

27th March 2020



## Important details in relation to the Coronavirus Job Retention Scheme

The Government has now issued further guidance in relation to the Job Retention Scheme (the scheme), which was initially announced on 20 March 2020.

The Job Retention Scheme is a temporary scheme open to all UK employers for at least three months starting from 1 March 2020. The scheme is expected to be up and running for employers to make grant claims by the end of April. It is designed to support employers whose operations have been severely affected by coronavirus (COVID-19).

Following a number of queries raised by employers, the government has clarified a number of outstanding issues and has set out the main guidance as follows:

### 1. What are the main points of the Scheme?

Employers will be able to use a portal (still in construction) to claim a grant for the following wage costs:

- 80% of furloughed employees' (employees on a leave of absence) usual monthly wage costs, up to £2,500 a month; plus

- the associated Employer National Insurance contributions; and
- the minimum automatic enrolment employer pension contributions on that wage.

**The scheme is open to all UK employers that had created, and started, a PAYE payroll scheme on 28 February 2020.**

### 2. Who can claim the grant?

Any UK organisation with employees can apply, including:

- businesses
- charities
- recruitment agencies (agency workers paid through PAYE)
- public authorities

The employer must have created, and started, a PAYE payroll scheme on or before 28 February 2020 and have a UK bank account.

Where a company is being taken under the management of an administrator, the administrator will be able to access the Scheme.

### **3. Are Public Sector organisations eligible?**

The government expects that the scheme will not be used by many public sector organisations, as the majority of public sector employees are continuing to provide essential public services or contribute to the response to the coronavirus outbreak.

Where employers receive public funding for staff costs, and that funding is continuing, employers are expected to use that money to continue to pay staff in the usual fashion – and correspondingly not furlough them. This also applies to non-public sector employers who receive public funding for staff costs.

Organisations who are receiving public funding specifically to provide services necessary to respond to COVID-19 are not expected to furlough staff.

In a small number of cases, for example where organisations are not primarily funded by the government and whose staff cannot be redeployed to assist with the coronavirus response, the scheme may be appropriate for some staff.

### **4. Which employees can an employer claim for?**

Furloughed employees **must have been on the employer's payroll on 28 February 2020**, and can be on any type of contract, including:

- full-time employees;
- part-time employees;
- employees on agency contracts; and
- 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.

### **5. Can an employee continue working once furloughed?**

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.

### **6. Can an employee continue working for reduced hours/reduced pay?**

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

### **7. Does the employer need the agreement of employees?**

Employers should discuss with their employees 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.

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

An employer does not need to place all their employees on furlough. However, those employees who are placed on furlough cannot undertake work for their employer.

### **8. What happens if the employee is on unpaid leave?**

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

### **9. What happens if the employee is 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.

### **10. What if the employee has more than one job?**

If the 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.

### **11. Can the employee do 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 the 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.

## 12. What if the 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 the 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 an employer offers enhanced (earnings related) contractual pay to women on Maternity Leave, this is included as wage costs that the employer can claim through the scheme.

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

## 13. What can an employer claim?

Employers will be able to 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. HMRC 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.

## 14. How does an employer work out the salary for full time and part time employees?

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.

## 15. How does an employer calculate and Employees salary whose pay varies?

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

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

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

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

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

## 16. Does an Employer still have to pay 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.

Employers 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).

## 17. Are there any National Living Wage/National Minimum Wage implications?

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.

## 18. What information is required to make a claim?

To make a claim, an employer will need:

- their 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);
- their bank account number and sort code
- a contact name dealing with the claim; and
- a contact phone number.

HMRC can retrospectively audit all aspects of an employer's claim.

## 19. How often can an employer make a claim?

An employer 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. Once HMRC have received a claim and the employer is eligible for the grant, they will pay it via BACS payment to a UK bank account.

An employer can make their claim in accordance with actual payroll amounts at the point at which they run their payroll, or in advance of an imminent payroll.

The employer must pay the employee all the grant they receive for their gross pay, no fees can be charged from the money that is granted. An employer can choose to top up the employee's salary, but they do not have to.

## 20. What will happen at the end of the scheme?

When the government ends the scheme, the employer 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).

## 21. What employment rights do furloughed employees have?

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.

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

## 22. Does the employee have to pay Income tax and Employee National Insurance?

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.

## 23. What is the tax treatment of the Coronavirus Job Retention Grant?

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.

If you have any immediate questions, please do not hesitate to get in touch.



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