



Coronavirus Job Retention Scheme What employers need to know

On 20 March 2020 the UK Government announced the Coronavirus Job Retention Scheme (CJRS) designed to try and retain jobs and avoid redundancies, where possible. This is in addition to other measures announced to help businesses. Further guidance on the scheme was issued on 26 March 2020, updated on 4 April 2020, and the below is intended to cover key questions employers may have and based on our understanding of the scheme at the time of publication. Please note the scheme only applies to individuals already on your payroll as at 28 February 2020.

1. Q. Can we simply impose a furlough on staff, or do we need their agreement?

A: Contract law still applies so staff must agree to being “furloughed” under the CJRS absent any existing express right to do so in your employment contracts. You will need to ask them to sign a Furlough agreement to that effect. If you would like assistance drafting a Furlough Agreement please get in touch.

2. Q: What employment costs will the government cover for furloughed staff?

A: The guidance confirms the Government will cover the lower of 80% or £2,500 of an individual’s gross earnings plus employer national insurance contributions and minimum automatic enrolment pension

contributions. This can include past overtime and compulsory commission payments. They will not reimburse bonuses or commission payments.

3. Q: Do we have to pay our staff the remaining 20% and any enhanced pension contributions?

A: Whilst the guidance says you do not have to top up the remaining 20%, please remember this will effectively amount to a variation of an individual's employment contract so you should agree with your staff as part of the furlough arrangement what they will be paid.

4. Q. How is pay calculated for employees with a variable income?

A: For employees who have been employed for 12 months prior to being placed on furlough leave, the employer can claim for either 80% of the same months' earnings from the previous year or the average monthly earnings from the 2019-2020 tax year, whichever is higher. For employees who have been employed for less than 12 months, the employer can claim for an average of the monthly earnings since the employee started employment.

5. Q. How do we choose which employees to Furlough? Is there a risk of discrimination?

A: You only need to keep the most critical staff to keep your business operation going. If you have a number of staff doing the same job, you can follow a similar selection procedure as in a redundancy situation to select those to furlough. It is also acceptable to ask for volunteers in the first instance.

6. Q. Does Holiday accrue whilst on Furlough Leave?

A: Yes. However, the Government has brought in legislation to relax the requirements of the Working Time Regulations with immediate effect meaning where an employee is unable to take their statutory leave

entitlement because of COVID 19 then this may be carried over into the next two holiday years. Please note, however, this change only applies to the first four weeks of an individual's statutory leave entitlement. The remaining 1.6 weeks, along with any enhanced contractual leave entitlement, will remain subject to your current internal practices on carrying over unpaid leave, unless you likewise choose to relax these. You will also now need a "good reason" to refuse leave, although this is not defined.

7. Q. Can we ask staff to do a small amount of work whilst on Furlough?

A: No. They cannot carry out any work for you whilst on furlough. Employees are permitted to do volunteer work, subject to public health guidance, as long as the employee is not doing it to the benefit the employer or providing services to the employer.

8. Q. Can we ask employees to complete training courses whilst on furlough?

A: Yes, however they then must be paid at least the National Living Wage for the time spent training, even if this exceeds 80% of their wage that will be subsidised.

9. Q: Should we Furlough members of staff who don't want to come into work because of their concerns?

A: Technically, if an employee says that (assuming the employee is concerned rather than sick/self-isolating) the employer can say I'm not paying you, but that would be quite a harsh position to take in current circumstances. Best practice would suggest assessing it on case by case basis as there is a risk that the entire workforce could request to be furloughed and then the employer is left without a business operation.

10. Q: We have someone about to go on maternity leave who has an enhanced maternity package in her contract, can we put her on Furlough leave?

Yes, however, if eligible, she has a statutory right to 6 weeks at 90% of her average earnings. Thereafter any enhanced maternity package is counted as wage costs for the purposes of the scheme. This would equally apply to any enhanced adoption leave or shared parental leave offered.

11. Q: Can we put someone on Furlough for half of the week and pay them for the rest of the week?

A: No, the guidance issued states that the minimum amount of time an employee can be furloughed for is 3 weeks. It is possible therefore to Furlough for 3 weeks, then return to work on full pay and then be placed on Furlough again sometime later.

12. Q: If we furlough an employee but then find we need to make them redundant can we treat part of their furlough leave as their notice period?

A: This is not addressed in the guidance. The whole purpose of the CJRS is, of course, to try and protect jobs. If, before the scheme ends, you find you have to make redundancies you will be required to consult in the usual way and, subject to any further guidance issued, should expect to have to cover any sums due to those selected for redundancy including notice and holiday pay, along with any statutory redundancy entitlement, as you would have done had this scheme not been introduced. You will also need to bear in mind that as part of consultation reasonable alternatives to redundancies should be considered, including the continued furloughing of staff until the scheme is withdrawn.

Further Information

Full details of the guidance issued on the 26 March 2020 can be found via the following link: <https://www.gov.uk/guidance/claim-for-wage-costs-through-the-coronavirus-job-retention-scheme>

Please note the above is based on guidance currently available on what is a new scheme and whilst we hope you find the above useful, it is not intended as legal advice.

If the above does not cover any particular question(s) you have on the CJRS and your ability to utilise the same, need a draft furlough agreement, or for any other employment related enquiries please do not hesitate to contact Louise Nunn or Alice Radford or email employment@lightfoots.co.uk.

Contact Us

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