

JOB RETENTION SCHEME

Frequently Asked Questions

(Based on information available as at 29 March 2020)

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

This applies to employees who have been asked to stop working, but who are being kept on the pay roll, otherwise known as 'furloughed workers'. HMRC will reimburse 80% of their wages, up to £2,500 per month. This is to safeguard workers from being made redundant.

The Coronavirus Job Retention Scheme will cover the cost of wages backdated to 1 March and is initially open for 3 months, but will be extended if necessary.

Q1: What does 'furloughed' mean

This is a term which is typically used in the United States. It means putting employees on temporary leave of absence where they do not work but are retained on payroll and resume their duties when they are needed again.

Q2: Is any work allowed?

Furlough means that the employee does not carry out any work

Q3: Can directors of a company be furloughed?

At first it was thought that directors could not be furloughed. However, Martyn Lewis announced on his programme on Friday 27 March that he had contacted HMRC and they confirmed that company directors can be "furloughed" even though still carrying on their statutory duties as directors e.g. filing returns at Companies House.

If this is officially confirmed it will be good news for thousands of directors, particularly those running personal service (IR35) companies.

Note that the 80% grant would only apply to directors salaries, not their dividends.

Q4: Does the scheme apply to all employers?

Yes, all employers can access the scheme provided they have a PAYE scheme in operation, there is no restriction on size or type. It also applies to not for profit organisations.

Q5: What actions do employers need to take?

You will need to designate which of your workforce will be furloughed employees and then submit that information to HMRC, along with each employee's earnings.

Q6: What if only certain employees are furloughed?

Employers need to designate which employees are furloughed, If you are not placing everyone on furlough, you should consider carefully which employees it applies to.

It may be worth getting advice from employment law/ HR specialists as the decision may result in discrimination claims from those who allege they were made to do it because of their age, disability or pregnancy.

Think about those workers whose skills will continue to be in demand. This may help justify why some were furloughed and why others were not.

You might also consider asking for volunteers across the workforce

There does not appear to be a maximum number of employees who can be furloughed.

Q7: How much can employers claim from the government?

When employers have designated which employees are furloughed and notified HMRC of their earnings the employer will then receive a grant to cover the 80% their wages. The grant will be liable for income tax and employee national insurance contributions (NICs).

As at 26 March we are still awaiting more information from the government on the online portal to be used to submit the information and what other information may be required. The Chancellor stated that he hopes the first grants will be paid by the end of April 2020, and they will be backdated to 1 March 2020.

The scheme is initially intended to run for three months but may be extended.

Q8: What is the 80% grant based on?

The maximum grant will be calculated per employee and is the lower of:

- 80% of 'an employee's regular wage' and.
- £2,500 per month.

Plus the associated employers' national insurance contributions (NIC) on this amount and the minimum automatic enrolment employer pension contributions on that wage.

This gives a maximum cap of £2,500 +£245 (employers' NIC) + £59 (auto- enrolled pension contribution) = £2,804 of total possible grant that can be applied for per employee per month.

The grant is only available in respect of employees on the payroll at 28 February 2020.

Q9: What about bonuses, commission, fees and overtime?

Fees, commission and bonuses should not be included in the calculation of the employees regular wage. It is unclear at this stage how overtime will be treated.

Q10: What about workers on zero hours contracts or irregular hours?

The Chancellor said the intention was to try to cover as broad a group of people as possible. It has been suggested (as yet unconfirmed) that the 80% test would apply to such workers' February 2020 pay.

Q11: Do employers still need to pay the full salary to the employee?

No, there is no requirement to do this, employers can do so if they wish. They would need to make up the other 20%. Many employers will choose to reduce the employee's pay to the amount funded by the government.

Q12: What about employees on short-time working?

Furlough requires the employee to not carry out any work, so short-time working could not continue during furlough.

Employers should consider re-organising work patterns to allow for some of those on short-time working to go back to full hours and the others to be furloughed. This should be discussed with employees first. This may have employment contract implications and employment law/ HR specialist input may be required - **See Q6.**

Q13: Which employees can we claim for?

Furloughed employees must have been **on your PAYE payroll on 28 February 2020**, and can be on any type of contract, including:

- full-time employees
- part-time employees
- employees on agency contracts
- employees on flexible or zero-hour contracts

The scheme also covers employees who were made redundant since 28 February 2020, if they are rehired by their employer.

To be eligible for the subsidy, when on furlough, an employee can not undertake work for or on behalf of the organisation. This includes providing services or generating revenue. While on furlough, the employee's wage will be subject to usual income tax and other deductions.

This scheme is only for employees on agency contracts who are not working.

Employers should discuss with their staff and make any changes to the employment contract by agreement. When employers are making decisions in relation to the process, including deciding who to offer furlough to, equality and discrimination laws will apply in the usual way.

To be eligible for the subsidy employers should write to their employee confirming that they have been furloughed and keep a record of this communication.

You do not need to place all your employees on furlough. However, those employees who you do place on furlough cannot undertake work for you.

Q14: Which employees are not eligible?

Employees hired after 28 February 2020 cannot be furloughed or claimed for in accordance with this scheme.

If an employee is working, but on reduced hours, or for reduced pay, they will not be eligible for this scheme and you will have to continue paying the employee through your payroll and pay their salary subject to the terms of the employment contract you agreed.

Q15: What if employees are on unpaid leave?

Employees on unpaid leave cannot be furloughed, unless they were placed on unpaid leave after 28 February.

Q16: What about employees on Statutory Sick Pay?

Employees on sick leave or self-isolating should get Statutory Sick Pay, but can be furloughed after this.

Employees who are shielding in line with public health guidance can be placed on furlough.

Q17: What if an employee has more than one job?

If your employee has more than one employer they can be furloughed for each job. Each job is separate, and the cap applies to each employer individually.

Q18: What if an employee does volunteer work or training?

A furloughed employee can take part in volunteer work or training, as long as it does not provide services to or generate revenue for, or on behalf of your organisation.

However, if workers are required to for example, complete online training courses whilst they are furloughed, then they must be paid at least the NLW/NMW for the time spent training, even if this is more than the 80% of their wage that will be subsidised.

Q19: What if an employee is on Maternity Leave, contractual adoption pay, paternity pay or shared parental pay?

Individuals who are on or plan to take Maternity Leave must take at least 2 weeks off work (4 weeks if they work in a factory or workshop) immediately following the birth of their baby. This is a health and safety requirement. In practice, most women start their Maternity Leave before they give birth.

If your employee is eligible for Statutory Maternity Pay (SMP) or Maternity Allowance, the normal rules apply, and they are entitled to claim up to 39 weeks of statutory pay or allowance.

Employees who qualify for SMP, will still be eligible for 90% of their average weekly earnings in the first 6 weeks, followed by 33 weeks of pay paid at 90% of their average weekly earnings or the statutory flat rate (whichever is lower). The statutory flat rate is currently £148.68 a week, rising to £151.20 a week from April 2020.

If you offer enhanced (earnings related) contractual pay to women on Maternity Leave, this is included as wage costs that you can claim through the scheme.

The same principles apply where your employee qualifies for contractual adoption, paternity or shared parental pay.

Q20: How much can we claim?

Employers need to make a claim for wage costs through this scheme.

You will receive a grant from HMRC to cover the lower of 80% of an employee's regular wage or £2,500 per month, plus the associated Employer National Insurance contributions and minimum automatic enrolment employer pension contributions on that subsidised wage. Fees, commission and bonuses should not be included.

At a minimum, employers must pay their employee the lower of 80% of their regular wage or £2,500 per month. An employer can also choose to top up an employee's salary beyond this but is not obliged to under this scheme.

We will issue more guidance on how employers should calculate their claims for Employer National Insurance Contributions and minimum automatic enrolment employer pension contributions, before the scheme becomes live.

For full time and part time salaried employees, **the employee's actual salary before tax, as of 28 February** should be used to calculate the 80%. Fees, commission and bonuses should not be included.

Q21: What About Employees whose pay varies?

If the employee has been employed (or engaged by an employment business) for a full twelve months prior to the claim, you can claim for the higher of either:

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

If the employee has been employed for less than a year, you can claim for an average of their monthly earnings since they started work.

If the employee only started in February 2020, use a pro-rata for their earnings so far to claim.

Once you've worked out how much of an employee's salary you can claim for, you must then work out the amount of Employer National Insurance Contributions and minimum automatic enrolment employer pension contributions you are entitled to claim.

Q22: What about National Insurance and Pension Contributions?

All employers remain liable for associated Employer National Insurance contributions and minimum automatic enrolment employer pension contributions on behalf of their furloughed employees.

You can claim a grant from HMRC to cover wages for a furloughed employee, equal to the lower of 80% of an employee's regular salary or £2,500 per month, plus the associated Employer National Insurance contributions and minimum automatic enrolment employer pension contributions on paying those wages.

You can choose to provide top-up salary in addition to the grant. Employer National Insurance Contributions and automatic enrolment contribution on any additional top-up salary will not be funded through this scheme. Nor will any voluntary automatic enrolment contributions above the minimum mandatory employer contribution of 3% of income above the lower limit of qualifying earnings (which is £512 per month until 5th April and will be £520 per month from 6th April 2020 onwards).

Q23: What about employees on National Minimum Wage?

Individuals are only entitled to the National Living Wage (NLW)/National Minimum Wage (NMW) for the hours they are working.

Therefore, furloughed workers, who are not working, must be paid the lower of 80% of their salary, or £2,500 even if, based on their usual working hours, this would be below NLW/NMW.

However, if workers are required to for example, complete online training courses whilst they are furloughed, then they must be paid at least the NLW/NMW for the time spent training, even if this is more than the 80% of their wage that will be subsidised.

Q24: What information is required to make a claim?

To claim, you will need:

- your PAYE reference number
- the number of employees being furloughed
- the claim period (start and end date)
- amount claimed (per the minimum length of furloughing of 3 weeks)
- your bank account number and sort code
- your contact name
- your phone number

You will need to calculate the amount you are claiming. HMRC will retain the right to retrospectively audit all aspects of your claim.

You can only submit one claim at least every 3 weeks, which is the minimum length an employee can be furloughed for. Claims can be backdated until the 1 March if applicable.

Q25: When can we start claiming?

The online service you'll use to claim is not available yet. We expect it to be available by the end of April 2020.

You can only submit one claim at least every 3 weeks, which is the minimum length an employee can be furloughed for. Claims can be backdated until the 1 March if applicable.

Q26: How will the grant be paid?

Once HMRC have received your claim and you are eligible for the grant, they will pay it via BACS payment to a UK bank account.

You should make your claim in accordance with actual payroll amounts at the point at which you run your payroll or in advance of an imminent payroll.

You must pay the employee all the grant you receive for their gross pay, no fees can be charged from the money that is granted. You can choose to top up the employee's salary, but you do not have to.

Q27: What happens when the government ends the scheme?

When the government ends the scheme, employers must make a decision, depending on their circumstances, as to whether employees can return to their duties. If not, it may be necessary to consider termination of employment (redundancy).

Once the scheme has been closed by the government, HMRC will continue to process remaining claims before terminating the scheme.

Q28: What about employment rights of furloughed employees?

Employees that have been furloughed have the same rights as they did previously. That includes Statutory Sick Pay entitlement, maternity rights, other parental rights, rights against unfair dismissal and to redundancy payments.

Q29: What about Income tax, NIC and pension deductions?

Wages of furloughed employees will be subject to Income Tax and National Insurance as usual. Employees will also pay automatic enrolment contributions on qualifying earnings, unless they have chosen to opt-out or to cease saving into a workplace pension scheme.

Employers will be liable to pay Employer National Insurance contributions on wages paid, as well as automatic enrolment contributions on qualifying earnings unless an employee has opted out or has ceased saving into a workplace pension scheme.

Q30: Is the Coronavirus Job Retention Grant Taxable?

Yes, payments received by a business under the scheme are made to offset these deductible revenue costs. They must therefore be included as income in the business's calculation of its taxable profits for Income Tax and Corporation Tax purposes, in accordance with normal principles.

Businesses can deduct employment costs as normal when calculating taxable profits for Income Tax and Corporation Tax purposes.

Q31: Who can claim?

Employers must have:

- created and started a PAYE payroll scheme on or before 28 February 2020
- enrolled for PAYE online - this can take up to 10 days
- a UK bank account

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

Q32: What about apprentices?

Apprentices can be furloughed in the same way as other employees and they can continue to train whilst furloughed.

However, employers must pay their Apprentices at least the Apprenticeship Minimum Wage, National Living Wage or National Minimum Wage (AMW/NLW/NMW) as appropriate for all the time they spend training. This means you must cover any shortfall between the amount you can claim for their wages through this scheme and their appropriate minimum wage.

Guidance is available for changes in apprenticeship learning arrangements because of COVID-19.

Q33: What about nannies and other domestic staff?

Individuals can furlough employees such as nannies provided they pay them through PAYE and they were on their payroll on, or before, 28 February 2020.

Q34: What about companies in Administration?

Where a company is being taken under the management of an administrator, the administrator will be able to access the Job Retention Scheme. However, HMRC would expect an administrator would only access the scheme if there is a reasonable likelihood of rehiring the workers. For instance, this could be as a result of an administration and pursuit of a sale of the business.

Q35: What about employees with caring responsibilities?

Employees who are unable to work because they have caring responsibilities resulting from coronavirus (COVID-19) can be furloughed. For example, employees that need to look after children can be furloughed.

Q36: What about employees on a fixed term contracts?

Employees on fixed term contracts can be furloughed. Their contracts can be renewed or extended during the furlough period without breaking the terms of the scheme. Where a fixed term employee's contract ends because it is not extended or renewed employers will no longer be able claim grant for them.

Q37: Can Office Holders be Furloughed?

Yes, Office holders can be furloughed and receive support through this scheme. The furlough, and any ongoing payment during furlough, will need to be agreed between the office holder and the party who operates PAYE on the income they receive for holding their office. Where the office holder is a company director or member of a Limited Liability Partnership (LLP), the furlough arrangements should be adopted formally as a decision of the company or LLP.

Q38: What about Company Directors?

As office holders, salaried company directors are eligible to be furloughed and receive support through this scheme. Company directors owe duties to their company which are set

out in the Companies Act 2006. Where a company (acting through its board of directors) considers that it is in compliance with the statutory duties of one or more of its individual salaried directors, the board can decide that such directors should be furloughed. Where one or more individual directors' furlough is so decided by the board, this should be formally adopted as a decision of the company, noted in the company records and communicated in writing to the director(s) concerned.

Where furloughed directors need to carry out particular duties to fulfil the statutory obligations they owe to their company, they may do so provided they do no more than would reasonably be judged necessary for that purpose, for instance, they should not do work of a kind they would carry out in normal circumstances to generate commercial revenue or provides services to or on behalf of their company.

This also applies to salaried individuals who are directors of their own personal service company (PSC).

Q39: What about salaried Members of Limited Liability Partnerships (LLPs)?

Members of LLPs who are designated as employees for tax purposes ('salaried members') under the Income Tax (Trading and Other Income) Act (ITTOIA) 2005 are eligible to be furloughed and receive support through this scheme.

The rights and duties of a member of an LLP are set out in an LLP agreement and in the absence of an agreement, default provisions in the LLP Act 2000, based upon company and partnership law. Such an agreement may include separate agreement between the LLP and an individual member setting out the terms applicable to that member's relationship with the LLP.

To furlough a member, the terms of the LLP agreement (or any such agreement between the LLP and the member) may need to be varied by a formal decision of the LLP, for example to reflect the fact that the member will perform no work in the LLP for the period of furlough, and the effect of this on their remuneration from the LLP. For an LLP member who is treated as being employed by the LLP (in accordance with s863A of ITTOIA 2005), the reference salary for this scheme is the LLP member's profit allocation, excluding any amounts which are determined by the LLP member's performance, or the overall performance of the LLP.

Q40: What about Agency Workers (including those employed by umbrella companies)?

Where agency workers are paid through PAYE, they are eligible to be furloughed and receive support through this scheme, including where they are employed by umbrella companies.

Furlough should be agreed between the agency, as the deemed employer, and the worker, though it would be advised to discuss the need to furlough with any end clients involved. As with employees, agency workers should perform no work for, through or on behalf of the agency that has furloughed them while they are furloughed, including for the agency's clients.

Where an agency supplies clients with workers who are employed by an umbrella company that operates the PAYE, it will be for the umbrella company and the worker to agree whether to furlough the worker or not.

Q41: What about Limb (b) Workers?

Where Limb (b) Workers are paid through PAYE, they can be furloughed and receive support through this scheme.

Those who pay tax on their trading profits through Income Tax Self-Assessment, may instead be eligible for the Self-Employed Income Support Scheme (SEISS).

“Limb (b) worker” is a status acknowledged under EU employment law recognised as an intermediate category between employee and self-employed. Limb (b) workers benefit substantially from employment rights derived from EU law, for example: rights to restrict their working hours, rights to annual leave, protection from discrimination and equal pay.

Q42: What About Contingent workers in the public sector?

The Cabinet Office has issued guidance on how payments to suppliers of contingent workers impacted by COVID-19 should be dealt with where the party receiving the contingent worker's services is a Central Government Department, an Executive Agency of a Central Government Department or a Non-Departmental Public Body.

Read more information on contingent workers impacted by COVID-19. This guidance applies to agency workers paid through PAYE, as well as those paid through umbrella companies on PAYE and off-payroll workers supplying their services through a Personal Service Company (PSC).

Q43: How much you be claimed? – further

Employers need to claim for:

- 80% of employees' wages (even for employee's on National Minimum Wage) - up to a maximum of £2,500. Do not claim for the worker's previous salary.
- minimum automatic enrolment employer pension contributions on the subsidised wage

Employers can choose to top up the employee's salary, but you do not have to. Employees must not work or provide any services for the business while furloughed, even if they receive a top-up salary.

Grants will be prorated if the employee is only furloughed for part of a pay period.

Claims should be started from the date that the employee finishes work and starts furlough, not when the decision is made, or when they written to confirming their furloughed status.

The way you work out your employees' wages is different depending on what type of contract they're on, and when they started work.

For salaried employees (full time or part-time) Claim for the 80% of the employee's salary, as of 28 February 2020, before tax.

Q44: What about Employer National Insurance and Pension Contributions?

Employers will still need to pay employer National Insurance and pension contributions on behalf of furloughed employees, and those costs can be included in the claim.

Employers cannot claim for:

- additional National Insurance or pension contributions they make because you chose to top up your employee's salary
- any pension contributions they make that are above the mandatory employer contribution

Q45: What about Overtime, Fees, Commission, Bonuses and non-cash payments?

Employers can claim for any regular payments they are obliged to pay employees. This includes wages, past overtime, fees and compulsory commission payments. However, discretionary bonus (including tips) and commission payments and non-cash payments should be excluded.

Q46: What about Benefits in Kind and Salary Sacrifice Schemes?

The reference salary should not include the cost of non-monetary benefits provided to employees, including taxable Benefits in Kind. Similarly, benefits provided through salary sacrifice schemes (including pension contributions) that reduce an employee's taxable pay 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.

Q47: What about 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.

Q48: What is the Minimum furlough period?

Any employees placed on furlough must be furloughed for a minimum period of 3 consecutive weeks. When they 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.