

Coronavirus Job Retention Scheme

On Friday 20 March, the Chancellor announced an unprecedented economic intervention with the Government stepping in and helping to pay people's wages.

What it is and what will it cover?

The Coronavirus Job Retention Scheme will be a government grant – to reimburse employers for 80% of furloughed workers wage costs, to a cap of £2,500 per month.

Further the scheme will be:

- Backdated to March 1st
- Open initially for at least three months but extended 'for longer if necessary'

In addition, employers can also claim the associated employers' national insurance contributions (NIC) on this amount and the minimum automatic enrolment employer pension contributions on that wage.

Please note employers can top up wages to beyond the scheme maximum thresholds if they wish, but there is no requirement to do this.

Past Overtime, Fees, Commission, Bonuses and non-cash payments

You can claim for any regular payments you are obliged to pay your employees. This includes wages, past overtime, fees and compulsory commission payments. However, discretionary bonus (including tips) and commission payments and non-cash payments should be excluded.

Benefits in Kind and Salary Sacrifice Schemes

The reference salary should not include the cost of non-monetary benefits provided to employees, including taxable Benefits in Kind. Similarly, benefits provided through salary sacrifice schemes (including pension contributions) that reduce an employee's taxable pay should also not be included in the reference salary.

Where the employer provides benefits to furloughed employees, this should be in addition to the wages that must be paid under the terms of the Job Retention Scheme.

Normally, an employee cannot switch freely out of a salary sacrifice scheme unless there is a life event. HMRC agrees that COVID-19 counts as a life event that could warrant changes to salary sacrifice arrangements, if the relevant employment contract is updated accordingly.

Who is eligible for the scheme?

All UK businesses are eligible (or in the Chancellor's words "Any employer in the country – small or large, charitable or non-profit – will be eligible for the scheme.")

What employees are eligible?

Furloughed employees must have been on the 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; and
- employees on flexible or zero-hour contracts.

Employees whose pay varies

If the employee's salary varies (e.g. staff on zero- hour contracts) and they have been employed for a full twelve months prior to the claim, employers claim for the higher of either:

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

Employees who have worked less than a 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 in February 2020, use a pro-rata for their earnings so far to claim.

If an employee is between jobs, what support is available?

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

New employees hired after 28 February 2020 cannot be furloughed or claimed for in accordance with this scheme.

Scheme administration

Coronavirus Job Retention Scheme will be administered by HMRC.

Employers will need to:

- Designate affected employees as 'furloughed workers' (see further below)
- Submit information to HMRC about the employees that have been furloughed and their earnings through a new online portal (HMRC will set out further details on the information required).

As noted above the grant is a reimbursement to the employer therefore the employer will make the wage/ salary payment to the furloughed worker and then be reimbursed by HMRC.

When will the scheme be live?

No set date but the following are indications it will not be immediate:

- “HMRC are working urgently to set up a system for reimbursement. Existing systems are not set up to facilitate payments to employers.”
- “HMRC are working night and day to get the unprecedented Coronavirus Job Retention Scheme up and running and we expect the first grants to be paid within weeks.”
- • “If your business needs short term cash flow support, you may be eligible for the Coronavirus Business Interruption Loan Scheme”

What is a furloughed worker?

We understand that furloughed workers are “workforce who remain on payroll but are temporarily not working during the coronavirus outbreak”.

To be eligible for the subsidy, when on furlough, an employee can not undertake work for or on behalf of the organisation. This includes providing services or generating revenue.

It is noted that employers will need to notify employees of this change in employment status to furloughed, but that changing the status of employees remains subject to existing employment law and, depending on the employment contract, may be subject to negotiation.

Can furloughed workers be rotated?

It appears as though they can. Some employers have work for some staff, but not enough work for all. It appears that employees can be placed on furlough more than once.

This suggests that employers can rotate employees on furlough, so long as each employee spends a minimum of three weeks on furlough. This would mean, for example, that an employer can select an initial group of employees for furlough while a second group remain at work. The first group could then come back to work while the second group take their turn on furlough.

How long can workers be furloughed?

The minimum length of furloughing is three weeks. An employee can however be furloughed multiple times, subject to the minimum time period of three weeks, as often as the employer and employee agree.

The scheme will be open for an initial period of three months (1 March to 31 May 2020) but it might be extended.

Employers are likely to want to reserve the right to call employees back from furlough if trading conditions improve.

Can a furloughed worker do volunteer work or training

A furloughed employee can take part in volunteer work or training, as long as it does not provide services to or generate revenue for, or on behalf of the organisation.

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 an apprentice be furloughed

Apprentices can be furloughed in the same way as other employees and they can continue to train whilst furloughed.

However, you must pay your Apprentices at least the Apprenticeship Minimum Wage, National Living Wage or National Minimum Wage (AMW/NLW/NMW) as appropriate for all the time they spend training. This means you must cover any shortfall between the amount you can claim for their wages through this scheme and their appropriate minimum wage.

Can a personal employee (e.g. child's nanny) be furloughed

Individuals can furlough employees such as nannies provided they pay them through PAYE and they were on their payroll on, or before, 28 February 2020.

Can employees who are shielding or have caring responsibilities be furloughed

You can claim for furloughed employees who are shielding in line with public health guidance (or need to stay home with someone who is shielding) if they are unable to work from home and you would otherwise have to make them redundant.

Similarly, employees who are unable to work because they have caring responsibilities resulting from coronavirus can be furloughed. For example, employees that need to look after children can be furloughed.

Can company directors be furloughed?

Company directors that receive salaries through PAYE can be furloughed.

Company directors owe duties to their company which are set out in the Companies Act 2006. Where a company (acting through its board of directors) considers that it is in compliance with the statutory duties of one or more of its individual salaried directors, the board can decide that such directors should be furloughed. 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.

The same rules apply about not being able to provide services to or generate revenue for, or on behalf of the company. This could include tweeting from an official account or on behalf of the company. Also, they cannot make phone calls or discuss the firm or its business.

Where furloughed directors need to carry out particular duties to fulfil the statutory obligations they owe to their company (e.g. relating to filing documents to Companies House at the correct time), they may do so provided they do no more than would reasonably be judged necessary for that purpose.

This also applies to salaried individuals who are directors of their own personal service company (PSC).

Can furloughed employees take other jobs?

People on furlough and being paid 80% of their regular pay by their employer to do nothing under the Coronavirus Job Retention Scheme can take other work along as their employment contract does not forbid it.

How do you furlough your workers?

An example furlough letter is included in Appendix 1.

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 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 consecutive 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.

Appendix 1

Draft furlough letter

[date]

[state how delivered: e.g. By Hand or 1st Class and Registered Post]

PRIVATE & CONFIDENTIAL

[name/address]

Dear [name]

Re: Furlough Period

This letter is to inform you that, as agreed with you on 26th March 2020, your current position with XXX Company Limited is being "furloughed" effective from 27th March, 2020 and until further notice. Furlough is a temporary period of leave to help us deal with the fact that there is no work available for employees at this time due to the current COVID-19 situation.

You will remain employed during the furlough period and your usual contractual terms will apply.

Therefore, with effect from 27th March 2020, you are not required to attend work until we contact you to tell you that you are required to return to work. You must remain available for work during this time so that we can bring you back in immediately as the situation changes.

We will be applying to HMRC to claim funding to pay you furlough pay via its Coronavirus Job Retention Scheme (CJR Scheme). Please note that the government has not issued full information about this scheme yet. However, they have indicated that they intend for the CJR Scheme for last at least three months from 1 March 2020 but will extend it if necessary. Further, the government has indicated that applications for the CJR Scheme will need to be made via a new HMRC portal. As we understand it, the HMRC portal is being built and is not available yet.

If, once we are able to make the application via HMRC's new portal, this application is accepted, you will receive 80% of your wages for the period of furlough during which the CJR Scheme applies and provided that you remain on furlough. Please note that at the time of writing, we do not know how HMRC will calculate pay and wages. This letter does not create any legal obligation to pay more than HMRC will pay under the scheme.

We will contact you again when we know whether we have been able to secure the funding to pay you the 80% furlough pay.

We shall attempt to keep this period of furlough as short as possible. We will continue to seek appropriate work for you and will notify you as soon as possible when work becomes available. In this respect, please ensure that you have provided me with your current contact details to avoid any delay in us contacting you. So, for example, it is important to ensure that you have provided:

- A working email address;
- Your landline telephone number;

- • Your mobile telephone number;
- • Your home address; and
- • If you temporarily leave to self-isolate for example, your temporary address (and update us when you return to your permanent/normal address).

It is also important that you keep us updated as to whether you have been advised to self-isolate or are ill since this may affect your entitlement to furlough pay.

For speed and efficiency (and to avoid unnecessary burden on the postal service), our intention is to communicate with all staff via the email addresses provided. If you do not have an email address or there are reasons why this is not a suitable form of communication for you, please let me know. We will only use alternative means of communication where it becomes necessary.

If you have any queries during this period, please contact me in the first instance at email address.

Your co-operation during this difficult period is greatly appreciated.

Yours sincerely

