

JOB RETENTION SCHEME

Frequently Asked Questions

(Based on information available as at 31 March 2020)

Under the Coronavirus Job Retention Scheme, all UK employers with a PAYE scheme will be able to access support to continue paying part of their employees' salary for those that would otherwise have been laid off during this crisis.

This applies to employees who have been asked to stop working, but who are being kept on the pay roll, otherwise known as 'furloughed workers'. HMRC will reimburse 80% of their wages, up to £2,500 per month. This is to safeguard workers from being made redundant.

The Coronavirus Job Retention Scheme will cover the cost of wages backdated to 1 March and is initially open for 3 months, but will be extended if necessary.

Q1: What does 'furloughed' mean

This is a term which is typically used in the United States. It means putting employees on temporary leave of absence where they do not work but are retained on payroll and resume their duties when they are needed again.

Q2: Is any work allowed?

Furlough means that the employee does not carry out any work

Q3: Can directors of a company be furloughed?

At first it was thought that directors could not be furloughed. However, Martyn Lewis announced on his program on Friday 27 March that he had contacted HMRC and they confirmed that company directors can be "furloughed" even though still carrying on their statutory duties as directors e.g. filing returns at Companies House.

If this is officially confirmed it will be good news for thousands of directors, particularly those running personal service (IR35) companies.

Note that the 80% grant would only apply to directors salaries, not their dividends.

Q4: Does the scheme apply to all employers?

Yes, all employers can access the scheme provided they have a PAYE scheme in operation, there is no restriction on size or type. It also applies to not for profit organisations.

Q5: What actions do employers need to take?

You will need to designate which of your workforce will be furloughed employees and then submit that information to HMRC, along with each employee's earnings.

Q6: What if only certain employees are furloughed?

Employers need to designate which employees are furloughed, If you are not placing everyone on furlough, you should consider carefully which employees it applies to.

It may be worth getting advice from employment law/ HR specialists as the decision may result in discrimination claims from those who allege they were made to do it because of their age, disability or pregnancy.

Think about those workers whose skills will continue to be in demand. This may help justify why some were furloughed and why others were not.

You might also consider asking for volunteers across the workforce

There does not appear to be a maximum number of employees who can be furloughed.

Q7: How much can employers claim from the government?

When employers have designated which employees are furloughed and notified HMRC of their earnings the employer will then receive a grant to cover the 80% their wages. The grant will be liable for income tax and employee national insurance contributions (NICs).

As at 26 March we are still awaiting more information from the government on the online portal to be used to submit the information and what other information may be required. The Chancellor stated that he hopes the first grants will be paid by the end of April 2020, and they will be backdated to 1 March 2020.

The scheme is initially intended to run for three months but may be extended.

Q8: What is the 80% grant based on?

The maximum grant will be calculated per employee and is the lower of:

- 80% of 'an employee's regular wage' and.
- £2,500 per month.

Plus the associated employers' national insurance contributions (NIC) on this amount and the minimum automatic enrolment employer pension contributions on that wage.

This gives a maximum cap of £2,500 +£245 (employers' NIC) + £59 (auto-enrolled pension contribution) = £2,804 of total possible grant that can be applied for per employee per month.

The grant is only available in respect of employees on the payroll at 28 February 2020.

Q9: What about bonuses, commission, fees and overtime?

Fees, commission and bonuses should not be included in the calculation of the employees regular wage. It is unclear at this stage how overtime will be treated.

Q10: What about workers on zero hours contracts or irregular hours?

The Chancellor said the intention was to try to cover as broad a group of people as possible. It has been suggested (as yet unconfirmed) that the 80% test would apply to such workers' February 2020 pay.

Q11: Do employers still need to pay the full salary to the employee?

No, there is no requirement to do this, employers can do so if they wish. They would need to make up the other 20%. Many employers will choose to reduce the employee's pay to the amount funded by the government.

Q12: What about employees on short-time working?

Furlough requires the employee to not carry out any work, so short-time working could not continue during furlough.

Employers should consider re-organising work patterns to allow for some of those on short-time working to go back to full hours and the others to be furloughed. This should be discussed with employees first. This may have employment contract implications and employment law/ HR specialist input may be required - **See Q6.**

Q13: Which employees can we claim for?

Furloughed employees must have been **on your PAYE payroll on 28 February 2020**, and can be on any type of contract, including:

- full-time employees
- part-time employees
- employees on agency contracts
- employees on flexible or zero-hour contracts

The scheme also covers employees who were made redundant since 28 February 2020, if they are rehired by their employer.

To be eligible for the subsidy, when on furlough, an employee can not undertake work for or on behalf of the organisation. This includes providing services or generating revenue. While on furlough, the employee's wage will be subject to usual income tax and other deductions.

This scheme is only for employees on agency contracts who are not working.

Employers should discuss with their staff and make any changes to the employment contract by agreement. When employers are making decisions in relation to the process, including deciding who to offer furlough to, equality and discrimination laws will apply in the usual way.

To be eligible for the subsidy employers should write to their employee confirming that they have been furloughed and keep a record of this communication.

You do not need to place all your employees on furlough. However, those employees who you do place on furlough cannot undertake work for you.

Q14: Which employees are not eligible?

Employees hired after 28 February 2020 cannot be furloughed or claimed for in accordance with this scheme.

If an employee is working, but on reduced hours, or for reduced pay, they will not be eligible for this scheme and you will have to continue paying the employee through your payroll and pay their salary subject to the terms of the employment contract you agreed.

Q15: What if employees are on unpaid leave?

Employees on unpaid leave cannot be furloughed, unless they were placed on unpaid leave after 28 February.

Q16: What about employees on Statutory Sick Pay?

Employees on sick leave or self-isolating should get Statutory Sick Pay, but can be furloughed after this.

Employees who are shielding in line with public health guidance can be placed on furlough.

Q17: What if an employee has more than one job?

If your employee has more than one employer they can be furloughed for each job. Each job is separate, and the cap applies to each employer individually.

Q18: What if an employee does volunteer work or training?

A furloughed employee can take part in volunteer work or training, as long as it does not provide services to or generate revenue for, or on behalf of your organisation.

However, if workers are required to for example, complete online training courses whilst they are furloughed, then they must be paid at least the NLW/NMW for the time spent training, even if this is more than the 80% of their wage that will be subsidised.

Q19: What if an employee is on Maternity Leave, contractual adoption pay, paternity pay or shared parental pay?

Individuals who are on or plan to take Maternity Leave must take at least 2 weeks off work (4 weeks if they work in a factory or workshop) immediately following the birth of their baby. This is a health and safety requirement. In practice, most women start their Maternity Leave before they give birth.

If your employee is eligible for Statutory Maternity Pay (SMP) or Maternity Allowance, the normal rules apply, and they are entitled to claim up to 39 weeks of statutory pay or allowance.

Employees who qualify for SMP, will still be eligible for 90% of their average weekly earnings in the first 6 weeks, followed by 33 weeks of pay paid at 90% of their average weekly earnings or the statutory flat rate (whichever is lower). The statutory flat rate is currently £148.68 a week, rising to £151.20 a week from April 2020.

If you offer enhanced (earnings related) contractual pay to women on Maternity Leave, this is included as wage costs that you can claim through the scheme.

The same principles apply where your employee qualifies for contractual adoption, paternity or shared parental pay.

Q20: How much can we claim?

Employers need to make a claim for wage costs through this scheme.

You will receive a grant from HMRC to cover the lower of 80% of an employee's regular wage or £2,500 per month, plus the associated Employer National Insurance contributions and minimum automatic enrolment employer pension contributions on that subsidised wage. Fees, commission and bonuses should not be included.

At a minimum, employers must pay their employee the lower of 80% of their regular wage or £2,500 per month. An employer can also choose to top up an employee's salary beyond this but is not obliged to under this scheme.

We will issue more guidance on how employers should calculate their claims for Employer National Insurance Contributions and minimum automatic enrolment employer pension contributions, before the scheme becomes live.

For full time and part time salaried employees, **the employee's actual salary before tax, as of 28 February** should be used to calculate the 80%. Fees, commission and bonuses should not be included.

Q21: What About Employees whose pay varies?

If the employee has been employed (or engaged by an employment business) for a full twelve months prior to the claim, you can claim for the higher of either:

- the same month's earning from the previous year
- average monthly earnings from the 2019-20 tax year

If the employee has been employed for less than a year, you can claim for an average of their monthly earnings since they started work.

If the employee only started in February 2020, use a pro-rata for their earnings so far to claim.

Once you've worked out how much of an employee's salary you can claim for, you must then work out the amount of Employer National Insurance Contributions and minimum automatic enrolment employer pension contributions you are entitled to claim.

Q22: What about National Insurance and Pension Contributions?

All employers remain liable for associated Employer National Insurance contributions and minimum automatic enrolment employer pension contributions on behalf of their furloughed employees.

You can claim a grant from HMRC to cover wages for a furloughed employee, equal to the lower of 80% of an employee's regular salary or £2,500 per month, plus the associated Employer National Insurance contributions and minimum automatic enrolment employer pension contributions on paying those wages.

You can choose to provide top-up salary in addition to the grant. Employer National Insurance Contributions and automatic enrolment contribution on any additional top-up salary will not be funded through this scheme. Nor will any voluntary automatic enrolment contributions above the minimum mandatory employer contribution of 3% of income above the lower limit of qualifying earnings (which is £512 per month until 5th April and will be £520 per month from 6th April 2020 onwards).

Q23: What about employees on National Minimum Wage?

Individuals are only entitled to the National Living Wage (NLW)/National Minimum Wage (NMW) for the hours they are working.

Therefore, furloughed workers, who are not working, must be paid the lower of 80% of their salary, or £2,500 even if, based on their usual working hours, this would be below NLW/NMW.

However, if workers are required to for example, complete online training courses whilst they are furloughed, then they must be paid at least the NLW/NMW for the time spent training, even if this is more than the 80% of their wage that will be subsidised.

Q24: What information is required to make a claim?

To claim, you will need:

- your PAYE 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.

You can only submit one claim at least every 3 weeks, which is the minimum length an employee can be furloughed for. Claims can be backdated until the 1 March if applicable.

Q25: When can we start claiming?

The online service you'll use to claim is not available yet. We expect it to be available by the end of April 2020.

You can only submit one claim at least every 3 weeks, which is the minimum length an employee can be furloughed for. Claims can be backdated until the 1 March if applicable.

Q26: How will the grant be paid?

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.

Q27: What happens when the government ends the scheme?

When the government ends the scheme, employers must make a decision, depending on their circumstances, as to whether employees can return to their duties. If not, it may be necessary to consider termination of employment (redundancy).

Once the scheme has been closed by the government, HMRC will continue to process remaining claims before terminating the scheme.

Q28: What about employment rights of furloughed employees?

Employees that have been furloughed have the same rights as they did previously. That includes Statutory Sick Pay entitlement, maternity rights, other parental rights, rights against unfair dismissal and to redundancy payments.

Q29: What about Income tax, NIC and pension deductions?

Wages of furloughed employees will be subject to Income Tax and National Insurance as usual. Employees will also pay automatic enrolment contributions on qualifying earnings, unless they have chosen to opt-out or to cease saving into a workplace pension scheme.

Employers will be liable to pay Employer National Insurance contributions on wages paid, as well as automatic enrolment contributions on qualifying earnings unless an employee has opted out or has ceased saving into a workplace pension scheme.

Q30: Is the Coronavirus Job Retention Grant Taxable?

Yes, payments received by a business under the scheme are made to offset these deductible revenue costs. They must therefore be included as income in the business's calculation of its taxable profits for Income Tax and Corporation Tax purposes, in accordance with normal principles.

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