

## Corona Virus – Further Facts on Furloughs

On Wednesday 15 April HMRC updated its advice on Furloughing employees. We look at what we know so far as the Job Retention Scheme becomes more defined and honed.

The significant change just announced is that the scheme has been extended to cover employees inservice as of 19 March, it was previously 28 February. They must have also been notified to HMRC by an RTI submission by 19 March.

Similarly, employees made redundant or leaving up to 19 March 2020 can be re-employed so long as they were on the payroll as at 28 February and notified to HMRC by then. They can be re-employed after 19 March.

We would emphasise that HMRC are keen to point out that the employee must have been on the payroll before 19 March or 28 February under these scenarios such that the employer will have to have notified HMRC through an RTI submission up to the appropriate date.

If an employee has had multiple employers over the past year, has only worked for one of them at any one time, and is being furloughed by their current employer, their former employer/s should not reemploy them, put them on furlough and claim

for their wages through the scheme. It is worth highlighting that Automatic Enrolment Employer Pension Contribution subsidy is capped as follows:

*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.*

It had been previously announced that claims must be online only and will be available from 20 April. It has now been added that it is expected that claims will be paid within 6 days, although the first due are expected from 30 April. Based on experience, we might mention that HMRC processing and authorising a payment and it arriving in someone's bank account on the same day

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may be optimistic, especially as this is a hurriedly set up operation and no doubt HMRC will be swamped with applications. More details of how to make a claim are now included further down this article.

Where a company is in Administration, although there may be a genuine threat of redundancy already, employees can be furloughed, but this can only apply where there is a realistic chance that their jobs would be available again after the Corona Virus Pandemic crisis is over. Again, it is worth reminding ourselves that the scheme is designed to assist with the temporary impact of COVID 19 and not other, more general, economic factors.

### Eligible employees include:

- Apprentices (note that they must receive at least minimum wage whilst doing any training)
- Domestic employees (e.g. nannies and housekeepers).
- Both full and part time staff, plus zero hours contract workers and those on flexible time.
- Agency workers including those working through an umbrella company.
- Foreign nationals are eligible. Grants are not treated as access to public funds and employees on any type of visa may be furloughed.
- Employees who ceased working (e.g. redundancy or resignation) before 19 March 2020 and have been re-employed. so long as they were on the payroll as at 28 February and notified to HMRC by then. They can be re-employed after 19 March.
- People who are 'Shielding in line with the guidance' (essentially those deemed as extremely vulnerable) and those who need to stay at home to support them if they cannot work from home.
- Employees with caring responsibilities due to COVID 19, e.g. parents with children now off school, so long as they cannot work from home and are doing so in accordance with Government guidance and advice.
- Employees with a second job can work for one employer whilst furloughed by another.
- Employees whose contracts have been

transferred from one entity to another under TUPE after 19 March 2020 do not have their rights under the Coronavirus Job Retention Scheme affected by the transfer between employers.

- People who are on Fixed Term Contracts so long as it hasn't expired. The contract can be renewed or extended and still be eligible for the Job Retention Scheme.
- Company Directors: Whilst they cannot do any commercial work, they are allowed to undertake statutory duties etc in order to keep the company compliant and intact.
- Company office holders.
- Salaried members of Limited Liability Partnerships (LLPs), excluding performance-based remuneration.
- Employees of a Personal Service Company, in other words single director, 'one man band' entities. However, as many will tend to reward themselves with dividends rather than salary, the impact of the scheme may be minimal.
- Furloughed employees doing volunteer work whilst furloughed
- Furloughed employees doing training. Note that they must be paid at least Minimum Wage whilst undertaking training.
- Public Sector employees, although most are expected to work to support essential services.
- Some Government funded organisations' employees may not be eligible if the Government funding is continuing because it would be expected that the Government funding should cover staffing costs (if appropriate).

### **It is also possible to claim for people who are on the payroll but are not legally employees under employment law, so long as they are paid under PAYE and were at 19 March 2020:**

- We presume that this will cover deemed employees in various roles within the entertainment sector.
- Office holders, such as some company directors or company secretaries, who are within PAYE in accordance with tax legislation but are not employees in the true sense.

- Salaried members of LLPs.
- Agency workers including those working through an umbrella company (as above).
- ‘Limb (b)’ workers (Dependent Contractors: people who ‘white label’ by working for themselves but provide a service that appears to be for the main contractor, e.g. service engineers working for themselves but dealing with domestic repairs for, say, a major energy or phone/internet/cable supplier. Note that the courts are, however, tending to rule that many Limb (b) workers have employee rights). However, to qualify they must have been paid via PAYE. If they are paying tax as a self-employed person then they must look to the Self-Employed Income Support Scheme.
- Deemed employees caught by the so-called IR35 regime, including contractors providing services to Public Sector organisations.

### Who an employer cannot claim for:

- Employees working, but on reduced hours during the crisis.
- Employees on unpaid leave.
- Employees on sick leave entitled to Statutory Sick Pay.
- Employees Self-Isolating, who will be eligible for Statutory Sick Pay. However, once off Statutory Sick Pay they can be furloughed.
- Employees on Maternity Leave, Paternity Leave, Adoption Leave or Shared Parental Leave who will be eligible for payment under the existing rules covering these situations.

### Key Points to remember:

- Claims are based on the notion that the employment is in jeopardy and that redundancy would have happened if the furlough option was not available and that this is caused by the impact of the COVID 19 crisis.
- All employers are potentially able to claim whether they are a business or not.

- It is a temporary scheme for 3 months from 1 March 2020, but may be extended.
- Employees must have been on the PAYE payroll before 19 March 2020.
- Employers must have a PAYE scheme (set up before 19 March 2020) and have a UK bank account and be registered for PAYE Online.
- The scheme will cover 80% of the employee’s usual pay up to a maximum of £2,500 per month per employee.
- An employer can reduce pay to 80% of pay (subject to contract) and pay this lower sum.
- If 80% of salary is used and this falls below Minimum Wage, this is acceptable unless the employee is undertaking any training, in which case the training period must be topped up to Minimum Wage by the employer if necessary.
- The employer can claim the pay plus Employers’ National Insurance and their Automatic Enrolment Pension Plan Payments (taking the amount potentially above £2,500). However, there is a limit to the Pension amounts. 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.
- Employers must inform the employee in writing and keep a record of the notice for 5 years.
- The minimum period is a continuous three weeks, for example working 1 day a week would not count as four days a week of furlough.
- Furlough periods can be extended, but each extension must be at least 3 weeks.
- The employee can be made redundant at the end of the furlough.
- The employee must not do any work for the employer during the furlough.
- The pay is calculated by reference to pay at 19 March 2020 for salaried employees (full or part time)

- Where pay varies, there is a choice to reference to the same month in the previous year or the average over the 2019/20 Tax Year.
- Where the employee has served less than 12 months, one should take the average salary over the period.
- If the employee has worked less than a month, pro rate the salary up to the monthly equivalent.
- Past overtime, contractual/compulsory commissions and fees may be included in the calculation above, but discretionary bonuses and non-monetary benefits in kind should not be included therein.
- The employer may continue to provide ongoing benefits in kind.
- Where there is a Salary Sacrifice Scheme, it is the reduced salary amount that is included for the Job Retention Scheme. This, therefore, excludes, Pension Contributions paid by the employer from the salary amount.
- Employees can switch out of Salary Sacrifice Schemes during the crisis as HMRC view COVID-19 as a 'Life Event'.
- Apprenticeship Levy Scheme payments must continue to be paid and the scheme does not cover them.
- Student Loans must continue to be paid and are not covered by the scheme.
- The scheme is due to open for claims on 20 April 2020. The first payments are anticipated from 30 April and, thereafter, should generally be made within 6 working days.
- Claims are likely to be monthly but may be made on a three-week cycle.
- Claims can be back dated to 1 March 2020.
- Employers must continue to pay PAYE amounts to HMRC but may wish to consider calling HMRC for a time to pay arrangement.
- HMRC will retain the right to retrospectively audit all aspects of claims.

## Information needed to make a claim:

1. The bank account number and sort code the claim is to be received in.
2. The name and phone number of the person in the business/organisation or individual employer where appropriate for HMRC to call with any questions, or if using an agent such as NLP see below.
3. The employer's Personal Self-Assessment UTR (Unique Tax Reference) if not an organisation, Company UTR or CRN (Company Registration Number) if the entity is a company etc.
4. The total amount being claimed for all employees and the total furlough period.
5. A Government Gateway (GG) ID and password – if the employer doesn't already have a GG account, one can apply for one online (<https://www.gov.uk/register-employer>), or by going to GOV.UK and searching for 'HMRC services: sign in or register
6. The employer should be enrolled for PAYE online – if the employer isn't registered yet, they can do so now (<https://www.gov.uk/register-employer>), or by going to GOV.UK and searching for 'PAYE Online for employers'
7. The following information for each furloughed employee being claimed for:
  - Name.
  - National Insurance number.
  - Claim period and claim amount.
  - PAYE/employee number (optional).
8. If there are fewer than 100 furloughed staff – it will be necessary to input information directly into the system for each employee
9. If there are 100 or more furloughed staff – it will be necessary to upload a file with information for each employee; they will accept the following file types: .xls .xlsx .csv .ods.

**Please Note: You should retain all records and calculations in respect of your claims as HMRC may choose to retrospectively audit your claim.**

### ***If you would like Nyman Libson Paul to act for you***

- *If you use Nyman Libson Paul or another agent who is authorised to act for you for PAYE purposes, they will be able to make a claim on your behalf using their ID or password. You will need to advise as to which UK bank account you want the grant to be paid into, in order to ensure funds are paid as quickly as possible to you.*
- *However, if you use a file-only agent (who files your RTI return but doesn't act for you in other matters), they won't be able to make a claim for you and you'll need the information listed above from them to make the claim yourself or upgrade their agent status*

## Useful links

We have included a series of HMRC links which may be useful at this current time

### **Coronavirus Job Retention Scheme – eligibility guidance**

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

### **Job retention scheme calculator**

<http://www.tax.service.gov.uk/job-retention-scheme-calculator>

### **Guidance on calculating your employee wages to claim**

<http://www.gov.uk/guidance/work-out-80-of-your-employees-wages-to-claim-through-the-coronavirus-job-retention-scheme>

### **Step-by-step guide for employers**

<http://www.gov.uk/government/publications/coronavirus-job-retention-scheme-step-by-step-guide-for-employers>

### **Statutory Sick Pay (SSP): employers guide**

<https://www.gov.uk/employers-sick-pay>

### **IR35**

<http://www.gov.uk/guidance/understanding-off-payroll-working-ir35>

### **PAYE scheme**

<http://www.gov.uk/payee-for-employers>

### **Limited Liability Partnerships (LLP)**

<http://www.gov.uk/government/publications/life-of-a-limited-liability-partnership/life-of-a-limited-liability-partnership-gpllp3>

### **Contingent workers**

<http://www.gov.uk/guidance/check-if-you-could-be-covered-by-the-coronavirus-job-retention-scheme#guidance-for-specific-customers>

### **National Minimum Wage and National Living Wage rates**

<http://www.gov.uk/national-minimum-wage-rates>

### **Coronavirus (COVID-19): advice for employers and employees**

<http://www.acas.org.uk/coronavirus>

### **HMG business support**

<http://www.businesssupport.gov.uk/coronavirus-business-support/?utm>

### **HMRC extra support**

<http://www.gov.uk/dealing-hmrc-additional-needs>

### **Guidance for businesses in Scotland**

<http://www.gov.uk/guidance/coronavirus-covid-19-information-for-individuals-and-businesses-in-scotland>

### **Guidance for businesses in Wales**

<http://www.gov.uk/guidance/coronavirus-covid-19-information-for-individuals-and-businesses-in-wales>

### **Guidance for businesses in Northern Ireland**

<http://www.gov.uk/government/news/covid-19-guidance-information-for-ni-businesses-employers>

We propose to update this document as we receive new information and will continue to post useful updates on our home page as well as on our social media



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