

CORONAVIRUS JOB RETENTION SCHEME – FAQ

March 2020

BACKGROUND

What does “furlough” mean?

Furlough is a mandatory time off from work with no pay. It is generally implemented by employers as a cost-saving measure during tough economic times or otherwise slow periods. In the US, where it is more commonly used (compared to the UK lay-off rules), it operates to force employees to be temporarily absent from work as an alternative to redundancy, so that they can readily return in due course.

CORONAVIRUS JOB RETENTION SCHEME

The scheme will apply to staff on an employer’s PAYE system, so will not cover self-employed staff. There is the alternative [Self-employed Income Support Scheme](#) for staff who are self-employed as individuals or members of a partnership.

Under the scheme, employers will need to:

- Assess their workforce and designate them into two groups. Those who will continue to work and those affected employees who will no longer work - and designated as “furloughed workers”; and notify employees of this.
- Submit information to HMRC online about employees that have been “furloughed” and their earnings.

Initial Government [guidance can be found at GOV.UK.](#)

KEY ISSUES

All employers with a PAYE scheme that was set up on or before 28 February 2020 will be eligible to apply under the scheme. It will be initially open for three months but may be extended if necessary. The scheme will be able to cover the cost of wages backdated to 1 March 2020. Employers will use an online portal to apply.

Some of the key issues that employers will need to consider are:

1. The Government has made it clear that designating an employee as a “furloughed worker” remains subject to existing employment law and, depending on the wording of individual employment contracts. It would seem therefore that it cannot be imposed on employees. They would need to be in agreement to be furloughed. The scheme does not therefore give employers an automatic right to stop their employees from working and to expect the Government to pick up the salary costs. Although if employees do not agree to be furloughed employers can dismiss by reason of redundancy if the redundancy definitions are met and a proper process followed.
2. The scheme applies only to employees who can no longer work or those who would otherwise have been laid off during this crisis. In instances where an employee could be redeployed/moved to carry on other duties within the business, it will not apply. Further guidance on how this is applied in the Construction Sector specifically will be published by ACE and the Construction Leadership Council in the coming days.
3. In instances where employers have already commenced redundancy processes, the question remains whether they should delay those processes while the scheme is running. The Government has made it clear that its aim is to prevent mass redundancies. It would therefore appear risky to continue with redundancy processes while the scheme is operating. Employers should consider discussing the scheme with ‘at risk’ employees as part of the consultation process and agree to either carry on with the redundancy process (recognising the risks associated with it) or agree to use the scheme as an alternative.

4. Some employers may have already introduced policies such as reduced hours or short-time working linked to the COVID-19 crisis. These employers may need to consider whether they can renegotiate with employees and potentially agree new terms making use of the scheme.
5. It would appear that an employee is not restricted from taking on other work or working for multiple employers while under the scheme; current guidance states that if an employee has more than one employer they can be furloughed for each job. Each job is separate, and the cap applies to each employer individually.

FAQS

Q: Which employees can be furloughed under the Coronavirus Job Retention Scheme?

A: The scheme covers employees on any type of contract, who were on their employers' payroll on 28 February 2020. It includes full-time and part-time employees, employees on flexible or zero contracts and on agency contracts. The scheme also covers employees who have been made redundant since 28 February 2020, if they are rehired by their employer.

Q: Can employees work for the employer when furloughed?

A: To qualify for the scheme, employees must not undertake work for the employer while furloughed. Wages of employees working a reduced schedule due to the pandemic are not covered. The employee must not work for the employer at all during the furlough period. 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 your 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.

Q: Can employees undertake training when furloughed?

A: The employee must not work for the employer at all during the furlough period. 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 your 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.

Q: Is the amount an employer pays net or gross up to £2.5k?

A: HMRC will pay 80% of the employee's usual wage costs, up to £2,500 a month, plus Employer National Insurance contributions and minimum automatic enrolment employer pension contributions on the subsidised wage. The employee's wage will be subject to usual income tax and other deductions.

Q: How does an employer work out how much grant they will receive?

A: For full-time and part-time salaried employees, the employee's actual salary before tax, as of 28 February should be used to calculate the 80%. Fees, commission and bonuses should not be included.

For employees whose pay varies:

- If the employee has been employed for a full twelve months prior to the claim, you can claim for the higher of either: the same month's earning from the previous year or average monthly earnings from the 2019-20 tax year
- 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.
- If the employee only started in February 2020, use a pro-rata for their earnings so far to claim.

Q: What should an employer do about pension contributions for a furloughed worker - do these stop?

A: HMRC will pay 80% of the employee's usual wage costs, up to £2,500 a month, plus Employer National Insurance contributions and minimum automatic enrolment employer pension contributions on the subsidised wage.

Q: Does a contractor qualify for the JRS if the industry is being told to continue working?

A: The Coronavirus Job Retention Scheme has been introduced to support businesses and to prevent redundancies from the impact of Covid 19. Despite the industry being advised to continue working where possible in line with the CLC Site Operating Procedures if individual companies within the industry are struggling due to the impact of the pandemic on their revenue they would be supported under the Scheme to ensure that their employees remain in work.

Q: Will a contractor only qualify once work has to cease because of supply shortages or the business runs into financial difficulties because clients withhold payment?

A: The scheme is intended to support employers who cannot cover staff costs due to COVID-19, in order to avoid redundancies. If individual companies within the industry are struggling due to the impact of the pandemic on their revenue they would be supported under the Scheme to ensure that their employees remain in work. It is into clear in the guidance but HMRC may in future require evidence of revenue shortfall.

Current guidance states that all UK businesses are eligible as long as they:

- Designate affected employees as 'furloughed workers'
- Notify those employees of this change – changing the status of employees is subject to existing employment law and employment contracts.

Q: What happens to employees that are off sick?

A: Employees on sick leave or self-isolating should get Statutory Sick Pay or Contractual Pay depending on the terms of their contract but can be furloughed after this. Employees who are shielding in line with public health guidance can be placed on furlough.

Q: When will companies get the money?

A: HMRC is working to get the new online portal that supports the scheme up and running. We understand that they are building the system from scratch. We expect the first grants to be paid within weeks and before the end of April and backdated to the start of the furlough period for the employee.

Please note this this guidance note supersedes a previously released version. We will be adding to this note with a substantial edit early next week with additional information.

Make sure you keep up-to-date with the latest best-practice, guidance and advice on COVID-19 on our [website](#).

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