



Burgis & Bullock
Chartered Accountants

Coronavirus Job Retention Scheme

what you need to know



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Under the Coronavirus Job Retention Scheme, all employers in the UK will be able to access support to continue paying part of employees' salaries who would otherwise have been laid off during the ongoing crisis.

Furloughed workers are employees whose employers cannot cover their staff costs due to coronavirus, and as such they have been asked to stop working but the employer does not want to make them redundant. Such employers will shortly be able to access support to continue paying part of their staff's wages, to avoid redundancies and so they can retain their teams.

To avoid fraud, there are expected to be cross-checks between the applications for grants against PAYE records for each employer. Employers will be required to make one claim for the entire workforce, record how many workers are covered and will need to keep records.

We must stress that detailed guidance has not yet been published and the following represents various views currently being expressed about how the scheme might work. As soon as we do receive the Government's guidance, we will issue further details.

The Scheme

The employer should discuss with affected employees and notify them (preferably in writing) that they have become 'furloughed workers'. Some contracts of employment give employers the right to lay people off work or place them on short time working but not all do. It is therefore vitally important if you do not have the contractual right to do this that you get employee consent in writing. ACAS have issued some suggestions as to what should be included in these communications, which we have adapted and included below, but it could be a costly exercise to get wrong and we would strongly recommend that you also seek the advice of an employment law solicitor, particularly if you are dealing with a large number of employees. The only detail issued by the Government so far stated very clearly that the scheme was subject to employment legislation, so they are clearly expecting this part of the law to be upheld.

So how do we think the scheme may work:

- The employer can claim a grant of 80% of workers' wages up to £2,500 a month once they have been furloughed
- The employees remain on the payroll deducting tax and national insurance under the pay as you earn (PAYE) system.
- If employers want to top up pay levels, they can, but will not be able to claim for more than 80 per cent of £3,125.
- The grant will be paid to the employer through a new online system which is being built for this purpose (see below).
- The employer could choose to fund the differences between this payment and employee's salary but does not have to.
- The furloughed workers should not undertake work for their employer while they are furloughed.
- The scheme is available to all employees.
- The employer needs to get agreement from the worker to do this, unless it's covered by a 'lay off' clause in the employment contract.

- The employer needs to submit information to HMRC about the employees that have been furloughed and their earnings. The submission will be through a new online portal which is expected before the end of April (HMRC will set out further details on the information required).
- If an employee's salary is reduced as a result of these changes, the employee may be eligible for support through the welfare system, including Universal Credit.
- For employees on zero-hour contracts, the employer can use the monthly pay in February 2020 as a benchmark for each person's pay when furloughed. If any employee did not work in that month, they should claim Universal Credit.
- If employees have to stay at home to look after young children, the employer is likely to be allowed to claim compensation if they furlough these workers.
- 80% of 'wages'. The notes published so far, use the phrase 'wage for all employment costs up to a cap of £2,500 per month'. It is our understanding that this includes employers' NIC and pension contributions.

The Coronavirus Job Retention Scheme will run for at least 3 months from 1 March 2020 but will be extended if necessary.

As this will take time to build, businesses should look to the Coronavirus Business Interruption Loan Scheme (CBILS) to support cash flow in the meantime. The narrative used in the information released so far says 'if your employer cannot cover staff costs due to COVID-19 they may be able to access support...'. This is a conditional phrase which may relate to existing funds available to the employer. We do not yet know how these might be determined, nor whether there is a bar of some description.

Warning

Please be careful: The promise of 80% funding with a £2,500 cap to avoid making layoffs by 'furloughing' staff, asking them to take a 'temporary leave of absence' might be attractive, but the legal position is unclear.

Further information and clarification is expected from Government shortly, for now, unless your contracts of employment have what is called 'A Lay-off Clause' which allows you to send employees home without pay, or 'such action is a regular practice', you need to proceed cautiously and at the very least have the employees' agreement to being furloughed in writing.

The Government has been clear, this announcement does not create a legal right to place employees on furlough leave. The employee's status will continue to be subject to employment law and existing contracts of employment.

Illustration

X Ltd employs Mr A at an annual salary of £24,000, so £2,000 per month. Mr A has opted out of auto enrolment.

Each month, Mr A currently receives net pay of £1,665 which is after deducting PAYE of £191 and employees NIC of £144. On this salary, the employer pays employers' NIC of £174.

The available grant for the employer is the lower of

- 80% of (£2,000 + £174) total cost to employer of £2,174, and
- £2,500

So, a grant of £1,739.

The cash required by X Ltd to furlough based on maintaining the existing salary should they wish to do so (including employer's NI) is £435 per month. It is a matter for employment law whether the employer is required to pay this top up. Discussions with employees may have agreed that the employee has agreed to a different arrangement during their furlough.

Summary

HMRC are working urgently to set up a system for reimbursement. Existing systems are not set up to facilitate payments to employers. It is expected that employers borrow or self-fund in the short term to provide the wage package. If a business needs short term cash flow support, it may be eligible for a Coronavirus Business Interruption Loan.

Suggested wording (drawn and adapted from the ACAS suggested content).

The furlough agreements should be in writing and it's a good idea to include:

- the date furlough starts
- when it will be reviewed
- how to keep in contact during furlough,
- A statement that a worker will stay employed while they are furloughed, but they must not work.

Suggested letters Letter 1

Dear xxx

As discussed, and [agreed/under terms of contract] to keep our business running we are placing a number of members of our team into the government backed Coronavirus Job Retention Scheme. This will allow us to keep you on the payroll and as a business we receive a grant of up to 80% of workers' wages up to £2,500 a month.

[We will be paying a salary of £xxxx]

The date you will be placed under the scheme is xxx and it will be reviewed with you at xxx.

We will keep in contact during the period by [insert method]. During this period, you will stay employed but a condition of the scheme is that you must not undertake work for our business.

Suggested letters Letter 2

Re: Notice of Furlough

Dear [employee name],

We regret to inform you that because of the current level of work available as a result of COVID-19, we have opted to place you on furlough (temporary layoff) during the next [number] weeks.

You are not authorised to work during the furlough without advance written authorisation from your [manager, supervisor, or director].

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