



Employment Law Newsletter - the Extended Coronavirus Job Retention Scheme FAQ

The Government has published guidance on the Extended Coronavirus Job Retention Scheme (ECJRS)

The extension runs until 31st March 2021 and you can submit or change claims for periods ending on or before 31st October 2020 up to 30th November 2020.

If you cannot maintain your workforce because your operations have been affected by coronavirus (Covid-19), you can furlough employees and apply for a grant to cover a portion of their usual monthly wage costs where you record them as being on furlough. Here we answer your questions:

Which businesses are eligible?

All employers with a UK bank account and UK Pay As You Earn (PAYE) scheme can claim the grant. You do not need to have claimed before the 30th October 2020 to be eligible to claim for periods from 1st November 2020.

Which employees are eligible?

Employees can be on any type of employment contract, including full-time, part-time, agency, flexible or zero-hour contracts. Foreign nationals may be furloughed. Grants under the scheme are not counted as 'access to public funds', and you can furlough employees on all categories of visa.

For how many employees can you claim?

There is no maximum number of employees for whom you can claim from 1st November 2020.

What if you're publicly funded?

If you have staff costs that are publicly funded (even if you're not in the public sector), you should use that money to continue paying your people, and not furlough your staff.

You can use the scheme if you are not fully funded by public grants. You should contact your sponsor department.

What can you claim?

For the period 1st November 2020 to 31st January 2021 the government grant will revert to the full 80% of wages, employers will not be required to contribute or top-up for the hours not worked but will still not be able to claim for employer National Insurance contributions or employer pension contributions..

You can claim the grant for the hours your employees are not working calculated by reference to their usual hours worked.

Must you top up employee's wages to 100% of their normal pay?

No, you don't have to, but you can if you wish.

How should you agree furlough?

You should discuss and agree any changes in the employment contract with your employees.

You must:

- make sure that the agreement is consistent with employment, equality, and discrimination laws
- keep a written record of the agreement for five years
- record how many hours your employees work and the number of hours they are furloughed (that is, not working)

The employee does not have to provide a written response and you do not need to place all your employees on furlough.

You can:

- fully furlough employees - they cannot undertake any work for you while furloughed full time
- flexibly furlough employees - they can work for any amount of time, and any work pattern but they cannot do any work for you during hours that you record them as being on furlough.

How long must furlough last?

There is no minimum furlough period. Agreed flexible furlough agreements can last any amount of time. Employees can enter into a flexible furlough agreement more than once.

Although flexible furlough agreements can last any amount of time, unless otherwise specified the period that you claim for must be a minimum of seven calendar days.

What about tax, NI and pension?

Your employees will still pay the taxes they normally pay out of their wages.

You must deduct and pay to HMRC income tax and employee National Insurance contributions on the full amount that you pay the employee, including any scheme grant.

You must also pay to HMRC the employer National Insurance contributions on the full amount that you pay the employee, including any scheme grant.

Can you use the grant to pay notice?

You can continue to claim for a furloughed employee who is serving a statutory notice period, however grants cannot be used to substitute redundancy payments. HMRC will continue to monitor businesses after the scheme has closed.

The government is reviewing whether employers should be eligible to claim for employees serving

contractual or statutory notice periods and will change the approach for claim periods starting on or after 1st December 2020. Further guidance will be published in late November.

What about holiday pay?

Furloughed employees continue to accrue leave according to their employment contract.

Employees can take holiday whilst on furlough. If an employee is flexibly furloughed, then any hours taken as holiday during the claim period should be counted as furloughed hours rather than working hours.

You must pay employees who are on holiday additional amounts over the grant to reflect their normal pay. You can restrict when employees take leave if there is a business need and you give the correct notice. That is, twice the number of days you require them to take. So, you must give two weeks' notice to take one week's leave.

Who will know that you've used ECJRS?

From December 2020, HMRC will publish employer names for companies and Limited Liability Partnerships (LLPs) and the company registration number of those who have made claims under the scheme during that month December onwards.

For how long should you claim?

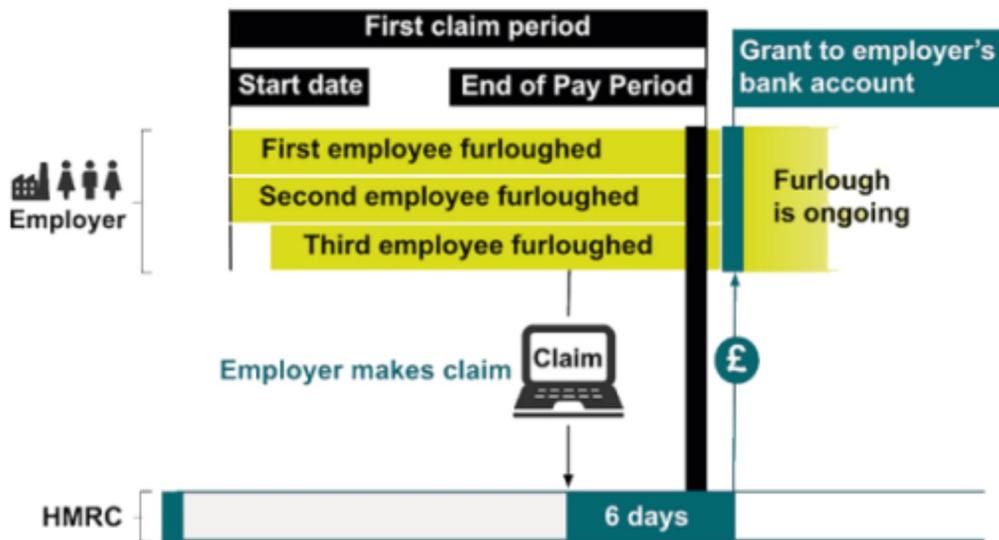
If possible, you should match your claim period to the dates you process your payroll. You can only make one claim for any period so you must include all your furloughed or flexibly furloughed employees in one claim even if you pay them at different times. If you make more than one claim, your subsequent claim cannot overlap with any other claim that you make. Where employees have been furloughed or flexibly furloughed continuously (or both), the claim periods must follow on from each other with no gaps in between the dates.

When should you claim?

You should not claim for employees who are flexibly furloughed until you are certain of the exact number of hours they will have worked during the claim period. If you claim in advance and your employee works for more hours than you have claimed for, then you will have to pay some of the grant back to HMRC.

When will HMRC pay you?

You will be paid six working days after you make your claim.



What should you include when calculating wages?

If you've already claimed for an employee who was on furlough during October, and they are paid a fixed salary, you will follow the same wage calculation for claim periods after 31st October 2020.

The amount you should use when calculating 80% of your employees' wages for hours not worked, is made up of the regular payments you are obliged to make, including:

- Regular wages you paid to employees.
- Non-discretionary payments for hours worked, including overtime.
- Non-discretionary fees.
- Non-discretionary commission payments.
- Piece rate payments.

You cannot include payments made at your or a client's discretion, where you're not contractually obliged to do so. This includes:

- Any tips, including those distributed through troncs.
- Discretionary bonuses.
- Discretionary commission payments.
- Non-cash payments.
- Non-monetary benefits, benefits in kind (such as a company car) and benefits received under salary sacrifice schemes (including pension contributions) that reduce an employee's taxable pay.

What about the apprenticeship Levy and student loans?

You should continue to pay the apprenticeship levy as usual. Grants from the ECJRS do not cover the apprenticeship levy.

How should you calculate the number of furloughed hours?

You should start with your employee's usual hours then subtract the number of hours they actually worked in the claim period – even if this is different from what you agreed.

You must pay the employee their contractually agreed rate for any hours they work.

How should you claim?

You'll need the Government Gateway user ID and password you got when you registered for PAYE online.

If you do not finish your claim in one session, you can save a draft. You must complete your claim within seven days of starting it. All claims for periods from 1st July 2020 to 31st October 2020 must be submitted no later than 30th November 2020.

Claims from 1st November 2020 must be submitted by 11.59pm 14 calendar days after the month you're claiming for. If this time falls on the weekend, then claims should be submitted on the next working day.

Claim for furlough days in Claim must be submitted by

November 2020	14th December 2020
December 2020	14th January 2021
January 2021	15th February 2021
February 2021	15th March 2021
March 2021	14th April 2021

HMRC may accept a claim made after the relevant deadline if you had a reasonable excuse for failing to make a claim in time and you then claimed without delay after the excuse no longer applied.

What happens after you've claimed?

Once you've claimed, you'll get a claim reference number. HMRC will then check that your claim is correct and pay the claim amount by BACS into your bank account within six working days.

You must keep a copy of all records for 6 years, including:

- the amount claimed and claim period for each employee
- the claim reference number for your records
- your calculations in case HMRC needs more information about your claim.

What should you do when the scheme ends?

When the scheme closes, you must decide to either:

- bring your employees back to work on their normal hours
- reduce their hours
- terminate their employment. Normal redundancy rules apply to furloughed employees.

30th November 2020 is the last day that you can submit claims for periods ending on or before 31st October 2020.

How will tax be treated?

Payments you've received under the scheme are to offset the deductible revenue costs of your employees. You must include them as income when you calculate your taxable profits for Income Tax and Corporation Tax purposes.

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

Individuals with employees that are not employed as part of a business (such as nannies or other domestic staff) are not taxed on grants received under the scheme. Domestic staff are subject to

Income Tax and National Insurance contributions on their wages as normal.

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

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