy. Employers whose operations have been affected by the current crisis will be able to keep employees on their payroll and then be able to apply for a grant to recover a proportion of their employees' wages.

An employer will only be able to benefit from the scheme in respect of employees which they confirm are 'furloughed employees'. To do this they will have to formally notify the employee that they are 'furloughed' and obtain their agreement. It is important that employers keep a copy of that communication. Employers may need to advise employees of the potential alternatives (e.g. redundancy) otherwise employees may not wish to accept a reduction in pay (see below).

The scheme will be in place for at least 3 months from 1 March 2020.

What will HMRC reimburse?

Employers will be able to claim 80% of a furloughed employee's salary up to a cap of £2,500 per month plus the employer's National Insurance contributions and minimum auto-enrolment employer pension contributions on that salary.

For salaried employees, the wages which can be claimed will be based on their normal salary. Commission, bonuses and overtime pay will not be included.

For employees whose pay varies, e.g. those on zero hour contracts, the wages which can be claimed will be based on the higher of their equivalent pay in the same month in the previous year or their average monthly pay over the 2018/19 tax year, whichever is higher.

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.

When will employers be reimbursed?

The scheme is set to go live from 20 April 2020 and grants will be paid within 6 working days of submitted applications.

Businesses who cannot afford to pay salaries while they are waiting for the grant should seek support under other government support packages, such as the Coronavirus Business Interruption Loan Scheme, which we have considered in a separate blog found [here](#).

Which businesses are eligible?

Any employers in the UK will be eligible for the scheme including charities, recruitment agencies and public authorities, provided that they have a PAYE payroll scheme in place on or before 19 March 2020 and have a UK bank account.

Employees that were employed as of 28 February 2020 and on payroll (i.e. notified to us on an RTI submission on or before 28 February) and were made redundant or stopped working for you after that, and prior to 19 March 2020, can also qualify for the scheme if you re-employ them and put them on furlough.

Which employees will be eligible?

The scheme will potentially cover all staff paid through PAYE who have been on the payroll since 19 March 2020 on any type of contract including full-time and part time, agency contracts (so long as they are on PAYE contracts) and employees/workers on flexible or zero hours contracts.

The minimum period of furlough leave will be three weeks.

If employees are working but on reduced hours or for reduced pay then they will not be eligible for the scheme.

Employees who are 'shielding' in line with public health guidance can be placed on 'furlough leave'. Employees who are currently on sick leave or are self-isolating in line with government advice are entitled to Statutory Sick Pay (SSP) but once they return to work they can then be 'furloughed'.

Self-employed individuals will be supported by an alternative scheme which we have considered in a separate blog found [here](#).

Will company directors qualify for the scheme?

Yes, it has now been confirmed that directors will be eligible for the scheme, provided the standard conditions for furlough in the HMRC guidelines are met.

The main issue for company directors is that once furloughed, like their employees, they cannot undertake any work for the company during this time. It is understood that a company director can continue to undertake statutory duties but must not perform any other work for the company. Statutory duties should include filing returns (dealing with VAT, PAYE and Company Accounts), maintaining records and attending board meetings. Activities undertaken to generate revenue on behalf of the company would exclude directors from the scheme.

The amount which can be claimed under the grant is limited to 80% PAYE salary only and cannot include dividends. The salary claimed must be the salary as at 28 February.

Where one or more individual directors' furlough is so decided by the board, this should be formally adopted as a decision of the company, noted in the company records and communicated in writing to the director(s) concerned.

Are employers required to 'top up' the additional 20% of their employee's wages?

No they are not required to do so however some may wish to. However this is why it is important to obtain employee agreement to furlough where pay is being reduced.

Can employees continue to work while furloughed?

No, employees should not carry out any work for their employer during this time. They can however take part in volunteer work or any training provided that it does not provide services to generate revenue for their employer. You can work for unrelated companies while furloughed, but could not, for example, work in another branch of the same company.

How will employers claim this grant?

HMRC will establish an online portal through which employers will be able to claim the grant. This will become available from 20 April 2020.

Employers will need to provide the following information:

1. The bank account number and sort code you'd like HMRC to use when paying your claim.
2. The name and phone number of the person in your business for HMRC to call with any questions.
3. Your Self-Assessment UTR (Unique Tax Reference), Company UTR or CRN (Company Registration Number).
4. The name, employee number and National Insurance number for each of your furloughed employees.
5. The total amount being claimed for all employees and the total furlough period.

We can help you manage the process of completing the claim. Please contact us if you would like assistance.

Employers will be able to submit a claim every 3 weeks and claims can be back-dated to 1 March 2020.

How should employers operate payroll while waiting for the grant?

The furlough pay is classed as income and should be treated the same as any other standard payment. Calculations for all standard deductions of PAYE, employee's and employer's NIC as well as automatic enrolment pensions should remain.

As this is normal income the PAYE, employee's NIC and employer's NIC liability will continue as for any other payments. The values will be included in the full payment submission (FPS).

Does an employer have to consult with employees before furloughing?

In most cases it will be necessary to agree with employees that they will be furloughed, because their employment contracts do not give the employer a unilateral right to withdraw work/lay-off, plus in most cases pay is being reduced. If the alternatives are redundancy or unpaid leave of absence, it is very likely that employees will agree to being furloughed in order to receive the financial protection on offer.

Can employees who have already been made redundant be re-hired and put on furlough leave?

Staff must have been on the payroll on 28 February 2020 but are still eligible if they were made redundant after that date but were rehired before 19 March 2020.

Will furlough leave affect employment rights?

The government guidance has helpfully confirmed that 'furloughed employees' will have the same rights as before including those for SSP, maternity and other parental rights, rights against unfair dismissal and for redundancy payments.

It is anticipated that employees will have continuous employment throughout the 'furloughed' period as this will be treated as a temporary cessation of work.

What happens after the scheme comes to an end?

The scheme may be extended further, we will have to wait and see. Once it does come to an end, it is for employers to decide whether employees can return to their duties or whether it may be necessary to consider redundancies. There is no obligation to retain the services of furloughed employees for a period of time after the scheme ends. But notice periods and statutory redundancy rights will continue to apply in the usual way.

Seeking HR Guidance

Whilst this guide is designed to help you manage your employee base in line with the Job Retention Scheme, we would strongly recommend that you seek appropriate guidance from your nominated HR provider in relation to the specifics of your employment contracts.

If you have other questions or would like to speak to one of our business specialists please call Haggards Crowther on 0207 384 0920.

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