

FURLOUGHING and CORONAVIRUS JOB RETENTION SCHEME

– WHAT IS IT AND HOW DOES IT WORK

(Based on guidance to 27 APRIL 2020)

Due to the Covid-19 Crisis we are all now becoming familiar with the new term “Furloughing”. This is a mechanism for Employers to put employees on a leave of absence and be able to claim, in most circumstances, 80% of the salary for that employee (up to a maximum of £2,500). The scheme is specifically to support Employers whose operations have been affected by the coronavirus.

The scheme that has been put in place by the Government is referred to as the “Coronavirus Job Retention Scheme” (CJRS)

The best way to explain the process and the rules as we currently understand them is by looking at the questions we are currently receiving on a day to day basis.

Q: Can I just tell my staff that they are Furloughed?

A: No. There is a formal process that needs to be adopted by Employers that involves a formal notification that is sent to the Employee which they then have to sign and agree to. Even though these are extraordinary times HR legislation still needs to be followed correctly by Employers. This is a contracted change to the employment status of the employee and therefore has to be communicated and agreed with them. It is expected that given the speed at which some Employers had to deal with Furloughing their employees that due process may not have been in place at the date it became effective. Employers therefore need to act now to ensure that the appropriate HR documents have been put in place.

Q: An employee started with the business on 6 March 2020, can they be furloughed?

A: Possibly. Only employees that were employed by the business as at 19 March 2020 and reported to HMRC on a RTI submission by this date can be furloughed. Employees taken on after this date cannot be furloughed and alternative procedures will need to be undertaken. This could include being laid-off, reducing salary or working hours and HR advice should be undertaken in these cases. This means that if an Employer continues to pay the individual the full amount or an 80% reduction (as this has been agreed formally with the employee) this will NOT qualify for a grant under the CJRS process. To extend further if an employee started on 6 March 2020 and their first pay period was dated 18 March 2020 and this was reported to HMRC they would qualify. If however the employee started on 6 March 2020 and their first pay period was 31 March 2020, they would NOT qualify.

Q: I have an employee who was correctly “Furloughed” from 20 March who earns £3,000 per month. Am I able to claim 80% of their salary back from 1st March under the CJRS?

A: No. There are 2 elements to this question. Firstly, as they were furloughed on 20 March, they will be entitled to Full Pay up until this date and no claim can be made via the CJRS for this period of employment. From 20 March you would only pay them 80% of their current salary up to a cap of £2,500 per month (£577 per week). (The cap is pro-rated for split payment periods).

As an example using the above information and assuming a 4 week period for ease of calculation.

- Weekly wage would be £750 – based on £3,000 divided by 4 weeks
- Weeks 1-3 would be at full pay. $£750 * 3 = £2,250$
- Week 4 would be at 80% subject to a maximum cap of £577 - $(£750 * 80%) = £600$ As this exceeds £577 the maximum amount to be paid for week 4 would be £577.
- Total wages for March would be $£2,250 + £577 = £2,827$

The Grant that can be claimed under CJRS would be £577 + Employers NIC + Employers Pension (based on minimum workplace pension rate)

Q: I have furloughed an employee and reduced their salary to 80%, can I get them to do some minor jobs whilst they are not working?

A: No. If an employee has been furloughed they are unable to do any work for the business including providing any services or generating revenue. This extends to them doing work for any other employer as compensation as this would be a breach of the furlough agreement. However, they are permitted to take part in volunteer work or training (see official guidance relating to training).

Q: My employee has agreed to take a reduction in their pay and are still working for the business, I assume I can still claim 80% back?

A: No. Firstly, for any reduction in hours or pay you will need to formally discuss any changes with the employee and obtain their consent to a change of their contract of employment. As the employee has not been "Furloughed" this means that no claim can be made under the CJRS for their pay.

Q: I have an employee who has currently been signed off sick and is being paid SSP, can they be furloughed?

A: Yes once their sick leave period has finished. For those self-isolating this would be after the 14 day SSP period, for other employees that are currently sick this would be after the date their existing sick note expires. Employees who are shielding in line with public health guidance can be placed on furlough from the date they were instructed to shield.

Q: I have furloughed my employees, they are contracted to work 30 hours a week but they regularly undertake overtime, will the 80% be calculated on contracted hours only?

A: No. In order to protect employees that are subject to zero hour contracts and those that regularly work overtime the wage that will be used to calculate the 80% allowed will be as follows:

- Where an employee has been employed for a full 12 months prior to the claim, you can claim for the higher of either:
 - The same months earning from the previous year
 - Average monthly earnings from the 2019/20 tax year
- Where an employee has been employed for less than a year, you can claim for the average of their monthly earnings since they started work for the 2019/20 tax year only.

Q: My furloughed employees regularly receive a quarterly bonus I assume this should be included in the calculations for the 80%?

A: Depends. Non-discretionary payments will be included such as commissions, overtime, fees. These are usually contracted within the contract of employment. Discretionary payments will not be included such as tips, bonuses, commissions, non-cash payments and non-monetary benefits in kind.

Q: Our pension scheme for employees is based on 10% of gross salary, I assume that I will be able to claim this as part of the Grant under the CJRS?

A: No. Any voluntary automatic enrolment contributions above the minimum mandatory employer contribution of 3% above the lower limit of qualifying earnings (£512 per month until 5 April) will not qualify. For example, a furloughed employee's revised monthly salary at 80% is £2,000 per month and the company contributes 10% as an Employers Pension contribution. This means that the Employer Pension amount due will be £200 and this will be paid to the pension company as normal. Under the CJRS a claim can only be made for £44.64 ((£2,000 - £512) @ 3%).

Q: I assume that I process and pay my employees once I receive the grant from HMRC?

A: No. Firstly, payroll processing periods will remain the same. Therefore if you are paid weekly, the payroll will be processed and reported via RTI submissions weekly. In terms of payment you should continue to pay your employees as normal once the payroll has been processed and their net pay is known. The Government expects that businesses should try to use the assistance measures that have been put in place to help with cashflow to ensure that employees continue to get paid on time. Where payments may be delayed to the employee it is important to ensure that your employees are informed and updated as much as possible. A delay in payment to them is a breach of employment conditions.

Q: How do I make a claim for the grant towards my wages costs?

A: You will need to have an online PAYE account with HMRC and a claim can be made via the coronavirus job retention scheme portal. You can claim once the payroll period has been run and the payment is imminent as the claim and the payroll should correspond. Payments will be made within 6 working days of the claim being filed. <https://www.gov.uk/guidance/claim-for-wage-costs-through-the-coronavirus-job-retention-scheme>