

## COVID-19 – Tax and Financial Reliefs

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20 April 2020

As a result of the disruption caused by the ongoing COVID-19 pandemic the government has announced a number of measures designed to protect employers and employees, one of which being the Coronavirus Job Retention Scheme (CJRS). Under this scheme, employees may be 'furloughed' to protect against them otherwise being made redundant.

The scheme is applicable to all UK employers who had a PAYE scheme in place on or before 19 March 2020.

### EMPLOYEES COVERED

All employees on the PAYE payroll at 19 March 2020 are eligible for the scheme. This covers employees who work full-time, part-time, flexible or zero-hours contract work and those hired via an agency.

Whilst in a period of furlough, employees must not undertake any work for the organisation. They may volunteer or complete training, provided they are not providing a service or generating revenue for the organisation.

Any employees made redundant between 28 February and 19 March may be rehired and subsequently will be eligible for the scheme. Employees hired after 19 March 2020 do not qualify for CJRS.

Staff employed by individuals, e.g. domestic staff, can be furloughed provided they are paid through the PAYE system.

Office holders, salaried company directors, salaried LLP partners, agency staff and Limb (b) workers are eligible to be furloughed under this scheme. Where a company director is furloughed, this must be agreed by the board and noted in the company records.

Apprentices can be furloughed; they are allowed to continue training during their period of furlough. Apprentices must be paid, at least, the National Minimum Wage for their time spent training, therefore employers in this circumstance must cover the shortfall between the grant received via the CJRS and the apprentice's appropriate minimum wage.

Employees on unpaid leave, as at 28 February, cannot be furloughed until the date at which it was agreed they would return to work. If an employee started unpaid leave after 28 February, they can be furloughed instead and must be paid a minimum of 80% of their usual wage.

If an employee is off sick at the point an employer chooses to furlough them, the employee must no longer receive statutory sick pay (SSP) and will be paid in line with the CJRS furlough rules. Employees who become unwell during their period of furlough must be paid, at least, SSP. Employers can choose to move the employee on to SSP but this is not mandatory. SSP can be reclaimed for up to two weeks per employee. Employers may also choose to furlough employees who are on long-term sick leave and /or shielding, as opposed to placing these employees on SSP.

The usual rules apply to those on parental leave (maternity/paternity/adoption/shared parental). The CJRS will only cover contractual enhanced (earnings related) pay for those on parental leave.

### GRANT AVAILABLE

The scheme will initially run from 1 March to 30 June 2020 but further extensions will be made if deemed necessary by the government.

For each furloughed employee, employers will receive a grant for the lower of 80% of their regular wage or £2,500, plus the associated employer NICs and minimum automatic enrolment employer pension contributions (3%) on the subsidised wage. Bonuses, commissions, benefits, salary sacrifices and other fees are excluded from the scheme.

Where an employee's base wage varies, and they have been employed for twelve or more months, the grant will apply to the higher of the average monthly earnings in the 2019-20 tax year or the same month's earnings from the previous year.

Where an employee's base wage varies, and they have been employed for less than twelve months, the grant will apply to their average monthly salary since they started.

For furloughed LLP members, the reference salary for the claim is the member's profit allocation, exclusive of any performance-related amounts.

Employers remain liable for NICs and pension contributions during this period. The CJRS grant covers the employer NIC and minimum automatic enrolment pension contributions incurred on the subsidised wage claimed through the scheme. If the employer chooses to continue to pay employees their full wage, the NICs and pension contributions on wages that exceed the government grant cannot be claimed.

Where an employer pays National Living Wage (NLW) or National Minimum Wage (NMW), the CJRS claim is still based on 80% of the employees' salary. This may take an employee's pay below NLW/NMW based on their usual working hours (assuming the employer is only paying 80% of wages), however because furloughed workers will not be working, there is no breach of the NMW rules.

The claim period starts on the date the employee has finished work and started their furlough and will cease on their return to work.

HMRC have created an online calculator to help employers calculate the amounts they can claim, which can be found [here](#).

## MAKING THE CLAIM

Claims are submitted via the government gateway.

One claim can be submitted every three weeks (the minimum furlough period permitted).

To make a CJRS claim, employers will need the following:

- your ePAYE 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
- details of furloughed employees (name, NI number, claim period, claim amount, payroll/employee number (optional))

Once HMRC receive the claim, they will pay the amount into the nominated bank account. The money should be received within six days of making the claim.

HMRC retain the right to retrospectively audit all aspects of the claim.

Agents can file a CJRS claim on behalf of employers.

Employers must also maintain a record of the written communication to each employee confirming they are being furloughed. These records must be retained for five years.

## DURING THE FURLOUGH PERIOD

Employees must be paid no less than 80% of their reference pay, up to the monthly cap of £2,500.

Employees must not undertake any work for the organisation.

Company directors who are furloughed may undertake specific tasks to fulfil statutory obligations owed to their company, however should not carry out work beyond these requirements.

Employers must continue to pay employees through their payroll system and settle PAYE related liabilities to HMRC as usual. The usual taxes will continue to apply to employers and employees, including student loan repayments and apprenticeship levies.

All employers have the choice to top up employees' salaries beyond the 80% grant, but are not obligated to do so (however, see comments below about legal considerations).

HMRC have agreed that the COVID-19 pandemic constituted a 'life event' and therefore employees can change a salary sacrifice agreement in place, given their employment contract is updated accordingly.

As payments from HMRC are not expected before May, employers currently facing short-term cash flow shortages may be eligible for a Coronavirus Business Interruption Loan, which may be used to pay employees' salaries.

In the face of rapidly changing circumstances, employees can be placed on furlough and "unfurloughed" where necessary, providing that the periods of furlough last a minimum of three consecutive weeks.

## TAX TREATMENT FOR THE BUSINESS

For partnerships and organisations required to submit a Corporation Tax return, the payments received under the CJRS must be included as income in the calculation of taxable profits. This income will be subsequently offset by the usual employment costs deducted.

Similarly, for unincorporated businesses the grants received must be included in taxable profits.

Amounts received by employers who are not in business will simply be offset against the amounts paid to the employee. This would apply to domestic staff such as nannies.

## LEGAL CONSIDERATIONS

We are not solicitors and don't provide employment law advice, however these comments highlight some employment issues that should be considered.

The government guidance states *"changing the status of employees remains subject to existing employment law and, depending on the employment contract, may be subject to negotiation"*.

Whilst employers can choose to fund the difference in monthly pay to their employees they are not required to do so. Reducing an employee's monthly wage whilst on furlough may amount to a temporary change in contract and therefore may require consent in writing from the employee, otherwise the employer risks making unlawful deductions from wages.

Employees paid their usual full salary will not necessarily have to give their consent to being furloughed, however this is unlikely to happen in practice, given the nature of being furloughed.

Employers should use a process of fair selection in deciding which employees are furloughed to avoid claims being made against them.

Where 20 or more employees at one organisation are due to be furloughed, collective consultation rules may apply, meaning discussions with trade unions may be required.

Employees still have the same rights, including statutory sick pay, parental leave, rights against unfair dismissal and redundancy payments.

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