

EMPLOYERS CORONAVIRUS GUIDANCE

This guide has been split into sections

- Part 1 – General Guidance – this covers employers general responsibilities
- Part 2 – Job Retention Scheme (JRS) – advice on how the scheme will work
- Part 3 – General Q&A

OVERVIEW

Please remember that Employment Law still applies and processes must be followed carefully.

The difference at the moment is that we are in unprecedented times and it has been chaotic. We are still not clear about a lot of things.

Please document all of your key decisions. We have to make difficult decisions at the moment based on incomplete information. Keep a record of your thought processes.

In order to minimise and slow down the spread of the virus, which will in turn help to ease the pressure on the NHS and ultimately reduce the number of people dying from the virus, the Government have put in place systems to help us all.

For employers and employees, the Job Retention Scheme has been introduced.

This will make it easier to lay off staff short term and avoid making staff redundant during these difficult and chaotic times.

It will also provide grants to help cover a large proportion of employees' wages.

The Government rhetoric throughout this difficult time has been that they will stand by Businesses but Employers should consider all of the reliefs available to try and avoid making staff redundant.

I have completed a separate guide for Company Directors. Company Directors can be furloughed subject to certain conditions which I have outlined in that guide.

PART 1 - GENERAL GUIDANCE – EMPLOYERS GENERAL RESPONSIBILITIES

The ACAS General Guidance is replicated below;

<https://www.acas.org.uk/coronavirus>

Staying at home and social distancing

Current government advice is for everyone to stay at home, except in specific situations.

This includes:

- only going outside for food, health reasons or work (where this absolutely cannot be done from home)
- staying 2 metres (6 feet) away from other people ('social distancing')
- avoiding busy commuting times on public transport where travel is essential
- washing your hands as soon as you get home

Employers should support their workforce to take these steps. This might include agreeing more flexible ways of working.

For full guidance on staying at home, see:

<https://www.gov.uk/coronavirus>

Working from home

For any employee working from home, the employer should:

- pay the employee as usual
- keep in regular contact
- check on the employee's health and wellbeing

Find out more about:

<https://www.acas.org.uk/working-from-home>

<https://www.hse.gov.uk/toolbox/workers/home.htm>

If an employee does not want to go to work

Some people might feel they do not want to go to work if they're afraid of catching coronavirus. This could particularly be the case for those who are at higher risk.

An employer should listen to any concerns staff may have and should take steps to protect everyone.

For example, they could offer extra car parking where possible so that people can avoid using public transport.

If an employee still does not want to go in, they may be able to arrange with their employer to take the time off as holiday or unpaid leave. The employer does not have to agree to this.

If an employee refuses to attend work without a valid reason, it could result in disciplinary action and/or loss of pay.

<https://www.acas.org.uk/absence-from-work>

Using holiday

You do have the right to tell employees and workers when to take holiday if they need to. For example, you can decide to shut for a week and everyone has to use their holiday entitlement, although this does remain subject to usual employment law considerations.

Dependents

Employees are entitled to unpaid emergency time off work to help someone who depends on them ie a child.

However there is no statutory right for this time off and therefore it can be unpaid.

Employees With Symptoms

If someone comes to work with the symptoms of CV or develops symptoms at work, please call Public Health England for advice.

As an employer you will have to pay your staff Statutory Sick Pay (SSP) if they are off work and need to self isolate. Employers will be able to reclaim any SSP paid for up to 2 weeks for employees off work due to the Virus.

You are unlikely to get a sick note although these can now be obtained online from 111 – however, we recommend that you ask the employee to put in writing why they are off ASAP. The reason for being off can include;

- they have coronavirus
- they have coronavirus symptoms, for example a high temperature or new continuous cough
- they have been told to self-isolate by a doctor or NHS 111

You should also ask them to provide regular updates.

Temporary Lay Offs & Furloughing

If as an employer, you tell your staff not to come to work, when they are not sick, subject to any clause in their contract of employment entitling the employer to lay off or short time working, they are entitled to their normal pay, subject to the Job Retention Scheme provisions that have been announced.

You may actually need to close the workplace to follow the medical guidance from the Government. The Government has introduced the **Job Retention Scheme (JRS)** to help employee and employers in this situation.

Without the JRS, employers would need to follow a strict legal process to send staff home. The Government want to simplify this process, so that we can follow the medical guidance.

Using the JRS, Employers can write to some or all employees, advising them that they have been proposed to be Furloughed.

Assuming the employees agree to becoming Furloughed, the Employer can pay them 80% of their wages and the Employer will be able to reclaim this from HMRC, via an online portal, which will be up an running sometime in April.

Furlough means, *to allow or force someone to be temporarily absent from work.*

If you do have a contractual right to lay off an employee, you should still seek their consent to furlough them. This is because furlough is a new concept and your lay clause is unlikely to cover this. Clearly employees who otherwise face the option of no pay if you did lay them off, are likely to agree to being furloughed.

Be aware that if you are choosing some employees to furlough but not others, this is allowed under the scheme, but you will need to ensure that you use a fair selection process as the Government has flagged that equality and discrimination laws would apply in the usual way. We understand that this can be a simplified selection matrix or criteria similar to a redundancy selection criteria.

Employers should still run the payroll normally and file RTI returns to HMRC. The only payroll processing change, is that pay from the effective date of Furloughing, will be based on 80%* of normal pay. (*Unless the employer has agreed to pay the extra 20%, which they will not be able to reclaim from HMRC)

PART 2 – JOB RETENTION SCHEME (JRS) - PRACTICAL ADVICE ON HOW THE JRS WILL WORK

The Coronavirus Job Retention Scheme is a temporary scheme open to all UK employers for at least three months starting from 1 March 2020.

<https://www.gov.uk/government/publications/guidance-to-employers-and-businesses-about-covid-19/covid-19-support-for-businesses#support-for-businesses-through-the-coronavirus-job-retention-scheme>

We expect the scheme to be up and running by the end of April.

Employers will need to use a portal to claim for 80% of furloughed employees' (employees on a leave of absence) usual wage costs, up to £2,500 a month, plus the associated Employer National Insurance contributions and minimum automatic enrolment employer pension contributions on that wage.

While on furlough, the employee's wage will be subject to usual income tax and other deductions. Payroll is processed in much the same way.

The scheme is applied to individual employees and you can have

Some employees who have not been furloughed, are working who will get their normal pay and the JRS does not apply and

Some employees who have been furloughed, who are not working and they are paid 80% and the JRS Does apply

To be eligible for the JRS subsidy and comply with employment law, employers should write to their employee confirming that they have been furloughed and keep a record of this communication.

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

You do not need to place all your employees on furlough. However, those employees who you do place on furlough cannot undertake work for you.

Practically, you have to operate the payroll system, pay the employees and file your RTI returns in the normal way, subject to potentially reducing gross pay to 80% for those employees who have been furloughed. Once the HMRC online portal has been set up, a claim can be made for the gross employer costs and HMRC will pay that money back to the employer.

If we operate your payroll, we will do all of this for you, we just need additional information regarding your payroll during this time, who is furloughed, when they were furloughed, if any employees have been off Sick as a result of the virus etc.

Where our clients operate their own payroll, we will help and advise you on the processes.

When announcing the JRS, the Chancellor said, *“We will pay grants to support jobs for as long as necessary. There will be no limit on what the budget will be. He added that HMRC were working night and day to implement the programme. This is as comprehensive a scheme as possible for people in employment, an economy wide intervention.”*

The Government want employers to look at the support available before laying off staff. The Chancellor said that he hoped that businesses would do everything that they could to avoid laying off staff.

The Government (via HMRC, Employers and the PAYE System) will pay up to 80% of wages for employees not working, up to a maximum of £2,500 pm if you keep the staff on the payroll.

The scheme applies to all employers and it is for all employees under the PAYE system. It will apply even if employers have laid staff off since 1 March.

This will be a grant from HMRC to cover wages. It is therefore not a loan but it will need to be claimed and this will be through the PAYE system.

The scheme is backdated from 1 March and will be for 3 months initially. So you can claim for staff who have already been laid off. The scheme may be extended if required.

The grants will be fully implemented before the end of April (potential cashflow issues in the interim)

This should get a lot of money into the economy, it will help to minimise redundancies and unemployment. Crucially it will ensure the continued flow of funds to lots of individuals (employees) and it will reduce the Governments’ admin burden of dealing with lots of individuals.

This gives employers some more certainty so that they can take stock and they can take a bit of time now to make more reasoned decisions. It is not a ‘golden ticket’ businesses have other costs to consider.

I believe that this shows that the Government value all businesses very highly and that they need your help at the moment to administer this huge, unprecedented, flow of money into the economy, to help mitigate this short term shock to our economy.

There will inevitably be significant long term economic effects but for now we need to get over this interim period, whilst the spread of the virus is brought under control.

80%?

The employer does not have to pay the other 20% to employees. Employers will only be entitled to reclaim 80% of the Gross Employer Wage Cost.

Employees will receive less net pay. However we are advising employers to ask their employees to look at their own cashflow and see what they can do to ease the burden. We are all in this together, we are all going to feel some of the pain.

The Government would obviously like employers to pay the other 20% if they can afford it. However, business cashflow over the next 12 months at least, will be difficult.

For the economy to recover as quickly as it can, we need as many businesses as possible to still be here in 3 months, 6 months etc so we would advise clients to think carefully before you commit to paying the extra 20%. Please consider your cashflow requirements very carefully.

Not Working?

So what does this mean? The grant can be used to pay for staff who are furloughed.

Furlough means, *to allow or force someone to be temporarily absent from work.*

At the moment that means, anyone asked to stop working during the CV pandemic but kept on the payroll which avoids them being made redundant.

This is a difficult area, which we could do with some more guidance.

At the moment, the best advice is that to be eligible for the subsidy, when on furlough, an employee cannot undertake work for or on behalf of the organisation. This includes providing services or generating revenue.

Cashflow?

The funds from the HMRC grant system will not be immediate. I would suggest that the funding will not start to come through until mid April at the earliest.

PART 3 – GENERAL Q&A

Employees that you can claim for

Furloughed employees must have been on your 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 (*this may need further guidance*)
- employees on flexible or zero-hour contracts

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

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

While on furlough, the employee's wage will be subject to usual income tax and other deductions.

If an employee is working, but on reduced hours, or for reduced pay, they will not be eligible for this scheme and you will have to continue paying the employee through your payroll and pay their salary subject to the terms of the employment contract you agreed.

If your employee is on unpaid leave

Employees on unpaid leave cannot be furloughed, unless they were placed on unpaid leave after 28 February.

If your employee is on Statutory Sick Pay

Employees on sick leave or self-isolating should get Statutory Sick Pay, but can be furloughed after this.

Employees who are shielding in line with public health guidance can be placed on furlough.

If your employee has more than one job

If your 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.

If your employee does 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 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.

If your employee is on Maternity Leave, contractual adoption pay, paternity pay or shared parental pay

Individuals who are on or plan to take Maternity Leave must take at least 2 weeks off work (4 weeks if they work in a factory or workshop) immediately following the birth of their baby. This is a health and safety requirement. In practice, most women start their Maternity Leave before they give birth.

If your employee is eligible for Statutory Maternity Pay (SMP) or Maternity Allowance, the normal rules apply, and they are entitled to claim up to 39 weeks of statutory pay or allowance.

Employees who qualify for SMP, will still be eligible for 90% of their average weekly earnings in the first 6 weeks, followed by 33 weeks of pay paid at 90% of their average weekly earnings or the statutory flat rate (whichever is lower). The statutory flat rate is currently £148.68 a week, rising to £151.20 a week from April 2020.

If you offer enhanced (earnings related) contractual pay to women on Maternity Leave, this is included as wage costs that you can claim through the scheme.

The same principles apply where your employee qualifies for contractual adoption, paternity or shared parental pay.

Work out what you can claim

Employers need to make a claim for wage costs through this scheme.

You will receive a grant from HMRC to cover the lower of

80% of an employee's regular wage or
£2,500 per month,

plus the associated Employer National Insurance contributions and minimum automatic enrolment employer pension contributions on that subsidised wage.

Fees, commission and bonuses should not be included. (*thought will need to be given to 'regular' overtime?*)

At a minimum, employers must pay their employee the lower of 80% of their regular wage or £2,500 per month. An employer can also choose to top up an employee's salary beyond this but is not obliged to under this scheme.

We will issue more guidance on how employers should calculate their claims for Employer National Insurance Contributions and minimum automatic enrolment employer pension contributions, before the scheme becomes live.

Full time and part time employees

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.

Employees whose pay varies

If the employee has been employed (or engaged by an employment business) 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
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.

Once you've worked out how much of an employee's salary you can claim for, you must then work out the amount of Employer National Insurance Contributions and minimum automatic enrolment employer pension contributions you are entitled to claim.

Employer National Insurance and Pension Contributions

All employers remain liable for associated Employer National Insurance contributions and minimum automatic enrolment employer pension contributions on behalf of their furloughed employees.

You can claim a grant from HMRC to cover wages for a furloughed employee, equal to the lower of 80% of an employee's regular salary or £2,500 per month, plus the associated Employer National Insurance contributions and minimum automatic enrolment employer pension contributions on paying those wages.

You can choose to provide top-up salary in addition to the grant. Employer National Insurance Contributions and automatic enrolment contribution on any additional top-up salary will not be funded through this scheme. Nor will any voluntary automatic enrolment contributions above the minimum mandatory employer contribution of 3% of income above the lower limit of qualifying earnings (which is £512 per month until 5th April and will be £520 per month from 6th April 2020 onwards).

National Living Wage/National Minimum Wage

Individuals are only entitled to the National Living Wage (NLW)/National Minimum Wage (NMW) for the hours they are working.

Therefore, furloughed workers, who are not working, must be paid the lower of 80% of their salary, or £2,500 even if, based on their usual working hours, this would be below NLW/NMW.

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.

What you'll need to make a claim

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 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.

Claim

You can only submit one claim at least every 3 weeks, which is the minimum length an employee can be furloughed for. Claims can be backdated until the 1 March if applicable.

What to do after you've claimed

Once HMRC have received your claim and you are eligible for the grant, they will pay it via BACS payment to a UK bank account.

You should make your claim in accordance with actual payroll amounts at the point at which you run your payroll or in advance of an imminent payroll.

When the government ends the scheme

When the government ends the scheme, you must make a decision, depending on your circumstances, as to whether employees can return to their duties. If not, it may be necessary to consider termination of employment (redundancy).

Employees that have been furloughed

Employees that have been furloughed have the same rights as they did previously. That includes Statutory Sick Pay entitlement, maternity rights, other parental rights, rights against unfair dismissal and to redundancy payments.

Once the scheme has been closed by the government, HMRC will continue to process remaining claims before terminating the scheme.

Income tax and Employee National Insurance

Wages of furloughed employees will be 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 cease saving into a workplace pension scheme.

Employers will be liable to pay Employer National Insurance contributions on wages paid, as well as automatic enrolment contributions on qualifying earnings unless an employee has opted out or has ceased saving into a workplace pension scheme.

Tax Treatment of the Coronavirus Job Retention Grant

Payments received by a business under the scheme are made to offset these deductible revenue costs. They must therefore be included as income in the business's calculation of its taxable profits for Income Tax and Corporation Tax purposes, in accordance with normal principles.

Businesses can deduct employment costs as normal when calculating taxable profits for Income Tax and Corporation Tax purposes

What if your employee had already agreed or been placed on unpaid leave?

They cannot be furloughed unless they were placed on unpaid leave after 28 February.

What if your employee is sick or self isolating as someone they live with has symptoms?

Those employees should get Statutory Sick Pay (SSP) from day one of their absence at £94.25 per week. Employers can claim up to two weeks of that SSP back from the Government, although please note that SSP can continue to be claimed by the employee for a longer period if they need to. You can ask your employee for a self isolation note from their GP if you want proof that they do need to self isolate.

If the employee is on SSP for the reasons above they should remain on SSP but can be furloughed after that.

Employees that are shielding in line with Public Health Guidance because they fall into the high risk categories can be placed on furlough. These persons are strongly advised to stay at home at all times and avoid any face-to-face contact for a period of at least 12 weeks from the day they receive the letter.

Can you put people on and off furlough?

The minimum length of time an employee can be furloughed for is three weeks.

Speaking on a CBI webinar this morning, Ben Kerry from HMRC who was part of the team designing the Scheme said it was possible to put people on and off furlough provided the 3 week minimum period of furlough is met each time.

Does Holiday accrue through the period of furlough?

The guidance is silent on this but Ben Kerry from HMRC confirmed that holiday does accrue through furlough. He also confirmed that if you had placed employees on holiday while waiting to see what the guidance was and before furloughing them, that you should only claim furlough from the end of that holiday period. You cannot back date that to the date the business closed for example.

Can Directors of a business furlough?

The guidance is silent on this but Ben Kerry from HMRC confirmed that a director can do so provided they were paid via PAYE as at 28 Feb 2020. Company Directors can complete their statutory duties, even if furloughed. This is the only work allowed.

What will happen when the scheme ends?

You must then make the decision as to whether employees can return to their previous duties and pay. If not, you may then need to consider making them redundant or agreeing a reduction in pay and hours with them. If you have a lay off or short-term working clause in their contract you may also be able to use this at that stage. Please seek legal advice at that stage so we can guide you on avoiding any pitfalls.

We have been liaising with Gill Fribbance at Nantes Solicitors throughout this process

At this stage we also understand that it may be possible to make an employee redundant if you wish even if they are furloughed. The usual rules on redundancy would then apply and the grant for that employee would then stop.