



Employment Law Newsletter – Coronavirus Job Retention Scheme (CJRS) update 14th April

Over the Bank Holiday weekend, HMRC updated its guidance to provide some useful clarification on how the scheme will work. The online service you will use to claim is still unavailable, but the Government has repeated its aim to have it available by the end of April 2020.

Previous versions of the guidance suggested that it should be used for employees that you would otherwise make redundant or lay off. It now says that you can furlough employees and apply for the grant if you cannot maintain your current workforce because your operations have been severely affected by coronavirus (COVID-19).

The guidance goes on to broaden its aim by stating that although it is designed to help employers retain their employees and protect the UK economy, all employers are eligible to claim under the scheme and the government recognises that coronavirus will affect different businesses differently.

Our earlier notes are at <https://watershedhr.com/resources-main/resource-library/newsletters/>. Here are the changes:

Who can claim?

In addition to stating that your UK business must have created and started a PAYE payroll scheme by 28th February 2020 and have a UK bank account, it now also says that, to claim the grant, you must have enrolled for PAYE online, which can take up to 10 days.

For which employees can you claim?

The guidance now clarifies that grants under the scheme are not counted as 'access to public funds' so you can claim for employees who are on a visa that stipulates that they must not access public funds.

Can you furlough an employee who is on Statutory Sick Pay?

The guidance reminds us that there is a three-week minimum furlough period and the scheme is not intended for short-term absences from work owing to sickness.

Short term illness/self-isolation should not be a consideration in deciding whether to furlough an employee. If, however, you want to furlough employees for business reasons and they are currently off sick, you are eligible to do so, as with other employees. In these cases, you should no longer pay the employee sick pay but instead classify them as furloughed. In these circumstances, an employee must either be sick and in receipt of SSP or furloughed and in

receipt of whatever pay has been agreed while on furlough. You cannot use the scheme to top up SSP.

What if your employee becomes sick while furloughed?

Furloughed employees retain their statutory rights, including their right to SSP. This means that furloughed employees who become ill must be paid at least SSP. It is up to you to decide whether to move these employees onto SSP or to keep them on furlough, at their furloughed rate.

If a furloughed employee who becomes sick is moved onto SSP, you can no longer claim for the furloughed salary. You are required to pay SSP, although you may qualify for a rebate for up to 2 weeks of SSP. If you keep the sick furloughed employee on the furloughed rate, you remain eligible to claim for these costs through the furloughed scheme.

Can you furlough an employee who has transferred to you under TUPE or where there has been a change in ownership?

The guidance says that you can only claim for furloughed employees that were on your PAYE payroll on or before 28th February 2020, which concerned businesses with employees who had recently transferred to them through TUPE.

The guidance clarifies that a new employer is eligible to claim under the scheme in respect of the employees of a previous business transferred after 28th February 2020 if either the TUPE or PAYE business succession rules apply to the change in ownership.

How does the scheme treat a consolidated payroll?

Where a group of companies have multiple PAYE schemes and there is a transfer of all employees from these schemes into a new consolidated PAYE scheme after 28th February 2020, the new scheme will be eligible to furlough those employees and claim the grants available under the CJRS.

How much can you claim?

You can claim for:

- 80% of your employees' wages (even for employees on National Minimum Wage) - up to a maximum of £2,500 per month (the subsidised pay).
- Employer National Insurance contributions that are paid on the subsidised pay.
- Employer pension contributions on the subsidised pay up to the maximum employer auto enrolment pension contribution.

Can you furlough shielding employees?

Yes, you are entitled to furlough employees who are shielding or off on long-term sick leave. It is up to you to decide whether to furlough these employees. You can claim back from both the scheme and the SSP rebate scheme for the same employee but not for the same period of time. When an employee is on furlough, you can only reclaim expenditure through the scheme, and not the SSP rebate scheme. If a non-furloughed employee becomes ill, needs to self-isolate or be shielded, then you might qualify for the SSP rebate scheme, enabling you to claim up to two weeks of SSP per employee.

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, but you can claim for these.

However, you will not be able to claim for additional National Insurance or pension contributions you make because you choose to top up your employee's salary or any pension contributions you make that are above the mandatory employer contribution.

The grant is payable for Employer National Insurance contributions that you pay on the subsidised pay, not normal pay

How does the scheme treat Benefits in Kind and Salary Sacrifice Schemes?

The reference salary should not include the cost of non-monetary benefits provided to employees, including taxable Benefits in Kind. Similarly, benefits provided through salary sacrifice schemes (including pension contributions) that reduce an employee's taxable pay should also not be included in the reference salary.

All the grant received to cover an employee's subsidised pay must be paid to them in the form of money. No part of the grant should be netted off to pay for the provision of benefits or a salary sacrifice scheme.

Where you provide benefits to furloughed employees, including through a salary sacrifice scheme, these benefits should be in addition to the wages that must be paid under the terms of CJRS.

What you will need to make a claim?

- Your employer PAYE reference number
- The number of employees you are furloughing
- National Insurance Numbers for the employees you want to furlough
- Names of the employees you want to furlough
- Payroll/works number for the employees you want to furlough
- Your Self-Assessment Unique Taxpayer Reference or Corporation Tax Unique Taxpayer Reference or Company Registration Number
- The claim period (start and end date)
- Amount claimed (the minimum length of furlough is three consecutive 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.

If you use an agent who is authorised to act for you for PAYE purposes, they will be able to make a claim on your behalf. If you use a file only agent (who files your RTI return but doesn't act for you on any other matters) they won't be authorised to make a claim for you, and you will need to make the claim yourself. Your file only agent can assist you in obtaining the information you need to claim (which is listed above). HMRC has said that it is making the claim process as straightforward as possible.

What about after you have claimed?

HMRC will check your claim, and if you are eligible, pay it to your UK bank account by BACS.

You must pay the employee all the grant you receive for their gross pay in the form of money.

Furloughed staff must receive no less than 80% of their reference pay (up to the monthly cap of £2,500).

Employers cannot enter into any transaction with the employee that reduces the wages below this amount. This includes any administration charge, fees, or other costs in connection with the employment.

What about after the scheme ends?

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

HMRC will process all claims made before the scheme ends.

Grants cannot be used to substitute redundancy payments. HMRC will continue to monitor businesses after the scheme has closed.

The full version of the latest scheme guidance can be found here: <https://www.gov.uk/guidance/claim-for-wage-costs-through-the-coronavirus-job-retention-scheme>

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

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