



# FURLOUGH AND THE JOB RETENTION SCHEME

## Guidance Notes

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The Government has announced its plans for financial assistance to help employers retain employees for an extended period of time, although offering no work, and avoid lay offs. It is called the Job Retention Scheme and we have set out below key information on how it will work. It is subject to continual review dependent on Government guidance.

### WHAT IS THE JOB RETENTION SCHEME?

It involves employers designating their employees as 'furloughed workers'. This isn't a term we use in UK employment law, and it seems to originate in the USA. It essentially means temporarily changing the status of employees so that they do no work but are retained on your books to be brought back in when you have work for them to do.

Employers who do this will be able to obtain a grant from the Government to cover 80% of furloughed employees' wages, to a maximum of £2,500 per employee per month.

All UK organisations with employees can apply, including:

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

Where employers are receiving public funding for staff costs, the Government expects that they use that money to continue to pay staff and 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.

### HOW DO I GET THE GOVERNMENT GRANT?

Guidance sets out that you will need submit information to HMRC on who your furloughed workers are. Once HMRC have received your claim and you are eligible for the 80% wage cost grant, they will pay it via BACS payment to a UK bank account. The Government are creating an online portal to be used to submit the necessary information.

You can only make one claim at least every 3 weeks. When applying, you will need:

- 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 should make a claim in accordance with actual payroll amounts at the point at which payroll is run or in advance of an imminent payroll.

The grant is a reimbursement to the employer therefore you should make the wage/salary payment to the furloughed worker as normal. Employers who are struggling with salary payments because of the current situation may be able to obtain assistance from the Coronavirus Business Interruption Loan Scheme (CBILS).



This is open to employers who have a turnover of no more than £45 million per year, and meet other eligibility criteria. Larger companies may be able to receive assistance via the COVID-19 Corporate Financing Facility, which buy short term debt to allow the finance of short term liabilities.

The Chancellor has stated 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 3 months but may be extended.

### **WHAT CAN I CLAIM THROUGH THE SCHEME?**

If employees have been employed (or engaged by an employment business in the case of agency workers) for a full year, employers will claim for the higher of either:

- the amount the employee earned in the same month last year, or
- an average of their monthly earnings from the last year.

If employees been employed for less than a year, employers will claim for an average of their monthly earnings since they started work.

The same arrangements apply if the employee's monthly pay varies because they are, for example, a zero-hour hours employee.

If the employee started work in February 2020, the employer will pro-rata the earnings from that month.

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.

Once you have 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.

### **WHAT ABOUT TAX, NATIONAL INSURANCE AND PENSIONS?**

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.

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 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.

If you decide to top up employees' pay above the 80%, employer National Insurance Contributions and automatic enrolment contribution on that top up salary will not be funded through the 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).

### **IF I PUT EMPLOYEES ON FURLOUGH AND I GET A GRANT TO COVER 80% OF THEIR WAGES, DO I HAVE TO MAKE UP THE OTHER 20%?**

No, there is no requirement to do this but of course you can if you wish.



## **WHAT DO I NEED TO DO TO FURLOUGH MY EMPLOYEES?**

You need to designate which employees are to be furloughed. This may be all of your workforce, or some of it. Theoretically any employee can be furloughed and this includes full time, part time, zero hours and variable hours, but they must have been on your payroll on 28 February 2020; any new employees taken on since then cannot be furloughed. Staff need to be on PAYE in order for you to be able to claim the grant for their wages.

Employees on unpaid leave cannot be furloughed, unless they were placed on unpaid leave after 28 February 2020.

Employees on sick leave or self-isolation can be furloughed after their period of sickness or self-isolation ends. You can decide at that point whether they are to be furloughed.

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.

It is your choice over who to designate and employees cannot insist on it. If only a portion of your workforce is to be furloughed, you should consider carefully who it should be. Think about whose skills will continue to be in demand through this difficult period. Whilst you may assume that the best thing to do is furlough those employees labelled as high risk by the Government, forcing them on to furlough without their input (and therefore forcing them on to 80% wages) may result in discrimination claims from those who allege they were made to do it because of their age, disability or pregnancy. Where you need to select employees for furlough, it may be best to ask for volunteers across the workforce and if any high risk employees, who had previously been risk assessed as fine to still be in work, put themselves forward, it may well be appropriate to choose them first. There is no maximum or minimum number of employees who can be furloughed.

## **DO I NEED AGREEMENT FROM EMPLOYEES TO DESIGNATE THEM AS FURLOUGHED?**

Guidance states that your ability to furlough an employee depends on their contract. It is not likely that employee contracts will include a specific right to use furlough. However, contracts may contain a right to lay off employees on no pay already so are likely to make the discussions around furlough a little smoother. You should, in all cases, discuss the situation with the employees first so that you can explain what is happening and agree with them that you are designating them as a furloughed worker. It is especially important that you get agreement to the reduction in pay, otherwise this may give rise to claims of breach of contract or constructive dismissal. Whilst the drop to 80% with a £2,500 cap may not be an initially attractive option to employees, it is likely to be viewed as more favourable when it is explained to the employee that redundancy may be the only other option available.

You may agree that 100% pay is maintained for your employees during furlough, but you will still only be able to claim 80% up to the £2,500 per month cap via the Scheme.

Once agreement is obtained, you should confirm their temporary furloughed worker status to the employee in writing.

## **IS THERE A MINIMUM FURLOUGH PERIOD?**

Yes. An employee must be furloughed for a minimum of 3 weeks for you to be able to receive the grant to cover their 80% wages. You can designate an employee as furloughed more than once which theoretically means that you can bring them back after a period of at least 3 weeks to perform some work, and then designate them as furloughed again. There does not need to be any gap between furlough periods, either.



## **WHAT IF I HAVE ALREADY MADE SOME EMPLOYEES REDUNDANT?**

If employees have been made redundant since 28 February 2020, you can agree to bring them back and place them on furlough.

## **WHEN MY EMPLOYEES ARE ON FURLOUGH, CAN I BRING THEM IN ON A COUPLE OF DAYS IF I FIND WORK FOR THEM?**

Once employees are on furlough, they will not be able to work for you during that period, which counts out a couple of days here and there, or a more regular 'short time' working arrangement.

They can undertake online training or volunteer subject to public health guidance, as long as they are not making money for you or providing services to you.

If employees are required to, for example, complete 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.

Because you can place employees on furlough more than once, you do have the option of bringing them in if there is work to do but a period of furlough must stop for this to happen. You can then agree to place them on furlough again. Each period of furlough must be at least 3 weeks in duration.

## **WHAT IF 80% OF WAGES FALLS BELOW NATIONAL MINIMUM WAGE/NATIONAL LIVING WAGE?**

National Minimum/Living Wage is a rate payable for hours worked. As no hours are being worked by the employee, it does not matter if 80% of wage falls below the minimum hourly rate.

## **WHAT ABOUT THOSE ON MATERNITY LEAVE?**

Those about to go on maternity leave will go on leave as normal. However, if their earnings have reduced due to a period on furlough prior to the start of leave, and specifically during the period used to calculate their entitlement to Statutory Maternity Pay, their entitlement may be affected. Those already on maternity leave will remain so until they wish to return, at which point you would need to assess whether there is work for them or reach agreement with them to be 'furloughed'. Individuals 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.

Employees who qualify for Statutory Maternity Pay 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 contractual pay to women on maternity leave, this is included as wage costs that you can claim through the Scheme.