

More on the Coronavirus Job retention Scheme

(P1192 - 16.25 minutes)

HMRC has substantially expanded their original guidance on this scheme that went live on 20 April 2020.

Overview

The scheme has been extended to run until the 30 June 2020, with the Chancellor saying that he will extend it further if necessary.

As reported last month, from 1 March 2020 employers have been able to furlough employees for a minimum of three weeks and apply for a grant covering 80% of regular monthly wage costs, capped at £2,500 a month, plus the associated Employer NICs and minimum automatic enrolment employer pension contributions on that wage. Employers can choose to top up the employee's salary, but they do not have to.

Salary and other employment related costs are deductible as normal in arriving at taxable profits, but the grant received must be included as taxable income.

When employees return to work, they must be taken off furlough. Employees can be furloughed multiple times, but each separate instance must be for a minimum period of 3 consecutive weeks.

Making a claim

On 17th April 2020 HMRC published detailed guidance on the information that employers will need to be able to make their claim and the guidance includes a link to start processing a claim.

While agents can claim on their clients' behalf, that is not the case for 'file only' agents responsible for filing only their clients RTI returns. These agents can assist in gathering the information that is needed, but cannot make the claim.

To make a claim, employers will need:

- their Government Gateway user ID and password;
- their bank details;
- their employer PAYE reference number;
- the number of employees being furloughed and for each employee their:
 - National Insurance number
 - payroll or employee number (optional)
- the start and end date of the claim;
- the total amount being claimed for including employer National Insurance contributions and employer minimum pension contributions;
- their name and phone number as well as their UTR or company registration number

Where the claim is for more than 100 furloughed employees, they will need to upload an accepted file (.xls, xlsx, .csv or .ods) with each employee's:

- full name
- National Insurance number
- payroll number (optional)
- furlough start date
- furlough end date (if known)
- full amount claimed

Once you've claimed, employers should keep a copy of all records and calculations, including the claim reference number for your records

Having checked that a claim is correct, HMRC will pay the claim by BACS within 6 working days.

www.gov.uk/guidance/claim-for-wages-through-the-coronavirus-job-retention-scheme

Employment contracts

Where necessary, employment contracts need to be amended to allow for furloughing and when deciding who to furlough, equality and discrimination laws apply as usual. The employer must confirm to their employees in writing that they have been furloughed and a record kept for five years.

Rights at work

Employees still have the same rights at work, including: Statutory Sick Pay, maternity and other parental rights, rights against unfair dismissal and redundancy payments. Employees who are receiving Statutory Sick Pay, can be furloughed once they are no longer receiving Statutory Sick Pay.

Grants cannot be used to substitute redundancy payments.

Who can be furloughed?

Any entity with a UK payroll can apply, including businesses, charities, recruitment agencies and public authorities.

To be furloughed, employees must have been on the employer's PAYE payroll on or before 19 March 2020 and notified to HMRC on an RTI submission on or before 19 March 2020.

The scheme covers anyone who is paid through PAYE so that can include:

- full-time and part-time employees;
- flexible and zero-hour contracts staff;
- UK and foreign nationals;
- employees on fixed term contracts at 19 March, provided their contracts are renewed or extended during the furlough period;
- apprentices;
- individuals employing staff such as nannies (Individuals are not taxable on the grant received);
- shielding employees who are unable to work or need to stay home with someone who is shielding;
- employees who are unable to work due to caring responsibilities resulting from COVID-19, including looking after their children;
- office holders (including company directors) where furloughed arrangements are formally agreed;
- salaried directors, including directors of their own personal service company provided they only do work to fulfil their statutory duties;
- salaried members of LLPs;
- agency workers (including those employed by umbrella companies);
- limb (b) workers if paid through PAYE (Those who pay tax on their trading profits may be eligible for the Self-Employed Income Support Scheme).

IR35 contractors who are deemed employees with public sector engagements

For such deemed employees to be eligible for the scheme:

- the public sector organisation must agree the arrangement with the Personal Service Company and the fee-payer;
- the fee-payer would:
 - apply for the furlough payment;
 - pay at least the amount of wage-grant received to the PSC and report the payment via PAYE.
- the PSC would report the amount it pays to the contractor as deemed employment income via PAYE using box 58A on the PAYE Real Time Information return.

If the contractor also furloughs themselves as an employee or director of their own company, and is receiving any payments from a public sector client (including through the Job Retention Scheme), this income must be excluded from any calculation of the reference pay for the purposes of the Job Retention Scheme.

Redundant employees: HMRC has confirmed that where an employer made employees redundant, or they stopped working after 28 February 2020 but before 19 March, the employer can re-employ them, put them on furlough and claim for their wages through the scheme. This applies as long as the employee was on the payroll as at 28 February and had been notified to HMRC on an RTI submission on or before 28 February 2020. This extends to former employees who are re-employed both before and after 19 March 2020.

More than one employer: Employees with more than one employer can be furloughed for each job with the cap applying to each employer individually. Employees can be furloughed in one job and be part of the scheme but continue working for another employer and receive their normal wages.

Company in administration: Where a company goes into administration and there is a reasonable likelihood of rehiring the workers, say as part of a business sale, the administrator can access the Job Retention Scheme.

What these staff can do

While on furlough, employees cannot work so simply reducing their hours or pay will prevent them from being furloughed under the scheme. They cannot do any work that makes money or provides services for the organisation.

However, employees can undertake volunteer work and training but this cannot provide a service to or generate revenue for their employer. This means, for example, that apprentices can continue to train whilst furloughed. Where training is undertaken by furloughed employees, at the request of their employer, they are entitled to be paid at least their appropriate national minimum wage for this time (Apprenticeship Minimum Wage, National Living Wage or National Minimum Wage). The payment under the scheme may well provide sufficient monies to cover these training hours. However, where the time spent training attracts a minimum wage entitlement in excess of the furlough payment, employers will need to pay the additional wages.

If contractually allowed, employees are allowed to work for another employer whilst on furlough. Any new employee joining, while furloughed from another employment, should complete Statement C of starter checklist form.

Employees whose pay varies

If the employee has been employed for at least 12 months the employer can claim the higher of the:

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

However, if the employee has been employed for less than 12 months, the claim is for 80% of their average monthly earnings since they started work.

If the employee only started in February 2020, the 80% is calculated on a pro-rata for their earnings so far.

Past Overtime, Fees, Commission, Bonuses and non-cash payments

Employers can claim for any regular payments such as wages, non-discretionary overtime, fees and commission but discretionary bonuses, tips and future commission are excluded; so too are non-cash payments and non-cash benefits like company cars.

Benefits in Kind and Salary Sacrifice Schemes

The reference salary must not include the cost of non-monetary benefits, including taxable Benefits in Kind. Benefits provided through salary sacrifice schemes (including pension contributions) should also not be included in the reference salary. Where the employer provides benefits to furloughed employees, this should be in addition to the wages that must be paid under the terms of the Job Retention Scheme.

Normally, an employee cannot switch freely out of a salary sacrifice scheme unless there is a life event. HMRC agrees that COVID-19 counts as a life event that could warrant changes to salary sacrifice arrangements, if the relevant employment contract is updated accordingly.

Apprenticeship Levy and Student Loans

Both the Apprenticeship Levy and Student Loans should continue to be paid as usual. Grants from the Job Retention Scheme do not cover these.

Employees on unpaid leave

If this started after 28 February 2020, the employer could furlough them instead. Where an employee went on unpaid leave on or before 28 February, they can only be furloughed from the date on which it was agreed they would originally return from unpaid leave.

Interaction with sick pay

An employer may end up claiming both the Job Retention Scheme grant and statutory sick pay rebate scheme for an employee, but not for the same period of time.

The grant is not intended for short-term sickness or self-isolation when SSP is payable, but individuals who are shielding or on long-term sick leave can be furloughed under the Job Retention Scheme.

If an employee becomes ill while on furlough, they can be kept on furlough pay, but must be paid at least statutory sick pay. Alternatively, employers may decide to move sick employees onto Statutory Sick Pay and would no longer claim for the furloughed salary.

Holiday Pay

Furloughed employees continue to accrue leave as per their employment contract and can take holiday whilst on furlough. Where a furloughed employee takes holiday, the employer should pay their usual holiday pay in accordance with the Working Time Regulations. Employers will be obliged to pay additional amounts over the grant, though will have the flexibility to restrict when leave can be taken if there is a business need. This applies for both the furlough period and the recovery period.

Returning from statutory leave

Where an employee returns from statutory leave such as maternity leave and is furloughed, the Job Retention Grant should be based on their salary and not the pay that they were entitled to while on statutory leave.

Claims should be made either shortly before or during the running of the payroll and, claims can be backdated until the 1 March where employees have already been furloughed.

Where an agent who is authorised to act for an employer for PAYE purposes, they will be able to make a claim on the employer's behalf. However, employers using a file only agent to file their RTI returns, but doesn't act for employer in any other matters, they won't be authorised to make a claim and the employer will have to make the claim themselves.

HMRC will check the claim, and if eligible, pay it to the employer by BACS to a UK bank account.

Calculation guidance

HMRC has produced some useful guidance to help employers calculate the amount that can be claimed which can be found at:

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

This guidance includes a:

- number of useful worked examples to help employers understand how the '80% of normal wage' calculation works in a number of more challenging scenarios;
- link to HMRC's Coronavirus Job retention Scheme calculator for employers to use

Tax Treatment of the Coronavirus Job Retention Grant

Payments received by a business must be included as income in the business's calculation of its taxable profits for Income Tax and Corporation Tax purposes.

Businesses can deduct employment costs as normal when calculating taxable profits for Income Tax and Corporation Tax purposes. Individuals with employees that are not employed as part of a business (such as nannies or other domestic staff) are not taxable on grants received under the scheme.

When the scheme ends

When the government ends the scheme, employers must decide whether employees:

- can return to their duties; or
- are made redundant.

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