

Employer Guidance – Flexible Furlough

The Government published updated guidance on 12th June 2020 detailing how the Coronavirus Job Retention Scheme will change from 1st July onwards with the introduction of flexible furloughing. The changes set out the pathway to phasing out the scheme and to transferring some of the salary costs of furloughed employees to employers.

For fully furloughed employees (employees not taking part in any part-time work with their company), employers are required to start paying 10% of salary costs from 1 August.

From 1 July, employers can bring furloughed employees back to work for any amount of time and any shift pattern, while still being able to claim CJRS grant for the hours not worked. The ability to flexibly furlough employees will be of interest to many employers where there is some work for employees to do as we move out of lockdown but not enough to justify a return to normal working hours.

How are the rules about who can be placed on furlough changing?

It is now no longer possible to add new entrants to the revised furlough scheme, with one exception (see below). Only employees previously furloughed for three weeks before 30 June can continue to be part of the scheme after 1 July.

Employees need not be on furlough on 30 June itself to be part of the extended scheme - an employee in work at the end of June can be re-furloughed so long as they have been furloughed before. However, employers which have not previously used the furlough scheme will not now be able to do so.

The number of employees an employer can claim for after 1 July cannot exceed the number in any previous claim. For example, an employer that has claimed for 20 employees in April, 40 in May and 30 in June will not be able to claim for more than 40 employees in any claim after 1 July.

The only exception to the “no new furloughs” rule is where an employee has returned from maternity or other family leave, e.g. shared parental leave. Such individuals can be furloughed on their return.

How is the financial support available to employers changing?

This will remain unchanged until 31 July 2020, although from 1 July there are changes to the way in which claims must be made and flexible furlough will be allowed.

From 1 August 2020, the monthly cap on the furlough grant will remain at 80% of employee wages capped at £2,500 but employers will be required to meet the cost of employer NICs and pension contributions.

From 1 September 2020, employers will also have to pay 10% towards an employee’s wages (resulting in the monthly cap on the furlough grant reducing to £2,187.50).

From 1 October 2020, an employer’s contribution towards an employee’s wages will increase to 20% (resulting in the monthly cap on the furlough grant reducing to £1,875).

The furlough scheme will end on **31 October 2020**.

What started as a relatively basic scheme is now becoming complex, particularly in calculating the amount that can be reclaimed under the CJRS. As such, employers who are furloughing employees should also review the updated guidance on how to work these sums out:

[Claim for wages under the Coronavirus Job Retention Scheme](#)

[Examples of how this works in practice](#)

Are there changes to the way we need to make a claim?

Yes, any claim in respect of the period before 30 June must be made by 31 July 2020.

In the period after 1 July 2020, a claim must start and end within the same calendar month. This is to accommodate the fact that the scheme is changing from month to month. It is possible to make more than one claim in each month, but each claim must be for a period of at least seven days.

The only exception to the seven-day claim is if you are making a claim for a few days at the beginning or end of a month (e.g. if you pay weekly and the month end results in a week being split across two months). There, you will need to make two claims (one for each month).

How will flexible furloughing work?

From 1 July, it will be possible to allow employees to work for some days (or part days) and be furloughed for others. For example, an employee could work on Monday and Tuesday and be furloughed on Wednesday, Thursday and Friday. The cap on the furlough grant will be proportional to the hours not worked.

There is one situation in which a 1 July 2020 start date for flexible furlough is not possible, which is where a previously furloughed employee started a new three-week furlough period after 10 June. In that situation, the flexible furlough cannot start until those weeks have expired. This is most likely to impact employees who have been on a rotating furlough arrangement.

Any sort of working pattern is permitted under the flexible furlough scheme and there is no restriction on the length of time it must last. If an employer wishes to agree a flexible furlough arrangement, however, it must enter into a new agreement with the employee. The rules about what an employee is (and is not) permitted to do during any days they are furloughed remain unchanged.

Where flexible furlough is being used, there are additional record keeping requirements and employers are required to retain (for six years) records of the usual hours worked by each employee (including details of the calculation used to ascertain usual hours) and the actual hours worked.

Flexible furlough is not compulsory and full furlough will remain available until 31 October with the required additional financial contributions.

How will we calculate the furlough grant if we use flexible furloughing?

Although the principle of flexible furlough has generally been welcomed, the guidance sets out very complex rules for calculating the amount of grant which may be claimed in these circumstances.

The calculation varies depending on whether the employer has previously calculated the grant on the basis of a fixed salary or variable pay (depending on the hours worked), but in each case an employer is required to calculate a “baseline” number of “usual hours” in order that it can be compared with the actual hours worked. The government has prepared a number of [examples](#) to assist with the calculation and has updated its [calculator](#).

The calculation complexities are compounded by the need to ensure claims are contained within the same month, and also the government’s advice that an employer should not claim until it is sure of the exact number of hours an employee will have worked during the claim period. There is, however, now a mechanism under which a claim can be corrected.

Where an employer has a small number of employees it wishes to place on flexible furlough, these calculation challenges may be manageable. For large employers with complex staffing arrangements, however, it could be an extremely difficult task. This, coupled with the additional financial contributions under the furlough scheme from August, might accelerate redundancy exercises - particularly those where collective consultation is required.

If there is some work available, is there a way to bring employees back and avoid the flexible furlough calculations?

The requirement for an employee to remain on furlough for three weeks is being removed from 1 July. This means that an employer could explore different rotated furlough arrangements which would not require the calculation of usual hours that is a critical component of the flexible furlough scheme. For example, an employer could consider a “one-week-on/one-week-off” rotation. This might help employers to be more flexible in their arrangements and fairly distribute the work that is available.

It is also possible to require some employees to return to work and allow others to remain on furlough. Making decisions about who returns to work can be complicated and it is necessary to ensure you do so in a non-discriminatory way.

What should employers be doing now?

Employers, particularly those benefiting from the easing of restrictions, should give careful consideration to what their staffing requirements will be from 1 July and how that will impact the employees they currently have on furlough:

- Employers who intend to keep employees on full furlough will need to review their existing arrangements to see whether any further agreement is required and whether employees need to be notified of their intention to extend furlough. If you offer a “top-up”, you may also need to consider whether it is affordable to do so on an extended basis (particularly as you will be required to contribute more to the scheme).
- If you are going to use the flexible furlough scheme, you will need to put in place a new agreement and take on board the time it will take to work through the complex calculation requirements. Also remember there are new record-keeping requirements in this scenario.
- If alternative arrangements (e.g. new furlough rotations) are to be put in place, those will also need new agreements.

- If you intend to bring some employees back from furlough, you should start thinking about how you will decide who to bring back and ensure you communicate with employees in good time.

As the scheme becomes more complex and with increased costs to employers, it is inevitable that some employers will reconsider the furloughing of employees and look at other cost-cutting options. Please refer to our guidance on [practical cost-cutting alternatives to reducing headcount](#) to ensure you are considering every possible option before considering redundancies.

If you have any questions on the changes to furloughing employees or alternative steps that you may need to consider as a business, please contact the Purpose HR team for support – info@purposehr.co.uk

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Please note that this guidance is subject to change and review as additional information is published by the Government and HMRC