

COVID-19

FURLOUGHED WORKERS / BRIEFING NOTE

If you cannot cover staff costs due to COVID-19, you may be able to access support to continue to pay part of your employees' wages, to avoid redundancies.

If you intend to access the Coronavirus Job Retention Scheme, you will need to discuss with your employee(s) about becoming classified as a furloughed worker. This would mean that you keep them on your payroll, rather than being laid off.

To qualify for this scheme, your employees should not undertake work for you while they are furloughed. This will allow you to claim a grant of up to 80% of their wage for all employment costs, up to a cap of £2,500 per month.

Your employees will remain employed while furloughed. You could choose to fund the differences between this payment and their salary, but you do not have to.

If your furloughed employees salary is reduced as a result of these changes, they may be eligible for support through the welfare system, including Universal Credit. The Coronavirus Job Retention Scheme is intended to run for at least 3 months from 1 March 2020, but will be extended if necessary.

Rules as outlined in official statements released at 23 March 2020

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. Note that 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 of course 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' to use the Chancellor's words.
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 being built for this purpose.
7. The employer will pay the employee through payroll, using the Real Time Information (RTI) system as usual, as required by the employment contract. This contract may be renegotiated but that is a matter for employment law. So RTI system reporting of payroll will continue as normal.
8. 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 should look to the Coronavirus Business Interruption Loan Scheme to support cash flow in the meantime. The narrative used in the information released so far says 'if your employer cannot cover staff costs due to COVID-19 they may be able to access support...'. This is a conditional phrase which may relate to existing funds available to the employer.

- We do not yet know how these might be determined, nor whether there is a bar of some description.
9. Maximum grant will be calculated per employee and is the lower of:
- 80% of 'wages' (further guidance to follow).
 - £2,500 per month.

FREQUENTLY ASKED QUESTIONS (FAQs)

Which businesses are eligible?

Eligible businesses include charities and not-for-profit organisations and will include single director companies, although the same rules will apply as to other businesses. The grant applies to all UK based businesses.

Owner/managed companies

Many owner managed company director/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.

How is payment going to work in practice?

We understand that the employer will pay the contractually agreed amounts as required by the employment contract in the usual way. This will involve paying the employee, and HMRC the PAYE and both primary and secondary National Insurance Contributions. The grant will be paid directly to the employer. We do not know how this will operate for employers which use a payroll agency.

Employers will claim the grant through a new separate portal to be built by HMRC.

What is the £2,500 maximum grant based on?

The £2,500 monthly grant covers all employment costs, i.e., salary, employer pension contributions required by auto enrolment (if applicable), and employer NIC.

The earnings period to be used to determine the maximum grant has yet to be clarified. For new employees in particular, options will be needed and also for seasonal staff. However, clearly there will need to be a base line and options being considered are likely to include:

Average for a prior period such as 12 months to 1 March or perhaps the month of February alone for a new employee.

For seasonal workers, it might be possible to use the same period last year, such as three months March, April, May 2019.

For those working irregular hours or say, on reduced pay (e.g., maternity or sick leave) a different previous period may be needed.

Will entitlement to other employment benefits continue during the period of furlough?

The rules for the grant will not displace the existing employment contract. So, for example, we would expect the entitlement to holiday and sick pay would depend on the contract.

Employees eligible.

Eligible employees are those on the payroll on 28 February 2020. It has yet to be clarified whether or not those re-employed under a new contract will qualify, although the policy intent would seem to support this would be reasonable.

We have had many questions asking if workers can be moved in and out of being furloughed if work becomes available to an employer and then ceases again? This has yet to be clarified, but we consider it very likely that they will. The scheme is being designed to allow for flexibility so that furloughed staff can be brought back to work to

replace those still working who later become sick. We anticipate that this will be seen as difficult to regulate and anticipate that a minimum period of furlough leave may be built in as a requirement before the person can return to work. So we anticipate that the rules will specifically make provision for:

Sickness cover where a continuing employee is now off sick and a furloughed worker can provide cover.

Where employees agree to share shifts to enable more of them to continue to be paid.

This will again depend on the employment contracts of those affected.

The matter of which employees an employer decides to furlough will be a matter for negotiation with staff and employment law.

The impact on job sharing employees and the decision to furlough will be a matter for negotiation with staff and employment law.

We presume that, subject to anything different stated in the employment contract, eligible employees would also include apprentices and agency workers.

We do not yet know whether the scheme will include deemed employees under the off payroll working rules.

An employee does not have to accept furlough if offered, but the employer could then make the employee redundant instead using the usual employment law procedure.

We understand that staff can study while they are being furloughed.

It is a condition of the scheme that the employee must do no work at all during the furlough period. The intention of the scheme is to allow employers to pay staff who are without work. HMRC will of course have visibility of pay records.

Employees with more than one employment

While we understand that an employee who is furloughed can do no work at all, our current understanding is that the employee can hold a separate employment with a different and unconnected employer which will be unaffected.