

Coronavirus Job Retention Scheme Advice for Employers



Coronavirus Job Retention Scheme

HMRC has issued further guidance on the Coronavirus Job Retention Scheme. In this update paper we explain how employers can access the Job Retention Scheme (JRS) to continue paying 80% of the salary for employees that would otherwise have been laid off or made redundant, outline some practical next steps and flag up potential complications of the scheme. The government guidelines are continually evolving so please do get in touch with your usual contact for up to date advice.

The key points of the scheme include:

- Employers will receive reimbursement from HMRC from the date they have furloughed their staff, backdated to 1 March 2020 (if applicable). The JRS will be open before the end of April.
- It is open for workers who were in employment on 28 February 2020.
- Employees hired after 28 February 2020 cannot be furloughed or claimed for in accordance with this scheme
- Changing the status of employees remains subject to existing employment law and may be subject to negotiation
- Furloughed workers should not undertake any work for the company, including answering calls or emails
- JRS should not interrupt an employees' continuity of service
- Annual leave will continue to accrue
- HMRC has confirmed that individuals will need to pay tax and NIC on the pay received whilst furloughed
- The grant is a reimbursement by HMRC so businesses may face cash flow issues
- There appears to be a minimum period staff can be furloughed for – 3 weeks (based on claim cycle), though given the scheme is designed to last for 3 months, we expect this minimum period to be extended.

JRS is intended to run for at least three months from 1 March 2020, but it will be extended if necessary. The JRS will cover the cost of wages backdated to 1 March 2020 (if applicable) and will be open before the end of April. It is open for workers who were in employment on 28 February.

1. The Terms of the Scheme

The Job Retention Scheme (JRS) is a huge incentive for companies to keep employees on payroll.

- To access the support, companies need to classify employees as a furloughed worker (temporary lay-off).
- This means the employee should not undertake any work for the company while furloughed, including answering calls or emails.
- In exchange employers can claim a grant of up to 80% of each employee's wage for all employment costs, up to a cap of £2,500 per month.

The employee remains employed and their employer can choose to fund the difference between this payment and their usual salary, but it's not compulsory. Assuming notice hasn't yet been served on 'at risk' employees, and even if it has, employers should discuss the JRS with them as part of any consultation process and agree to either carry on with the redundancy process, or agree to use the JRS as an alternative. Should the business decide, at a later point, that redundancies are still necessary, they should take legal advice at that stage on the associated risks.

If your employee is on unpaid leave

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

If your 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.

If your 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.

If your 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.

If your 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.

2. Eligibility and Accessing the JRS

All UK businesses are eligible as long as they:

- Designate affected employees as 'furloughed workers'
- Notify those employees of this change - changing the status of employees remains subject to existing employment law and, depending on the employment contract, may be subject to negotiation.
- Submit information to HMRC about the employees that have been furloughed and their earnings. This will be through a new online portal - HMRC will set out further details on the information required.

3. Employer National Insurance and Pension Contribution

- 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).

4. How Businesses Should Prepare – The Financials

- Set up the payroll with a furloughed pay element to identify the amounts for reclaim
- Calculate furloughed pay based on the 12 months up to the end of February. Use regular basic pay but not overtime (see 6/4/20 update) or bonuses.
- For employees off sick during that 12 months base furloughed pay on the amounts excluding sick pay
- Assume this is still pay and that PAYE tax and NIC deductions will be due, albeit that payments to HMRC are likely to be deferred
- This is a grant that reimburses the business, so cash flow could still be an issue. A bank facility or loan may be required to fund these payments prior to reimbursement.

5. Practical Step by Step Process

It is important at the outset to note that that the Chancellor has confirmed that the scheme does not override existing employment law principles, so it's important in any rush to implement this scheme that core employment principles are respected and employee rights protected.

To claim under the scheme, employers will need to:

- Designate affected employees as 'furloughed workers' and notify employees of this change. Changing the status of employees remains subject to the existing employment law, and depending on the employment contract, may be subject to negotiation
- It is important to understand that employees can't 'elect' to be furloughed – it is exclusively for the employer to give this designation.
- Employment law rules will not be overridden however, so make sure that any designation is based on objectively justifiable decision making – unfair selection or designation will attract the same criticism from employees as normal (and potentially any subsequent Tribunal hearing in the case of a claim)

1. Identify those employees 'at risk' and earmarked for lay-off
2. Analyse pay from the last 12 months up to the end of February (estimated timeframe, government still to confirm)
3. Establish base pay that qualifies for 80% furloughed grant
4. Identify employees where £2,500 cap will apply
5. Calculate additional pay required to get to 'normal' pay
6. Model options to manage any top up outside of the grant
7. Identify employees required to remain in employment
8. Model options to flex remuneration for those employees not furloughed, including establishing new 'base' pay in line with national minimum wage and employment related loans
9. Commence communication with all affected employees including illustrations of proposed payments
10. Enter into consultation with identified employees, getting their agreement to any change in contractual terms
11. Obtain employee/union buy-in and issue correspondence to formalise any change in contractual terms, getting signature of employee and filing copy for records.

6. What You'll Need to Make a Claim

It is critical to remember that employers should discuss with their staff and make any changes to the employment contract by agreement. Employers may need to seek legal 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:

- 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.

7. 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.

8. What to Do After You've Claimed

- Once HMRC has 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.

9. Employees That Have Been Furloughed

- 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.

10. 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.

11. 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.

We are working closely with our clients on implementing the new JRS, below are some of the most frequently asked questions.

QUESTION: What is the process to transfer an employee to be 'furlough'?

The employer must note that changing the status of employees remains subject to existing employment law and, depending on the employment contract, may be subject to negotiation. This means that in the absence of any contractual rights to the contrary, employers would be wise to consult with employees and seek agreement about furloughing before doing so.

QUESTION: Are employees made redundant?

No. Workers who are furloughed are not being dismissed or made redundant. This means furloughed employees are not entitled to redundancy payments.

QUESTION: What happens if we have to close the business?

If the employer shuts the business and tells staff who are ready and able to work not to come into work, it is the employer that is not providing work for them. The employer would have to continue to pay them in full pay unless there is a shortage of work/lay off clause in their contracts and the employees have signed their contracts.

The current economic conditions mean businesses are having to trade under extremely challenging and unprecedented conditions. Now more than ever, real time working capital management and the robustness of business continuity arrangements are key. We would urge businesses foreseeing a requirement for additional support or finance to act promptly, even as a precautionary measure.

We have been working with clients closely as they face these issues. As key decisions have to be made quickly, please be reassured that our expert team is available outside of working hours for advice and support.

For more information on the Coronavirus Job Retention Scheme please contact:

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