

## **Coronavirus Job Retention Scheme – Q&A for Employers**

### **What is meant by “furloughed”?**

The word “furlough” generally means temporary leave of absence from work.

Furlough leave has been introduced by the government as part of its Job Retention Scheme during the coronavirus pandemic. It means leave offered which keeps employees on the payroll without them working. As the furloughed staff are kept on the payroll, this is different to being laid off without pay or being made redundant.

People who are furloughed must not work for you during the period of furlough but usually return to their job afterwards unless redundancies follow.

Note that furloughed employees have the same statutory employment rights as they did previously (for example rights against unfair dismissal, parental rights, rights to redundancy pay etc.)

### **Who is eligible for the Job Retention Scheme?**

Any employer in the UK will be eligible for the scheme. Charitable non-profit organisations are included, as are recruitment agencies where the agency workers are paid through PAYE. It is not expected that the scheme will be used by public sector organisations (the Government issued guidance provides more detail on this).

The scheme is intended to apply only to employers who cannot cover employee costs due to COVID-19. These employers can access support to continue paying part of their employee’s wage, in order to avoid redundancies. Employees must have been on the employer’s PAYE payroll on 28 February 2020, but can be on any type of contract including:

- Full time
- Part time
- Agency contracts
- Flexible or zero-hour contracts

Any employee who was on the payroll on 28 February and has since been made redundant can be re-hired and put on the scheme.

### **Is there a minimum furlough period?**

Yes, furlough leave must be taken in blocks of a minimum of three weeks.

### **Can I place an employee on furlough leave more than once, or rotate the leave amongst my employees?**

Yes – as long as an employee is placed on furlough leave for a block of at least 3 weeks, an employer can place an employee on furlough more than once, and one period can follow straight after an existing furlough period. The government guidance does not confirm whether leave may be rotated amongst employees, but neither does it prohibit this – so it seems that this will be allowed, provided each employee is off for the minimum three week period.

### **Can furloughed employees take on new work?**

No, while they are furloughed, they cannot do any work for your company nor can they take on any other paid work in this time (although see below for employees who already have more than one employer). However, they can undertake training and do volunteer work, provided they do not provide services or make any money for their employer.

If an employee is working, but on reduced hours, or for reduced pay, they will not be eligible for the scheme.

### **What happens if my employee has more than one employer?**

In this situation, they can be furloughed for each job. Each job is separate, and the payment cap applies to each employer individually. An employee can be put on furlough by one employer and continue to work for another, if it is permitted within their employment contract.

### **How much will furloughed employees be paid?**

The government will pay 80% of an individual's salary costs up to £2,500 per month plus the associated Employer National Insurance contributions and minimum automatic enrolment employer contributions on that wage. Fees, commissions and bonuses are not included. As a minimum, you must pay your furloughed employees the lower of 80% of their regular wage or £2500 per month.

You as an employer can decide whether to top up their salary whilst they are furloughed but you have no obligation to do so under the furlough scheme, although you do of course under the contract of employment. Any reduction in an employee's salary must be agreed with the employee, otherwise you will be breaching their contract of employment.

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For example, you may pay all of the difference between the grant and the employee's normal salary or pay part of the difference between the grant and the employee's normal salary. Note that Employer National Insurance Contributions and automatic enrolment pension contributions on any top up salary will not be funded through the scheme.

You may choose to supplement salaries initially up to 100%, keep this under review and then choose not to in later months if the business can no longer afford to do so. The important thing is to keep employees informed and seek their agreement to any reduction in overall salary levels.

For employees whose pay varies, the employer can claim for the higher of the same month's earnings from the previous year or average monthly earnings in the 2019-20 tax year.

Employees earning National Minimum Wage will still receive 80% of that wage, as they are not working, but note that they are entitled to be paid National Minimum Wage for any time spent training.

### **Will a furloughed employee's pay be subject to the usual deductions?**

Yes, wages of furloughed employees are 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 stop saving into a workplace pension scheme.

### **Can directors of limited companies furlough themselves?**

Yes, if they are on the payroll as an employee. However, if they furlough themselves, technically they are not allowed to then work in the business whilst they are furloughed.

For owner-managed businesses, directors can furlough themselves, and whilst furloughed workers are not meant to work, the current understanding is that these directors may be able to perform their statutory duties such as preparing statutory accounts, returns, VAT returns etc.

### **Does a furloughed employee retain their employment rights?**

Yes, all terms and conditions remain the same, except the level of pay (where the employee agrees to this being reduced).

### **Do I have to place all my employees on furlough?**

No, but those employees who you do place on furlough cannot do any work for you.

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## **Who decides whether an individual is furloughed?**

The employer decides on who will be furloughed but employers should also seek agreement from individuals to being designated as a furloughed employee. If you need to select only some of your employees to be furloughed, it seems sensible to define some criteria for doing so. The Government has confirmed that equality and discrimination laws will apply in the usual way when making decisions about the furlough process, including deciding who to offer furlough to. Discrimination may be justifiable in this situation, for example prioritising a vulnerable group such as the over 70s.

## **How do I furlough an employee?**

Employees must be consulted about them being furloughed. If sufficient numbers are involved, it may be necessary to use collective consultation processes to seek agreement.

Employers must write to their employees to confirm the terms of the furlough period, to seek and record their agreement to being furloughed (and any impact on their pay) and to allow them the opportunity to discuss this further, should they wish to do so. A copy of this communication should be kept on file. The status of furloughed employees should be reviewed regularly.

*Please see our template form below which can be adapted for your business for this purpose.*

## **Can I furlough an employee who is receiving sick pay or who is self-isolating or who is on unpaid leave or who is shielding?**

Those employees receiving sick pay or self-isolating cannot be furloughed but can be furloughed afterwards.

Employee who were placed on unpaid leave after 28 February 2020 can be furloughed.

Employees who are shielding can be placed on furlough.

## **Can I furlough an employee who is on maternity or other statutory family leave?**

Employees can continue with their leave and can claim statutory pay - the normal rules apply.

The government guidance states that where organisations offer enhanced contractual pay, this is included as wage costs that may be claimed through the job retention scheme. The details of this are not yet clear.

An employee returning to work after a period of statutory family leave may be furloughed.

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### **How long does the Coronavirus Job Retention scheme last for?**

It will be in place for at least 3 months. Claims can be backdated to start from the later of the date employees were laid off or 1 March 2020.

### **How do I tell the government about a furloughed employee and claim the funds?**

Employers can claim once every three weeks – weekly reimbursement is not available. Claims can be backdated to the date employees were laid off or 1<sup>st</sup> March 2020, whichever is the later.

HMRC is building an online portal now for you to do this. The government employer guidance document lists the information you will need to supply and explains the process for claiming, although we expect further detail in the coming weeks

### **We're not at the stage where we need to use the Job Retention Scheme. What other options do we have to keep our business running in these circumstances?**

This will depend on the circumstances and the financial position of your business. Other options may include temporary homeworking, part-time working or lay-off. Again, this must be with the employee's agreement. You might also require employees to use any accrued holiday.

If you ask your employees to work at home, make sure you put in place the necessary insurance, security arrangements (e.g. for data protection purposes), IT and other equipment, and that you consider the employee's health, safety and welfare (e.g. ensuring they have a suitable place to work at home, that they are able to keep in contact with colleagues etc).

### **How can I access the government guidance?**

Here are the links to the employer and employee guidance issued by the government.

- [guidance for employers](#)
- [guidance for employees](#)

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