

The Coronavirus Job Retention Scheme: Furlough Guidance

The following is our understanding of this policy and how this will work based on the information published so far. ***It should not be relied on for advice at this stage but is intended to give an indication of how the scheme will work.***

Key policy objectives of the scheme

Overall objective is to keep people at home while enabling employers to retain staff who will be needed when they begin to rebuild their businesses in the future. This will enable work to begin again with a critical core who have the necessary knowledge.

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. In other words furloughing applies from the date that you notify your employees that they are being furloughed (i.e. the date they stopped work), not the date that you make the payments. You cannot furlough someone retrospectively.

This will of course be subject to employment law in the usual way.

3. It is available to employees on the payroll at 29 February 2020.
4. All UK businesses are eligible, 'any employer on 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'. The notes published so far, use the phrase 'wage for all employment costs up to a cap of £2,500 per month'. It is our understanding that this includes employers' NIC and pension contributions. Wages will be determined by reference to a defined period (yet to be announced).
 - £2,500 per month.

Illustration

X Ltd employs Mr A at an annual salary of £24,000, so £2,000 per month. Mr A has opted out of auto enrolment.

Each month, Mr A currently receives net pay of £1,665 which is after deducting PAYE of £191 and employees NIC of £144. On this salary, the employer pays employers' NIC of £174.

The available grant for the employer is the lower of

- (a) 80% of (£2,000 + £174), and
- (b) £2,500

So a grant of £1,739.

The cash required by X Ltd to furlough based on maintaining the existing salary is £435 per month. It is a matter for employment law whether the employer is required to pay this top up. Discussions with employees may have agreed that the employee has agreed to a different arrangement during their furlough.

Notes to illustration based on an extended understanding of how the scheme will work

1. If Mr A had not opted out of auto enrolment, X Ltd would also be making pension contributions on his behalf. If so, the available grant is based on 80% of (gross salary + Employers' NIC + employers pension contributions paid), subject to the monthly cap of £2,500.
2. We understand that the rules for the scheme are being designed with underlying reference to employment law. If the individual is still under contract, Mr A can expect to receive his salary in full. The £1,739 grant paid to X Ltd should not be taken as the new maximum cost of employment to the employer unless the contract has been redrafted.
3. Subject to the employment contract and any amendment, the salary which the employer actually pays the employee during the furlough period may be different to the pay paid used as the reference period and upon which the grant figure is based.

Pubco - a scenario

In the following illustration, the business has already closed as instructed by the government. We have had a number of enquiries along similar lines and are seeking clarification of our understanding of the rules apply.

Mr & Mrs Fuller are the tenants of a pub. They have a substantial wet and food trade as the pub is in a coastal location and does good trade over the Summer. The pub is open all year round.

Mr & Mrs Fuller operate the pub through a limited company (Pubco). They take salaries of £8,600 each and withdraw profits of £30,000 each in the form of dividends. They live above the pub and work long hours being in the pub every day.

Pubco employs three permanent staff supplemented by extra seasonal staff in the Summer months and at Christmas.

The pub closed on 20 March as instructed by the Prime Minister. and following the Chancellor's announcement on 20 March, Pubco has furloughed its staff other than Mr & Mrs Fuller who are still living above the pub and dealing with the company administration. The contracts of employment of the other staff have been varied to permit furloughing and the three permanent staff members have agreed to accept a pay reduction to 80% of the previous level. The seasonal staff for this year have not yet been hired.

Our understanding is that Pubco will be eligible to receive the government grant support under the Coronavirus Job Retention Scheme for the monthly wages of the 3 permanent staff members. No grant support is available to support the living costs of Mr & Mrs Fuller.

Mr & Mrs Fuller will need to look for alternative support while the pub remains closed.

Coronavirus Job Retention Scheme further details

The following paragraphs describe our understanding of the scheme and are our proposed guidance only:.

Which businesses are eligible?

1. 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

2. 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?

3. 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.

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

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

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

6. 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:

- a. Average for a prior period such as 12 months to 1 March or perhaps the month of February alone for a new employee.
- b. For seasonal workers, it might be possible to use the same period last year, such as three months March, April, May 2019.
- c. For those working irregular hours or say, on reduced pay (eg, maternity or sick leave) a different previous period may be needed.

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

7. 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

8. Eligible employees are those on the payroll on 1 March 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.

9. 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:

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

10. The matter of which employees an employer decides to furlough will be a matter for negotiation with staff and employment law.
11. The impact on job sharing employees and the decision to furlough will be a matter for negotiation with staff and employment law.
12. We presume that, subject to anything different stated in the employment contract, eligible employees would also include apprentices and agency workers.
13. We do not yet know whether the scheme will include deemed employees under the off payroll working rules.
14. If someone isn't working for another reason i.e. they have to look after their children, then you can't furlough them. They are on unpaid leave.
15. 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.
16. We understand that staff can study while they are being furloughed.

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17. 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.

18. You can offer it to some and not to others but you should have a fair process e.g. can't send your friend home on 80% of the pay, but keep someone else doing a full job for just 20% more without a process.

Employees with more than one employment

17. 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.

Additional information

- <https://www.gov.uk/government/publications/guidance-to-employers-and-businesses-about-covid-19/covid-19-guidance-for-employees>
- <https://www.gov.uk/government/publications/guidance-to-employers-and-businesses-about-covid-19/covid-19-support-for-businesses>