



Rovva

ROVVA INSIGHT JULY 2020

Coronavirus Job Retention Scheme

This issue of Rovva's insight series provides an overview of the Government retention scheme.

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What is Furlough?

As part of its response to the COVID-19 pandemic the government has introduced the Coronavirus Job Retention Scheme. This allows all UK employers with employees on a PAYE scheme to designate those employees as ‘furloughed workers’. Employers have access to Government support to continue paying part of these furloughed employees’ salaries and potentially protect the employees from redundancy. The first phase of the scheme finishes at the end of June and will close completely at the end of October.

The word ‘furlough’ generally means temporary leave of absence from work. This can be due to economic conditions affecting one company, or matters affecting the whole country. Until now the expression has not carried any meaning in UK employment law but has been temporarily introduced in response to the unprecedented situation presented by the COVID-19 pandemic. This does not mean that the fundamentals of employment law have changed, simply that this scheme adds to them.

Furlough leave has been temporarily introduced by the government to provide employers with an option to keep employees on the payroll without them working; while working reduced hours is allowed under the flexible extension to the furlough scheme (starting in July). As the furloughed staff are kept on the payroll, this is different to being laid off without pay or being made redundant. The ability to furlough employees was designed to support employers who are severely affected by coronavirus.

This provides employers with another option when reviewing the circumstances of their business, as an alternative to implementing redundancies or lay offs without pay. Each employer will need to review options carefully (alongside legal advice) to pursue the best option for them.



Ending of the scheme

The Coronavirus Job Retention Scheme was originally scheduled to finish at the end of June. This has been extended until the end of October. It is critical for employers to understand the relevant dates and the fine detail.



The final date by which an employer can furlough an employee for the first time was 10 June. The full furlough scheme closes to new entrants on 30 June but there must have been a full 3-week furlough period completed before then for employees to continue to qualify. Employers must keep a careful record to show that the employees were furloughed on or before 10 June (although there is a limited exception to this cut-off date for those returning from periods of statutory parental leave – see below).

Closure to new entrants from 30 June

From 1 July claims are restricted to employers currently using the scheme for employees who they have previously furloughed before 10 June. This means that only employees who can be furloughed are those who have already completed a full three-week furlough period before 30 June. There is a further deadline of 31 July to make any claims for staff furloughed during the March to June period.

The only exception to the 10 June cut-off date is for parents on statutory maternity leave who plan to return to work in the coming months; the Government has confirmed these employees will be eligible for the extended furlough scheme if their leave period ends after the 10 June cut-off date. This applies to statutory paternity, adoption, shared parental, and parental bereavement leave too. Further Government guidance

on the extended furlough scheme was published on 12 June, outlining which employees employers can use the scheme for, and how to work out what you can claim.

Flexible furlough

From 1 July the furlough scheme becomes more flexible before it ends completely on 31 October 2020. The flexible scheme applies to employers currently using the scheme for previously furloughed employees. Employees will continue to receive 80% of their salary, subject to the cap, but employers will need to share the burden of paying NI and furlough salaries from August onwards. As under the original scheme, employers can top up the wages above the grant for fully furloughed staff if it is feasible for them to do so. Employees can work part-time under the revised flexible scheme. The capped figures on the furlough pay will apply in proportion to the hours not worked.

The furlough scheme will end on 31st October

There are now the following five stages:



June

From 10 June the furlough scheme is effectively closed for employees who have not been previously furloughed. Until June 30 employers can claim for 80% of furloughed employees current salary, up to £2,500 but the employee must not work for the employer. Employer National Insurance Contributions and certain pension contributions can be claimed too. Employers are not required to contribute anything towards furloughed employees' salaries for June.

July

The new flexible scheme applies only for previously furloughed employees. These people can now return to work part time, but employers can still claim the grant for normal hours not worked. Any amount of working time and any shift pattern can be agreed with the previously furloughed staff. Until July 31 employers can still claim for 80% of the furloughed employees current salary, up to £2,500 as well as employer National Insurance Contributions and pension contributions. This only

applies for the hours the employee doesn't work. Employers must pay employees for the hours they work.

August

The main change is that from 1 August, employers will have to pay employee's National Insurance Contributions and pension contributions, and can no longer claim a grant for these. Until August 31 the government will pay 80% of furloughed employees wages up to a cap of £2,500 for hours not worked. Employers must pay employees for the hours they work. Employers funding of employers' NICs and pension contributions applies to both the hours not worked and hours worked if any.

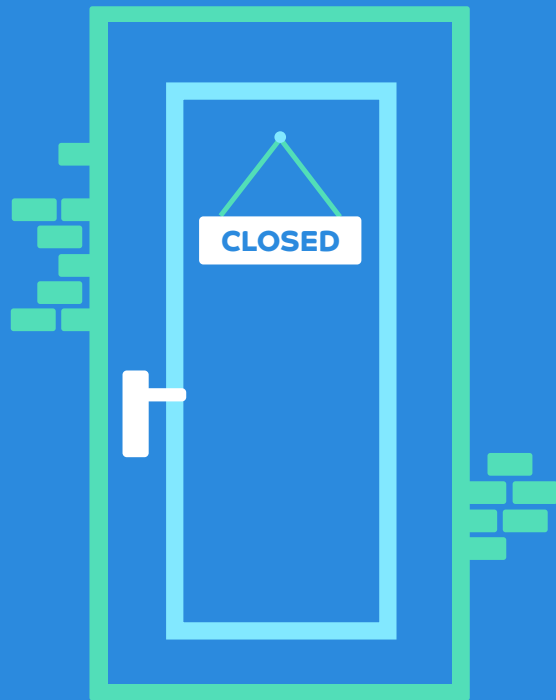
September

From 1 to 30 September the government will pay 70% of furloughed employees wages up to a cap of £2,187.50 for hours not worked. Employers will pay 10% of wages to make up 80% total up to a cap of £2,500 plus employers' total NICs and pension contributions.

October

From 1 October until the end of the scheme on 31 October the government will pay 60% of wages up to a cap of £1,875 for the hours the employee does not work. Employers will pay 20% of wages to make up the 80% total up to a cap of £2,500 plus employers' total NICs and pension contributions.

The employees that can agree to being furloughed are those working for employers whose businesses have been severely affected by coronavirus.



Which employers are eligible?

Any employer (of any size) is eligible for the scheme. This includes:

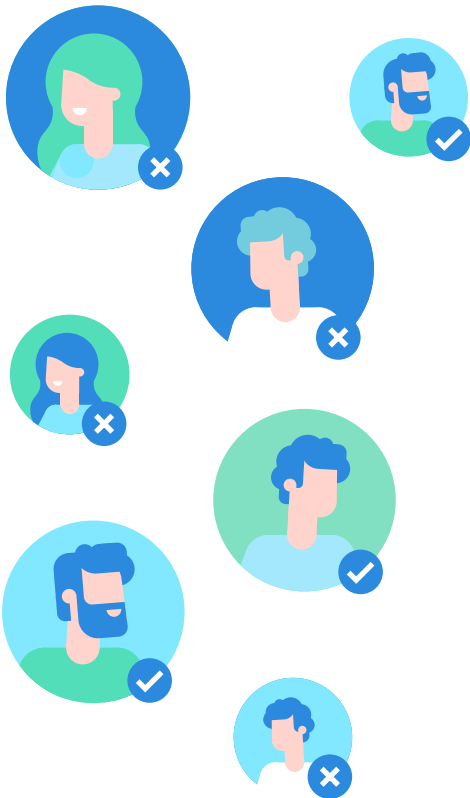
- **businesses**
- **charities**
- **recruitment agencies (if the agency workers are paid through PAYE)**
- **public authorities.**

To be eligible the employer must have created and started a PAYE payroll scheme on or before 19 March 2020 and have a UK bank account and must have placed employees on at least a 3-week furlough period by 10 June 2020.

Where a company is in administration, the administrator can access the Coronavirus Job Retention Scheme.

More information is available on the government website and further details of the extended flexible scheme are expected. The situation is evolving rapidly and future regulations and guidance should be checked frequently.

Which employees are eligible?



The furloughed employees must have been on the employer's PAYE payroll on 19 March 2020, including:

- **full-time employees**
- **part-time employees**
- **agency employees on agency contracts (provided they are not working at all)**
- **zero-hour contract workers (provided that they are employees albeit on flexible contracts).**

Employees who have been on sick leave can be placed on furlough leave after the period of sick leave has ended if there is no work for them to do. Employees who are shielding themselves in line with government advice can also be placed on furlough or sick leave.

Does furlough only apply to those at risk of redundancy?

When the coronavirus job retention scheme was launched in March the first set of guidance said the scheme applied to employees who “would otherwise

have been made redundant or laid-off”. However, this changed, and the original reference to redundancy and lay off in the government guidance for employers was replaced with wording which says that coronavirus must have “severely affected” the employer’s business operations. This means there is no specific requirement for furlough to be offered only if there is an underlying risk of redundancy. However, any redundancy process is likely to be unfair if the employer does not at least consider furlough as a potential alternative at the planning stage. On the government portal for making a claim employers confirm they are claiming the costs of furloughed employees due to health, social and economic emergencies resulting from coronavirus.

Due to the evolving nature of the guidance employers should keep copies of furlough agreements and written evidence to show that their operations have been negatively affected by coronavirus.

Employees who work elsewhere

Employees with two or more employers can be furloughed for each job separately but the £2,500 cap applies to each employer individually.

Furloughed employees can work for their employer part time after 1 July and will be paid normally by the employer (who must not claim furlough pay for the hours staff worked). If furloughed employees work.

for another employer during the hours they would normally be working for the employer who has furloughed them payments by HMRC will be paid even if the employee picks up other work. The employee will receive the furlough payments from the first employer and their normal wages from the new employer. Employees are only prevented from doing any work but only for the same employer that has furloughed them up until the end of June.

Business owners and partners

Owners of small businesses who pay themselves a PAYE salary are covered under the furlough scheme. The scheme does not apply to dividend payments so director-shareholders who are paid partly or mainly in dividends will only be covered to the extent that they receive PAYE earnings. The Coronavirus Self-employment Income Support Scheme provides a similar sort of support to those not eligible under the job retention scheme. This means self-employed directors with taxable profits below a £50,000 annual threshold whose business has been adversely affected by coronavirus can apply for support under the self-employment scheme. The scheme has been extended beyond June.

From a date to be specified in August eligible self-employed people can claim a taxable grant of 70% of their average monthly trading profits, paid out in a single instalment, again covering 3 months' worth of profit, capped at £6,570 in total.

Salaried partners who are paid through the PAYE payroll are eligible under the furlough scheme. Partner owners and LLP members who are treated as self-employed (and not paid through the PAYE payroll) will not be covered. Like directors, self-employed partners with taxable profits below the annual threshold may be eligible to apply for support under the self-employment scheme.

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Furloughed employees can work for their employer part time after 1 July and will be paid normally by the employer

How to apply to the scheme



The ability to furlough employees under the Coronavirus Job Retention Scheme has been operational since 20 April. Employers can apply on the Gov.uk website and use the step by step guidance to help them make their claim. The scheme is backdated and will apply from 1 March until the end of June on its current terms and then until October in its modified flexible form. Employers will be able to make their first claim under the new scheme from 1 July. From this date employers who previously claimed for periods that overlapped calendar months can no longer do this because of changes to the scheme.

Employers access the scheme through an online portal, providing details of the affected furloughed employees and information about their earnings and any other information required (such as the employee's NI number). Guidance on how to calculate 80% of employees' wages and step by step guidance on making a claim are available on the Government website and further guidance on how to calculate the 70% and 60% figures will follow.

Employers should take the following steps prior to making a claim:

1. Design a furlough process and agree a furlough policy. This should involve employees (or union representatives) to aid agreement to any changes.
2. This policy should be reviewed and updated in line with the Government extensions to the scheme. A template policy from HR-inform is available on the support materials page.
3. Decide which employees are affected perhaps using criteria similar to redundancy selection.
4. In the first phase decide whether to pay 80% of salary or to supplement it. You can use the Gov.uk guidance on calculating 80% salary to help make your decision.
5. Decide on the length of the claim period, what to include when calculating wages and employees' usual hours and furloughed hours.
6. During the further phase of the scheme employers will be obliged to supplement the salary, starting with employer NI contributions in August and increasing to 10% and 20% of salary in September and October respectively.

7. During the further phase of the scheme employers should agree flexible working hours or patterns and keep these agreements and records.
8. Select who will be flexibly furloughed, avoiding all forms of discrimination, especially sex, age and disability.
9. Plan for what will happen when the furlough scheme ends on 31 October.

Written agreements

Employers should gain the employees’ written consent to furlough, even if contractual provisions already cover lay off; express agreement is advisable especially if salary is not being topped. agree any terms relating to part-time work between July and October, confirming this in writing. The number of employees an employer can claim for between these months must not exceed the maximum number claimed for previously under the original scheme.

Record keeping

Record keeping requirements mean as well as furlough agreements employers must keep records of the following for six years:

- the amount claimed for each employee
- the claim period for each employee
- the claim reference number
- calculations (in case HMRC need more information about the claim)
- usual hours worked, including any calculations for flexibly furloughed employees
- actual hours worked for flexibly furloughed employees.

Employers should keep evidence to show that their operations have been negatively affected by coronavirus and the effect this has on their workforce, such as evidence to show lack of work available, show that each furloughed worker has no work, or that the employee was furloughed for another reason arising from coronavirus (for example they live with a person who is shielding or cannot work due to childcare commitments).



What happens during furlough?



Working

In the second phase of the scheme between July and October employees are permitted to work for the employer and the employer pays for hours worked. After furlough employees will usually return to their job afterwards (unless redundancies follow).

Pay

From 31 July employers will pay employees' NI and pension contributions, even for the hours the employee does not work. Employers will continue to do this and top up the reduced Government grant to 80% in September and October. All of the monies paid by the Government must be paid to the employee, plus any top up the employer is paying. Employers must not divert any part of the reclaimed grant, for example by deducting administration charges.

Annual leave

If furloughed workers do not book any holiday time their statutory minimum holiday entitlement of 5.6 weeks per

year will accrue while they are furloughed. The exact amount will vary depending on how much leave the employee has already taken. Employers can ask for employees to agree to any contractual (as opposed to statutory) holiday not to accrue during furlough.

Special provisions govern the current situation which mean that workers can carry-over up to four weeks' holiday into the next two holiday years. The interrelationship between leave and furlough is legally complex and employee guidance confirmed that employers have to top up pay to 100% for any employees who take annual leave during furlough. It is thought that employers can insist employees take holiday during the furlough, provided the appropriate notice is given. In this situation employers would then have to pay the holiday pay in full and could claim for the 80% (or 70% or 60%) grant towards this.

Training

If employees are required to complete any job-related training while they are on furlough leave (which is permitted as long as it doesn't involve them in providing services to, or generating revenue for or on behalf of their organisation) they should be paid at least the National Minimum Wage rate. Similarly, apprentices should receive at least the National or Apprenticeship Minimum Wage or the National Living Wage.