

Putting employees on Furlough – What we know so far

The following is the published information as at 24th March 2020:

Per the Government website for Employers

Support for businesses through the Coronavirus Job Retention Scheme

Under the Coronavirus Job Retention Scheme, all UK employers will be able to access support to continue paying part of their employees' salary for those employees that would otherwise have been laid off during this crisis.

Eligibility

All UK businesses are eligible.

How to access the scheme

You will need to:

- designate affected employees as 'furloughed workers,' and notify your 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 through a new online portal (HMRC will set out further details on the information required)

HMRC will reimburse 80% of furloughed workers wage costs, up to a cap of £2,500 per month. HMRC are working urgently to set up a system for reimbursement. Existing systems are not set up to facilitate payments to employers.

Per the Government website for Employees

Furloughed workers

If your employer cannot cover staff costs due to COVID-19, they may be able to [access support to continue paying part of your wage](#), to avoid redundancies.

If your employer intends to access the Coronavirus Job Retention Scheme, they will discuss with you becoming classified as a furloughed worker. This would mean that you are kept on your employer's payroll, rather than being laid off.

To qualify for this scheme, you should not undertake work for them while you are furloughed. This will allow your employer to claim a grant of up to 80% of your wage for all employment costs, up to a cap of £2,500 per month.

You will remain employed while furloughed. Your employer could choose to fund the differences between this payment and your salary, but does not have to.

Per ACAS

Government financial support

The government is providing financial support for employers affected by coronavirus disruption.

Coronavirus Job Retention Scheme

The government will be introducing the 'Coronavirus Job Retention Scheme'. This means employers can access financial support to continue paying the wages of employees who are temporarily sent home because there's no work. These staff are called 'furloughed' workers.

To access the scheme, employers will need to designate relevant staff as furloughed workers. The employer needs to get agreement from the worker to do this, unless it's covered by a clause in the employment contract.

Any furlough agreements should be in writing. It's a good idea to include:

- the date furlough starts
- when it will be reviewed
- how to keep in contact during furlough

A worker will stay employed while they are furloughed, but they must not work.

So what does this mean for me – what do I do now?

Whilst the published information is thin, we suggest the following approach:

1. Assess which employees to put on Furlough

Each employer should consider who should be furloughed. These have to be employees who would otherwise have been laid off. In some cases you may need to furlough some employees out of a pool of employees that are all in similar jobs due to a partial reduction in workload. Whilst we do not think there is a requirement to undertake an extensive selection process it would be sensible to make sure that you have recorded objective reasons for your choices to help avoid any discrimination type claims.

2. Decide your approach to topping up pay.

You are not obliged to but you may wish to do so if you can afford to. It may help with staff loyalty in the longer term. Nothing has been published yet which prevents you applying top ups to those most in need but not others but this may be a minefield that you wish to avoid depending again what you can afford and again also being mindful not to be discriminatory.

3. Communicate with the affected staff

As the furlough leave is stated to be subject to existing employment law, it is likely that you need to obtain the agreement of your employees to the change. A discussion explaining the reasons and the fact that it gives the business the best chance of riding through the situation should typically be an approach that will garner consent without too much trouble. You will also need to explain that this means that the employee is kept on the payroll but cannot undertake any work whilst furloughed. For many employees the alternative may be lay off on £29.00 per day (£30.00 from 6th April 2020), if a suitable lay off clause is in their employment contract, for a maximum of 5 days or redundancy.

4. Follow up the discussion in writing – confirming a record of the conversation and the fact that the employee has confirmed agreement. You may wish the employees to agree in writing if you have any concern that the position may be disputed at a later date.

5. Submit information to HMRC to claim your grant

HMRC will be setting up an online portal for employers to use to submit claims for support. Further details are awaited of the process.

Unfortunately, there are many questions that remain unanswered about the operation of the scheme so we urgently await further guidance. These include:

- What is the definition of “full employment costs”?
- What periods of leave can be classed as Furlough leave? Where does holiday fit in here?
- Can you put employees on and off furlough as work is or is not available?
- What exactly is required to designate an employee as a furloughed worker?
- In what circumstances is the Government envisioning that negotiation is required?
- What if that negotiation is unsuccessful?

A number of employers are asking if they can require employees to take holiday during the furlough period and what effect that will have on their claim for compensation from HMRC. At present we cannot provide a definitive answer but if further guidance from the Government prohibits furlough leave and holiday being taken either at the same time or within the overall furlough period then one solution may be to bring the furlough period to an end earlier than the date when employees can start work again and give them notice that they are required to take holiday for the period between the end of furlough and the return to work date. Under the Working Time legislation employers are permitted to require employees to take holiday provided they give appropriate notice – such notice being twice the period of the holiday e.g. if you require an employee to take a week off you need to give a minimum of two weeks notice.

As always we need to caveat that this is general guidance only in a very evolving situation so do check with your own professional advisers about your particular business circumstances.