



Employment Law Newsletter – Coronavirus Job Retention Scheme

FAQs for UK employers

Last night, 26th March 2020, the Government produced guidance on how the scheme will work. Here we answer the most important questions.

How long will the scheme last?

It will be open until 31st May 2020. You can use the scheme anytime until this date, but you may backdate your claim to 1st March 2020.

Who can claim?

Any business, charity or recruitment agency in the UK that had created and started a PAYE payroll scheme on 28th February 2020 and has a UK bank account.

Public sector organisations may use the scheme, but the Government expects the majority of public sector employees to continue providing essential public services.

For which employees can you claim?

Provided that the furloughed employee was on your PAYE payroll on 28th February 2020, how you employ them doesn't matter so it includes full and part time employees along with those engaged through an agency or on a flexible or zero hour contract.

What if you've already made them redundant?

You may use the scheme to rehire an employee whom you have made redundant after 28th February 2020.

Can you ask a furloughed employee to do some work?

No. They can't work for you. That means they cannot provide services or generate revenue.

Will a furloughed employee have to pay tax?

Yes. The employee's wage will be subject to usual income tax and other deductions.

Can you use the scheme if you've just cut an employee's hours or reduced their pay?

No. You will have to continue paying the employee through your payroll and pay their salary, subject to what you have agreed with them.

Are you exempt from the normal employment laws when using the scheme?

No, when deciding to whom and how to offer furlough leave, you will be subject to UK law on equality and discrimination in the usual way. You should discuss and agree any changes to the contract of employment with the employee.

How should you agree furlough?

Discuss and agree any proposed change to the contract of employment with your employee. Confirm in writing that you have furloughed this employee and keep records.

What about new starters?

You cannot furlough employees you hired after 28th February 2020.

What about those on unpaid leave?

You can only furlough an employee that you placed on unpaid leave after 28th February 2020.

Can you furlough an employee who is on Statutory Sick Pay

Employees on sick leave or self-isolating should get Statutory Sick Pay, but you could furlough them after this.

Can you furlough shielding employees?

Yes, if they are doing so in line with public health guidance.

What about an employee with more than one employer?

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.

How will volunteer work and training be treated?

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.

What can you claim?

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.

At a minimum, you must pay your employee the lower of 80% of their regular wage or £2,500 per month.

Must you top up the pay of furloughed employees to their normal wage?

You can if you wish but you don't have to.

How do you calculate employer's NI and pension contributions?

The Government will issue more guidance before the scheme goes live.

Is it 80% of gross or net salary?

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

What if pay varies?

If the employee has been employed (or engaged by an employment business) for a full twelve months before the claim, you can claim for the higher of either:

- The same month's earnings 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 their earnings so far to claim a pro-rata amount.

Are you still liable for Employer National Insurance and pension contributions?

Yes, you remain liable for associated Employer National Insurance contributions and minimum automatic enrolment employer pension contributions on behalf of your 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, which is 3% of income above the lower limit of qualifying earnings (£512 per month until 5th April 2020 and £520 per month thereafter).

Will furloughed employees' wages be taxed?

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.

How will tax on the grant be treated?

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

What about the 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 this would be below NLW/NMW.

Can you ask furloughed employees to complete training?

Yes, but if you require someone to, for example, complete online training courses whilst they are furloughed, then you must pay 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 will you need to make a claim?

Discuss and agree any contractual changes before you make them. Take legal advice on the process. The scheme is intended to apply in what would otherwise be lay-off or redundancy

situations. So, if sufficient numbers of staff are involved, it may be necessary to engage collective consultation processes to agree changes to terms of employment.

To claim, you will need:

- Your PAYE reference number.
- The number of employees being furloughed.
- The claim period (start and end date).
- The amount claimed (the minimum length of furloughing is three weeks).
- Your bank account number and sort code.
- Your 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.

How often can you claim?

You can only submit one claim every three weeks, which is the minimum length of time you can furlough an employee. You can backdate claims to 1st March 2020.

What happens after you have submitted your claim?

Once HMRC has received your claim and determined 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.

You must pay the employee all the grant you receive for their gross pay, no fees can be charged from the money that is granted.

Can you make an employee redundant after you have furloughed them?

Yes. After furlough you can decide whether to allow the employee to return to work or make them redundant.

What if employees refuse to go on furlough?

The Employee Guidance, as opposed to the general guidance, starts 'If you and your employer both agree, your employer might be able to keep you on the payroll'. This suggests that if you put employees on furlough without their agreement, even if you have consulted, collectively or otherwise, you may not be eligible for the grant. The option would still remain to make them redundant.

What about those on family leave?

Employees must take at least two weeks' maternity leave (four weeks if they work in a factory or workshop) immediately following the birth of their baby. This is a health and safety requirement.

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

If they qualify for SMP, they 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.

What if you pay enhanced maternity pay?

If you pay more than Statutory Maternity Pay, this enhanced contractual maternity pay is included within the wage costs that you can claim through the scheme. The same principles apply to contractual adoption pay, paternity pay or shared parental pay.

What about pregnant employees?

Maternity leave will start as usual. If an employee's earnings have reduced owing to a period on furlough or statutory sick pay before her maternity leave starts this may affect her Statutory Maternity Pay. The same principle applies to contractual adoption pay, paternity pay and shared parental pay.

If you would like to discuss these or any other issues facing your organisation please speak to your usual contact at Watershed or Keith Morgan on +44 161 703 5611

watershedhr.com

Although care has been taken in the preparation of this Newsletter, Watershed Europe cannot accept responsibility for errors, omissions or advice given. Readers should note that only Acts of Parliament and Statutory Instruments have the force of law and only the courts can authoritatively interpret the law.

To unsubscribe from our employment law newsletter please [click here](#).
To view our Privacy notice - including a summary of your rights under data protection regulations visit <https://watershedhr.com/privacy-notice/>

