

Client Guidance – Coronavirus Job Retention Scheme (CJRS)

Please note that this non-exhaustive guidance is subject to change and review as we await the publication of additional more detailed guidance from the Government and HMRC

Guidance updated on 5th June 2020

On 29 May 2020, the Chancellor set out several key changes to the Coronavirus Job Retention Scheme (CJRS), which are due to be implemented gradually over the next few months until the Scheme closes altogether on 31 October 2020. The main changes are summarised below, and in particular **the scheme will close to new entrants on 30th June**, with the last three-week furloughs before that point commencing on **10th June**. Claims from July onwards will be restricted to employers currently using the scheme and previously furloughed employees.

- **10 June 2020** will be the last day employers can place employees on furlough if those employees have not been furloughed previously;
- **From 1 July 2020, “flexible furloughing” will be allowed**, whereby employers can agree with employees to bring them back to work part-time (on potentially any hours and/or shift pattern the employer needs) whilst still keeping them on furlough for the remainder of their weekly contractual hours. Employers who bring employees back to work part-time will be required to pay their employees for the hours they work and then claim the remaining hours from the Job Retention Scheme;
- **From July onwards**, the number of employees an employer can claim for in any claim period under the new flexible scheme CANNOT exceed the maximum number they have claimed for under any previous claim under the current CJRS. Employers will not be able to furlough more people than the maximum number they have claimed for in any previous single claim.
- **From 1 August 2020**, employers will no longer be able to reclaim employer’s National Insurance and pension contributions in respect of any employees remaining on furlough;
- **From 1 September 2020**, the government will only reimburse 70% of a furloughed employee’s salary (up to a maximum of £2,190). Employers will be required to top this up to 80% (or more, depending on what has previously been agreed with the employee);
- **From 1 October 2020**, the government will only reimburse 60% of salary (up to a maximum of £1,875), with employers having to continue to top up to 80% (or more, as above).

Further guidance from the government in respect of the above changes is due to be published on 12 June 20.

Previous updated guidance from 13th May:

- **An extension to the Job Retention Scheme until the end of October 2020** - No change to its current form until the end of July.
- **What can be claimed regarding salary and non-salary payments** – Additional details relating to commission and salaries which vary due to shifts and overtime.
- **Placing a Director on Furlough Leave** – Salary directors paid through PAYE can be placed on Furlough leave, this process and requirements are set out below.
- **Placing an Office Holder on Furlough Leave** – Office holders paid through PAYE can be placed on Furlough leave, this process and requirements are set out below.

- **Employees in Special Circumstances** – Placing an employee on a fixed term contract on Furlough leave, employees shielding and employees with caring responsibilities being placed on Furlough leave.
- **Volunteer Work** – Enabling employees who have been Furloughed to complete volunteer activities outside the business.
- **Holiday Entitlement** - Legal changes in holiday entitlement rolling over between holiday years.
- **Salary Sacrifice** – COVID-19 regarded a life event by HMRC as such employees are able to switch out of salary sacrifice schemes.

Overview

On Friday 20th March 2020 the UK government announced that it was introducing a Coronavirus Job Retention Scheme.

This will allow employers to apply to HMRC for a grant of up to 80 per cent or £2500 per month, whichever is lower, of workers' pay for "Furloughed" workers, who otherwise would have been made redundant.

The scheme is available to all UK employers who have PAYE payroll scheme which was established before 19 March 2020 (this was updated recently, up until 15 April, the cut-off date was 28 February 2020).

Details announced so far:

- Employers will be able to apply to HMRC for a grant to cover up to 80% of workers' pay (up to a maximum cap of £2,500 a month per employee), for workers who are not working but are "Furloughed" and kept on payroll, rather than being made redundant.
- This will cover all workers paid through PAYE, but not self-employed contractors.
- This will also cover agency workers who are paid through PAYE
- Eligible claims can be backdated to 1 March 2020.
- The Scheme will remain available until the end of October 2020 (note, this was extended by the Government on 12 May).
- There will be no limit on the amount of funding available to the Scheme.
- From August the Government will ask employers to start sharing with the Government the cost of paying workers' salaries whilst they are furloughed until the scheme ends in October.
- The overall level of support that workers can expect to receive whilst furloughed will not change. The Government has stated that workers will, through the combined efforts of the Government and employers, continue to receive the same level of support as they do now, at 80% of their salary, up to £2,500.

What can be claimed regarding salary and non-salary payments

Claim for the 80% of the employee's salary, as of 28 February 2020, before tax.

If an employee's salary varies, and the employee has been employed for 12 months or more, you can claim the highest of either the:

- same month's earning from the previous year
- average monthly earnings for the 2019-2020 tax year

If the employee has been employed for less than 12 months, claim for 80% of their average monthly earnings since they started work.

If the employee only started in February 2020, work out a pro-rata for their earnings so far, and claim for 80%.

You can claim for any regular payments you are obliged to pay your employees. This includes wages, past overtime, fees and compulsory commission payments. However, discretionary bonus (including tips) and commission payments and non-cash payments should be excluded.

Which Employees can you place on Furlough Leave?

Government guidance has confirmed that all UK-wide employers with a PAYE scheme that was created and started on or before 19 March 2020 (this used to be 28 February 2020) will be eligible including:

- Businesses,
- Charities,

- Recruitment Agencies (agency workers paid through PAYE),
- Public Authorities

The employer must have a UK bank account and have enrolled for PAYE online.

Information available so far indicates that eligible workers for claims will be those who have been “Furloughed” by their employer and who would otherwise have been laid off/made redundant during the crisis.

Employees who are on furlough cannot be asked to do any work that:

- generates money for your organisation or any organisation linked or associated with your organisation
- provides services for your organisation or any organisation linked or associated with your organisation

Employees can, however, take part in volunteer work or training while on furlough (see below).

As such, it is our understanding is that this would rule out workers who have agreed to work shorter hours and receive lower pay, as from the information available so far, this funding cannot be used to top up reduced hours/pay arrangements).

Employers will need to agree with affected employees that they have been designated ‘Furloughed workers,’ and to notify employees of this change. It is likely this will require an agreed variation to contract of employment, confirmed in writing.

Whilst employees will hopefully welcome this option as an alternative to redundancy, we would recommend documenting the agreement discussions carefully and ensuring any communications make it clear that contractual entitlements on this basis are subject to acceptance of the claim by HMRC.

Employers may choose to 'top up' the pay to 100% of normal pay at their discretion - however this is not a requirement of the funding.

Employers can place a claim to HMRC for:

- Part-time and full-time employees
- Employees on flexible or zero-hour contracts
- Employees who have already been made redundant due to the business impact of the COVID-19 after 28 February 2020 (as long as they intend to rehire)
- The scheme is only available to employees hired before the 19 March 2020
- Employee placed on unpaid leave after 28 February 2020
- Employees who are foreign nationals. - Grants under the scheme are not counted as 'access to public funds', and you can furlough employees on all categories of visa.
- You can choose to place all or only part of your workforce on Furlough.

Placing a Director on Furlough Leave

If it is now confirmed that salaried Company Directors can be placed on Furlough leave. In order to place a salaried company Director on furlough leave they need to be paid via a PAYE scheme. In these circumstances the board of the company can make the decision to Furlough. Where one or more individual directors' furlough is so decided by the board, this should be formally adopted as a decision of the company, noted in the company records and communicated in writing to the director(s) concerned.

Where a Director owes statutory duties to the company under the Companies Act 2006, they can carry out these duties while on Furlough Leave however they should complete work which is reasonable to fulfil their statutory duties and not complete any work which would in normal circumstances generate comical revenue for the company

These rules can also apply to salaried individuals who are directors of their own personal service company (PSC).

Placing an Office Holder on Furlough Leave

In order to place an Office Holder on Furlough Leave then need to be paid via a PAYE. Office Holders can be placed on Furlough Leave via the Job Retention Scheme however they will need to agree the income they receive with their PAYE operator. Where the office holder is a company director or member of a Limited Liability Partnership (LLP), the furlough arrangements should be adopted formally as a decision of the company or LLP.

Employees in Special Circumstances

If you have employees who are currently on sick leave, they remain eligible for the statutory sick pay entitlement. They can be placed on Furlough Leave after coming off sick leave.

Employees who are currently shielding in-line with government advice due to being in a high-risk group can be placed on Furlough leave if they cannot work from home.

Employees with caring responsibilities which have arisen as a result of COVID-19 and who cannot work due to these responsibilities can be Furloughed.

The Coronavirus Job Retention Scheme is not intended to cover for periods of short-term illness and/or self-isolation. However, if you decide for business reasons to furlough employees who are currently off ill, you are eligible to do so. As such, the employee should no longer receive sick pay and will be classified as a furloughed employee.

Employees are furthermore entitled to furlough employees who are on long-term sick leave. It is up to employers to decide whether to furlough these employees. You can claim back from both the Coronavirus Job Retention 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 Coronavirus Job Retention Scheme, and not the SSP rebate scheme.

Employees on furlough retain their statutory rights, which includes their right to Statutory Sick Pay. Therefore, if an employee falls ill while on furlough, they must at least be paid their Statutory Sick Pay entitlement (currently set at £95.85). Employers can decide whether they will move the ill employee to Statutory Sick Pay, or indeed keep them furloughed, at the furlough rate (in which case they will remain eligible to claim for these costs through the furloughed scheme). For the avoidance of doubt, you can no longer claim furlough if you moved a furloughed employee onto Statutory Sick Pay. You may, however, qualify for a rebate for up to 2 weeks of Statutory Sick Pay

For employees on maternity leave/ adoption leave/ paternity leave or shared parental leave - these schemes should continue to run as normal and in line with your policies. If you offer enhanced maternity leave/ adoption leave/ paternity leave or shared parental leave, then the level of enhancement can be claimed via the job retention scheme.

Employees on fixed term contracts can be Furloughed. Their contracts can be renewed or extended during the furlough period without breaking the terms of the scheme. Where a fixed term employee's contract ends because it is not extended or renewed you will no longer be able claim funds from the Job Retention Scheme for them.

Volunteer Work

A Furloughed employee can take part in volunteer work, if it does not provide services to or generate revenue for the company. For example an employee can choose to volunteer to support a charity.

Training

Furloughed employees can engage in training, as long if it does not provide services to or generate revenue for the company. Indeed, current guidance actually encourages furloughed employees to undertake training.

For furloughed employees who receive less than the National Minimum Wage, employers will have to top up the furlough pay up to the National Minimum Wage as and when furloughed employees engage in training. Where the furlough pay provided to the employee is in excess to the National Minimum Wage, employers do not have to top this up.

Holidays and Furlough

Current guidance states that furloughed workers, can request and take their holiday in the usual way, if their employer agrees. This includes bank holidays. Furthermore, furloughed workers must get their usual pay in full, for any holiday they take.

However, it is currently unclear whether a period of holiday will interrupt the 3 week minimum furlough period and therefore jeopardise funding for employers. We would therefore advise that businesses make a judgment call as to whether or not they will be granting holidays to furloughed employees. When making such a decision, we would encourage considering the risk and the business' ability to, should the funds be withheld by the HMRC, to sustainably cover the salary cost.

We are very much hoping to receive further official guidance about this as quickly as possible.

Holiday Entitlement

During the coronavirus outbreak, it may not be possible for staff to take all their holiday entitlement during the current holiday year. Companies should still be encouraging staff members to take their paid holiday.

The government has introduced a temporary new law allowing employees and workers to carry over up to 4 weeks' paid holiday over a 2-year period.

This law applies for any holiday the employee does not take because of coronavirus, for example if:

- they're self-isolating or too sick to take holiday before the end of their leave year
- they've been temporarily sent home as there's no work ('laid off' or 'put on furlough')
- they've had to continue working and could not take paid holiday

If an employee or worker leaves their job or is dismissed during the 2-year period, any untaken paid holiday must be added to their final pay.

Employer National Insurance and Pension Contribution

The Job Retention Scheme will also cover employer National Insurance and Pension contribution. Employer pension contributions will only be made at the statutory limit of 3%. HMRC are currently working on the process for how employers can reclaim this amount with details to be released over the coming weeks.

What you'll need to make a claim

Employers should discuss with their staff and make any changes to the employment contract by documented agreement. Employers may need to seek advice on the process.

If sufficient numbers of staff are involved, it may be necessary to engage collective consultation processes to procure agreement to changes to terms of employment.

To claim, you will need to provide:

- your ePAYE reference number
- the number of employees being furloughed
- the claim period (start and end date)
- amount claimed (per the minimum length of furloughing of 3 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. The level of salary you claim for should not include the cost of non-monetary benefits, this includes any taxable benefits in kind. Equally salary sacrifice schemes (including pension contributions) that reduce an employee's taxable pay should also not be included in the reference salary.

You can claim employer pension contributions that are paid on the subsidised furlough pay, up to the level of the minimum automatic enrolment employer contribution. The maximum level of grant for employer pension contributions on subsidised furlough pay is set in line with the minimum automatic enrolment employer contribution of 3% on qualifying earnings. Grants for pension contributions can be claimed up to this cap provided the employer will pay the whole amount claimed to a pension scheme for the employee as an employer contribution.

Normally, an employee cannot switch freely out of a salary sacrifice scheme unless there is a life event. HMRC agrees that COVID-19 counts as a life event that could warrant changes to salary sacrifice arrangements, if the relevant employment contract is updated accordingly.

The minimum period you can Furlough an employee for is 3 weeks so all claims will need to be made for three weeks or longer.

Once HMRC have received your claim and 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. You can choose to top up the employee's salary, but you do not have to.

Following termination of the Job Retention Scheme

Once the scheme is ended by the Government you will need to assess if employees can return to their roles or if there remains a case for redundancies. As employees retain all employment rights while on Furlough Leave, you will need to follow a full redundancy process which may include statutory consultation timeframes, depending on the number of roles you are seeking to make redundant.

Lisa Thomson, 5 June 2020

Please contact lisa@purposehr.co.uk if you have questions in relation to the notes above.

Please note that this non-exhaustive guidance is subject to change and review as we await the publication of additional more detailed guidance from the Government and HMRC

Further sources of information and reference:

<https://www.gov.uk/guidance/claim-for-wage-costs-through-the-coronavirus-job-retention-scheme>

<https://www.businesssupport.gov.uk/coronavirus-job-retention-scheme/>

<https://www.acas.org.uk/coronavirus/using-holiday>