

The Coronavirus Job Retention Scheme

Our current understanding of furloughing employees during the coronavirus pandemic.

Introduction

- 1.1 On 20th March 2020 the Government announced that it would introducing the "Coronavirus Job Retention Scheme". The purpose of the Job Retention Scheme is to enable employers to retain staff who are not required to work for the foreseeable future, and who may therefore otherwise be laid off without pay or made redundant. Under the Scheme, the Government has committed to paying staff 80% of their usual salary, up to £2,500 per month.
- 1.2 In order to access the Scheme, employers must "furlough" (or temporarily lay off) affected staff. The term "furlough" is new and refers to a process where staff can be retained as employees, but not undertaking any work. If staff are placed on furlough leave the period of furlough leave must be a minimum of three weeks. The initial period during which staff can be placed on furlough leave is the three months from 1st March to 31st May 2020 but this may be extended. Employers will not be required to place staff on furlough leave for this whole three-month period but employers may choose to do so. This will depend on whether they are needed to undertake their work during this period.
- 1.3 It is important to note that the Job Retention Scheme will operate by way of reimbursement. The employer will still need to pay staff in the first instance. The mechanics for seeking reimbursements will not be up and running until April 2020 but employers will be able to backdate their application for reimbursement of wages to 1st March 2020.
- 1.4 The whole process will be managed through HMRC. Applications for reimbursements can be made every three weeks (ie employers can't claim weekly reimbursements).
- 1.5 The scheme is available to is available to employees paid through a PAYE scheme and who were employed on 28th February 2020.
- 1.6 It is anticipated that the Government will issue further guidance on the mechanics of claiming the payment in due course. Currently it expects the scheme will be up and running by the end of April.

How does it work?

- 1.7 An employing organisation (such as PCC, the BDBF and so on) need to decide which of their employees they are selecting for furloughed leave.
- 1.8 Furlough is likely to be appropriate where there is a reduction in work available and an employee would otherwise be at risk of being laid off or made redundant. Employees who are placed on furlough leave remain as an employee until work becomes available again and will continue to receive pay with the employer reclaiming up to 80% of each furloughed employee's salary through HMRC (up to £2500 per month).
- 1.9 The employer may also choose to pay the remaining 20% of a furloughed member of staff's salary notwithstanding that this cannot be reclaimed from HMRC. The Government guidance confirms that the employer will not be obliged to pay the

additional 20%. Careful consideration will need to be given to treat all staff fairly and consistently.

- 1.10 In addition to the reimbursement of 80% of salary the employer can reclaim associated employer NICs and minimum auto-enrolment pension contributions on that salary.
- 1.11 The scheme is very specific that any employee on furlough leave MAY NOT work for that organisation during this time - although they can undertake any opportunities for learning, prof development, or volunteer (basically they cannot do anything that generates income for the employer).
- 1.12 It may be that an employee has more than one part time job so may be put on furlough leave from either or both jobs. In reality this is a scheme to protect employment.
- 1.13 An employee must be furloughed for a minimum of three weeks and that three weeks can start any time during the duration of the scheme. They can then come off furlough and return to work.

`Furlough' and illness or working from home?

- 3.1 If someone is absent from work as a result of medical advice and self-isolation guidance and they are receiving statutory or contractual sick pay they should **not** be placed on furlough leave. However, staff could be furloughed later when they are ready to return to work.
- 3.2 Furlough should **not** be used as an alternative for sickness absence. The critical question is if there is work for them to do, or if they would otherwise have been at risk of redundancy due to lack of work. If they would otherwise have been in a category of staff who would have been furloughed it may still be appropriate to identify them as furloughed. If but for their illness or self-isolation they would be undertaking work, then it will not be appropriate to furlough them.
- 3.3 If staff are working remotely and there is work to do they should be retained and paid as normal.

How is the salary calculated?

- 4.1 The 80% salary is based on the higher of;
 - (i) the same month's earning from the previous year (for example if someone is furloughed in March this will be based on earnings from March 2019 if they are furloughed in April it will be based on earnings from April 2019 etc); or
 - (ii) the average monthly earnings in the 2019-20 tax year

How are staff informed or consulted with them on being designated a furloughed worker?

- 5.1 Ideally staff need to agree that they will be furloughed. As a starting point staff need to be written to explaining who you have identified as furloughed and ask them to confirm their agreement to this in writing. Should they not agree then it will be necessary to consult with them (over the telephone or video link) to understand their objections and if these can be overcome. Ultimately then consideration will need to be given as to whether to simply notify them of the change of status or alternatively make redundancies. Further advice should be sought at this stage.

- 5.2 Where all employees or whole teams or categories of staff are identified as not needed to work during this period then selection will be straightforward. However, where a reduction in staffing is required with some staff continuing to work, selection will be more complicated. In these circumstances a fair and objective selection process should be designed in order to justify the designation of all staff as either furloughed or working. It might be appropriate to seek volunteers or alternatively have clear criteria. In all cases there should be a document that can be shared that sets things out clearly, the rationale for furloughing staff, and if a selection has to be made, the basis for this.

Is anyone exempt from the scheme?

- 6.1 Yes, any employee appointed on or after 1 March 2020 is excluded from the scheme.

What if a post has already been made redundant?

- 7.1 An organisation can re-employ people who have been made redundant since 1st March, and then place them on furlough leave as an alternative to dismissal. It may be appropriate to consider redundancy for certain posts at a later date.

Anything else I should remember?

- 8.1 Furloughed absence is just a pause on day to day working whilst remaining on the pay roll, so the person is still part of the organisation and should be kept up to date with news and information.
- 8.2 Any furloughed member of staff, and any member of staff off sick continue to attract all their usual employment rights, including the accrual of annual leave so there may need to be a plan of how that leave is then taken when things 'get back to normal' to avoid people all then being off at the same time!
- 8.3 Throughout any period of sick leave of furloughed absence please do remember that there is still a duty of care and issues of wellbeing, support and pastoral care that should be in place so that people still feel part of things.

9. What about self employed people?

- 9.1 There are no steps to be taken here, HMRC will be in touch directly with a self employed person as there is a specific earnings protection scheme for the self-employed.

10. Is there further advice and guidance?

ACAS <https://www.acas.org.uk/>
GOV.uk <https://www.gov.uk/guidance/claim-for-wage-costs-through-the-coronavirus-job-retention-scheme>

Sample furlough leave letter

Before this letter is sent a conversation should take place so that there is time for any questions and clarifications to happen and reassurances given.

(This should ideally be sent by email with a hard copy letter following by post. The individual must consent to the change to their circumstances before furlough arrangements are implemented).

Organisation Logo etc

[Date]

Private and Confidential

[Name]

[Address]

Dear [Name]

Impact of coronavirus on our organisation

[I refer to our [meeting/video conferencing call] with [you/the workforce] on [date], during which we explained how the COVID-19 outbreak has impacted our organisation and the details of the Government's Coronavirus Job Retention Scheme.]

To minimise the risk to the sustainability of roles because of the [temporary closure of your place of work/temporary reduction in the need for your role/downturn in work], we propose to "furlough" your role on [full pay/pay reduced by 20%] from [date/immediately] until [date OR further notice].

To reassure you, furlough is a temporary period of leave to help us deal with the fact that there is [no/less] work available for your role at this time due to the current COVID-19 situation. You will remain employed by us during this period and your usual contractual terms and arrangements will all still apply such as continuing to accrue annual leave.

Your terms and conditions of employment will be unaffected, except in the following areas which shall be amended on a temporary basis for the period that your employment is furloughed, as follows:

- Your hours of work will be reduced to zero;
- You will continue to receive your usual [wages/salary] [, although reduced by 20%].
- You will not be required, or permitted, to work during this period and you should not attend your usual workplace (unless we request you to attend). However, you can and are encouraged to undertake any development activities related to your work.

It is important to say that you must remain in touch and available for work throughout this time so that we can bring you back in immediately as the situation changes.

We will be regularly monitoring any further government announcements and will keep you abreast of any important changes that may affect this proposed new arrangement.

Due to the urgent nature of this proposal, please respond to this letter within [24 hours/3 days etc.] to confirm your acceptance or otherwise of this proposal.

If you are willing to accept this temporary change to your employment contract, please sign and complete the section at the bottom of this letter and return it to [NAME] by email to xxxx).

If you would like to discuss this further or have any concerns please do let me know.

We understand this will be difficult news for you however, by making this decision we hope to be able to not have to make more uncomfortable decisions around unpaid leave or potential redundancies during these unprecedented times.

I look forward to hearing from you.

With best wishes

FURLOUGING OF EMPLOYEES

I confirm that I agree / do not agree (*delete as appropriate*) to be designated as on 'furlough leave'

Signed _____

Date _____