

COVID-19 – Furloughed Workers FAQs Updated 15.04.20

Government guidance:

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

Government direction to HMRC:

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/879484/200414_CJRS_DIRECTION_-_33_FINAL_Signed.pdf

Wording in green font – changes made on 09.04.20

Wording in red font – changes made on 15.04.20

What is the support available to me?

Eligible employers can contact HMRC for a grant to cover a proportion of a person's wage who is not working but are furloughed (given a temporary leave of absence) and kept on payroll

The beginning of the guidance states "*if you cannot maintain your current workforce because your operations have been severely affected by Coronavirus, you can furlough employees.*"





Importantly, on 15 April 2020, the Government's Treasury Department issued a Direction to HMRC outlining instructions for making payments under the CJRS. This is likely to amount to definitive guidance for HMRC to work with going forwards. The Direction now simply states that the scheme applies to anyone furloughed "*by reason of circumstances as a result of coronavirus or coronavirus disease*" so there is no reason to show particular hardship or a redundancy situation in respect of an employee.

The scheme will run from 1 March to 31 May initially.

Who is the scheme open to?

All UK employers that had created and started a PAYE payroll scheme on or before 19 March 2020, and who have a UK bank account.





Any UK organisation with employees can apply, including:

-  businesses
-  charities
-  recruitment agencies (agency workers paid through PAYE)
-  public authorities

Who is covered by the scheme?

Furloughed employees must have been on your PAYE payroll on or before 19 March 2020 **and** must have been notified to HMRC on an RTI submission on or before 19 March 2020. The extension from 28 February 2020 (contained in previous guidance) is likely to be of limited relevance to many employers as RTI submissions are made at the same time as payroll is run. Unless an employee is weekly paid or a monthly pay date occurs early in the month, employees who started between 28 February and 19 March are still unlikely to qualify for support.

The scheme covers:

-  full-time employees
-  part-time employees
-  employees on agency contracts (only employees on agency contracts who are not working).
-  employees on flexible or zero-hour contracts

Foreign nationals are eligible to be furloughed. Grants under the scheme are not counted as 'access to public funds' and businesses can furlough employees on all categories of visa.

It has been confirmed that apprentices can be furloughed but any time they spend training must be paid at relevant minimum wage. There is a link to detailed guidance for employers on breaks in learning, the encouragement of remote learning and keeping records on the gov.uk website.

The scheme has been widened by now stating "*if you made employees redundant, or they stopped working for you on or after 28th February 2020, you can re-employ them, put them on furlough and claim for their wages through the scheme*". This was previously limited to those who were made redundant after 28th February 2020.

It has now been confirmed that employees who transferred under TUPE after 19th March 2020 are covered under the scheme.

When will the scheme be up and running?

The portal should be live on 20th April, with the first payments being made by 30th April. Generally, the aim is for payments to be made within 4-6 working days of submission of a claim, and claims can be made up to 14 days in advance of the end of a pay period.

What exactly can I claim?

Commercial. Decisive. Expert.

Employers can use a portal to claim for 80% of furloughed employees' usual monthly 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 (so not on any enhancement). **It has been clarified that only the National Insurance and pension contributions on the 80% or £2,500 can be claimed (so any NI or pension contributions on a top-up would be the employer's responsibility).** For clarity, the pension contributions must be paid into the scheme as well.

HMRC 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.

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

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.

How do I calculate what my worker is due?

Salaried employees:

- For salaried employees, the employee's actual salary before tax, **in the last pay period prior to 19 March** should be used to calculate the 80%. Contractual fees, overtime, commission and bonuses are now 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 **has been employed for less than a month**, use a pro-rata for their earnings so far to claim.

When calculating pay the following now needs to be noted:

- When calculating pay, the Direction to HMRC states anything which is not "regular salary or wages" should be disregarded, including any performance related bonus and any conditional payments (e.g.**

where a threshold must be met). It appears that only guaranteed commission (not linked to any performance, thresholds or objectives) will be payable under the scheme;

- Discretionary bonus and commission payments should be excluded;
- The cost of non-monetary benefits, including taxable benefits in kind, and any benefits provided through a salary sacrifice scheme are excluded when calculating the employee's salary. This does suggest that monetary benefits (most commonly car allowance) are included when calculating this salary.

Can my employee undertake any work for me?

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

Can my employee undertake other work or volunteer while furloughed?

The guidance now clarifies that employees may not only continue with secondary employment but may also start a new job (subject to the employer's consent). This could put some employees in a more beneficial position financially.

A furloughed employee can take part in volunteer work.

Can my employee undertake training while furloughed?

A furloughed employee can take part in training, as long as it does not provide services to or generate revenue for, or on behalf of your organisation. 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.

I put some of my employees on short-time working/ agreed a pay cut – are they covered by the scheme?

No – the employee must have been laid off in order to qualify. If there is genuinely no work for the employee to perform, they could subsequently be furloughed.

What if my employee takes annual leave?

Currently if an employee is on maternity leave they can be furloughed but should be paid what they would have been entitled to on maternity leave ie. SMP. By analogy, therefore, an employee who is on annual leave could also be furloughed however they should be paid what they would have been entitled to on annual leave ie. 100%, with 80% of this being reclaimed from the government scheme.

What if my employee is already on leave for other reasons?

- ❏ Employees on unpaid leave cannot be furloughed, unless they were placed on unpaid leave after 28 February. **They cannot be furloughed until the date on which it was agreed their unpaid leave would come to an end.**
- ❏ It has been clarified that the scheme should not be used for periods of short-term illness or short-term self-isolation, especially given that a furlough period must last a minimum of 3 weeks. So, if an employee is working and needs to self-isolate for 7 or 14 days, or takes short-term absence unrelated to the Coronavirus, they should remain on sick leave. **Further to this, the Direction given by the Treasury to HMRC states that, where Statutory Sick Pay is payable in respect of an employee at the time when a furlough instruction is given, the employee is not treated as furloughed until the original SSP period has ended;**
- ❏ Employees on long-term sick leave can be furloughed.
- ❏ If an employee becomes sick during a period of furlough, the employer may choose whether to keep them furloughed or move them onto SSP.
- ❏ Employees who are shielding in line with public health guidance - or who need to stay home with someone who is shielding - can be furloughed. The words *"if they are unable to work from home and you would otherwise have made them redundant"* have thankfully been removed.
- ❏ The guidance now confirms that employees *"that need to look after children"* can be furloughed.
- ❏ If an employee is off on family-related leave e.g. they can be designated as a furloughed worker if they would otherwise have been laid off. However, the employer would continue to pay any applicable maternity, adoption, paternity leave. Employers can claim for any enhanced pay under the furloughed worker scheme. **An employee returning from family-related leave who is furloughed must have their earnings calculated based on their earnings prior to leave (and not the amounts receiving during this leave).**

Are furloughed workers entitled to the National Living Wage/National Minimum Wage?

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 do I need to make a claim?

- ❏ your employer PAYE reference number;
- ❏ the number of employees being furloughed;
- ❏ National Insurance numbers for the employees being furloughed;

Commercial. Decisive. Expert.

- ☐ The names of the employees being furloughed;
- ☐ Payroll/works numbers for the employees being furloughed (optional);
- ☐ your Self-Assessment Unique Taxpayer Reference, Corporation Tax Unique Taxpayer Reference or Company Registration Number;
- ☐ the claim period (start and end date);
- ☐ amount claimed;
- ☐ your bank account number and sort code;
- ☐ your contact name;
- ☐ your phone number.

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.

You will need to calculate the amount you are claiming. HMRC will retain the right to retrospectively audit all aspects of your claim.

If you have fewer than 100 furloughed staff you will be asked to enter details of each employee you are claiming for directly into the system - this will include their name, National Insurance number, claim period and claim amount, and payroll/employee number (optional).

If you have 100 or more furloughed staff you will be asked to upload a file with the information rather than input it directly into the system. We will accept the following file types: .xls .xlsx .csv .ods

The file should include the following information for each furloughed employee: name, National Insurance number, claim period and claim amount, payroll/employee number (optional).

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.

Can I rotate a furloughed worker?

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.

A worker can be placed on furlough more than once, and one period can follow straight after an existing furlough period, while the scheme is open. The guidance now clarifies that employees can be furloughed *“multiple times but each separate instance must be for a minimum period of 3 consecutive weeks”*

What is the 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.

Can I insist someone becomes a furloughed worker?

This is an entirely new status/category of employee and, whilst you may have a right to lay off under the contract, you must evidence furloughing by a written agreement and this must be retained for 5 years.

In reality, if the alternative is an imposed pay cut, lay-off without pay or compulsory redundancy, employees are likely to agree (especially if the salary is topped up to 100%).

What is the employee's status while furloughed?

They remain an employee of the company and continue to accrue continuous service. Their terms and conditions remain in full force (save for terms relating to pay and benefits) and would still be entitled to contractual notice and statutory redundancy payments in the event that they were subsequently made redundant.

An employee resigned but his new offer of employment has been withdrawn. Can he come back and claim furlough status?

This would be at your discretion.

The scheme has been widened by now stating "*if you made employees redundant, or they stopped working for you on or after 28th February 2020, you can re-employ them, put them on furlough and claim for their wages through the scheme*". This was previously limited to those who were made redundant after 28th February 2020.

In practice, there are a number of issues to consider with bringing people back and furloughing them:

- ❏ You will have responsibility for paying them, which may be difficult depending on the cash flow position of the business;
- ❏ The employee may retain continuity of service and the dismissal will be deemed not to have taken effect. This is likely to cause issues with exiting the employee in the future;
- ❏ You may not want to welcome an employee back who had decided they no longer wanted to work for you.