



The Coronavirus Job Retention Scheme

What is the Scheme about?

The scheme introduces the concept of furlough leave (leave of absence). Where an employer's operations have been affected by COVID-19, an employer may put employees on furlough. The scheme is not limited to those who would otherwise have been made redundant, but applies to those who are furloughed as a result of coronavirus.

What is furlough?

Employees put on furlough leave will not do any work for the employer but the employer will receive a government grant (rather than a loan) of 80% of the employee wages up to a maximum of £2,500 per month. The employer can choose to fund the difference between the payment and salary, but is not obliged to do so by the Scheme.

When will the Scheme be available?

The Scheme will initially last until the end of June (although it may be extended), being backdated from 1st March 2020. The Scheme has been up and running since 20th April with first reimbursements expected to be made on 30th April.

What can an employer claim?

Employers can claim 80% of furloughed employees' (employees on a leave of absence) regular payments, up to £2,500 a month, plus the associated Employer National Insurance contributions and minimum automatic enrolment employer pension contributions on that wage. This includes wages, past overtime, fees and any compulsory commission. Discretionary bonuses, tips and other non-cash perks are excluded (e.g. health insurance, car etc). The Scheme does not extend to dividends.

What is the eligibility criteria?

- The organisation claiming under the Scheme must be an employer. This is any UK organisation with employees, including businesses, charities, non-profit, recruitment agencies.
- The employer's operations have been severely affected due to COVID-19.
- The employer must have created and started a PAYE payroll scheme on or before 19 March 2020.
- The employer must have a UK bank account.
- The employer must have enrolled for PAYE online (which can take up to 10 days to process).



Which employees can be claimed for under the Scheme?

- Employees can be on any contract including full-time, part-time, agency contract and flexible and zero hours contracts.
- Employees must have been on the PAYE payroll on 19 March 2020.
- Employees must not carry out any work for the employer during the period of furlough.
- Employees on sick leave or self-isolating should get Statutory Sick Pay (or pay as per company sick pay policy where applicable), but can be furloughed after this.
- Employees who are shielding in line with public health guidance (or need to stay at home with someone who is shielding) can be placed on furlough if they are unable to work from home and would otherwise be made redundant.
- Employees who cannot work because they have to care for someone due to COVID-19 can be furloughed (e.g. look after children).

Key things to remember for employers:

- Employers should be mindful when selecting which employees to furlough, especially if selection is linked to a protective characteristic.
- An employer will only be eligible to claim the grant once furlough is agreed. This means that the employee must agree in writing (which can be an email) that the employee will cease work in relation to the employment.
- Where applicable the employer may need to consult with representatives/trade unions where 20 or more employees are being put on furlough leave.
- Although the Scheme does not require the employer to pay the additional 20%, it will usually be a breach of the employment contract for the employer not to pay the salary in full. The employer will therefore also need to agree this with the employee in order to vary the employment contract (note: Employer National Insurance Contributions and automatic enrolment contribution on any additional top-up salary will not be funded through this scheme).
- Although the employee is not obliged to agree to furlough, failure to reach agreement could lead to redundancy instead where the employer may not have the funds to pay redundancies monies either. In most cases employees are therefore likely to agree to furlough and reduced pay.
- Employers must keep a record of the agreement to furlough and associated correspondence for 5 years. It is good practice to provide an estimate period for furlough subject to review (although this may be difficult to do).
- Entitlement to other employment benefits such as sick pay and holiday will not be displaced by the Scheme. The normal rules of Statutory Maternity Pay or Maternity Allowance will continue to apply, however if there is an enhanced contractual pay then this is included as a wage that can be claimed through the Scheme (the same applies to contractual adoption, paternity, shared parental pay).



How can employers claim?

- The grant will be paid to the employer via a new online system administered by HMRC
- To claim, the employer will need:
 - the employer's ePAYE reference number
 - the number of employees being furloughed with start and end date
 - amount claimed (per the minimum length of furloughing of 3 consecutive weeks)
 - the employer's bank details
 - the employer's contact details
- Only one claim can be submitted at least every three weeks (being the minimum length an employer can be furloughed for).
- Once HMRC have received the claim and if eligible, they will pay it via BACS payment to a UK bank account.
- The employer will pay the employee the grant for the gross pay (no fees can be charged). The employer will also pay Employer National Insurance contributions on wages paid, as well as automatic enrolment contributions.

What earnings period will be used to determine the maximum grant?

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%.

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.

Frequently asked questions

What if an employee has more than one employer, if furloughed by one employer does this mean they can't work for the other employer either?

If an 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. This means an employee can receive furlough pay in one employment but receive their normal pay from another employer. If looking start a new job whilst on furlough, an employee should check whether their employment contract allows for this.



What if an employee has already been made redundant?

If an employee has been given notice of redundancy but is still employed, it is possible to put the employee on furlough leave instead.

Where an employee has been made redundant since 28 February 2020, the Scheme allows the employer to take the employee back and put them on furlough.

Is furlough leave available for employees who have already been put on reduced hours?

Bearing in mind that the objective of the Scheme is to avoid redundancies, where reduced hours (or reduced pay) has been effective in preventing redundancies then the Scheme will not be available. The employee's should be paid through the payroll as per the terms agreed.

Will an employee still have to pay income tax and normal deductions?

Yes, 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.

Can an employee still do volunteer work or training courses whilst on furlough?

Yes, as long as it does not provide services to or generate revenue for, or on behalf of the employer. However, employees must be paid at least the National Living Wage/National Minimum Wage for the time spent training, even if this is more than the 80% of their wage that will be subsidised.

Is an apprentice still allowed to train whilst furloughed?

Yes, provided that they are paid the appropriate minimum wage/ living wage. For more details please [click here](#).

Will employees be able to move in and out of furlough?

Yes, subject to a minimum period of three weeks furlough.

What if an employee has already agreed to unpaid leave?

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

Is it possible to take annual leave whilst on furlough?

Yes but it must be paid at full pay.

Can individuals furlough an employee?

Yes. The guidance states 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.

Can employees be furloughed if the employer has already gone into administration?

Only if there is a reasonable likelihood that the employee would be re-hired, for example, where there is to be sale of the business.



Can an employee be furloughed if they were hired after 19 March 2020?

Not unless the employee who was TUPE'd to the new employer.

Is the grant just for employees?

- As well as employees, the grant can be used to claim for:
 - Office holders (including directors)
 - Salaried members of LLP's
 - Agency workers (including those employed under an umbrella company)

Decisions to furlough in the case of company directors and LLP's will have to formally adopted. Directors will still have to comply with their statutory duties. Please contact our Corporate team for further advice regarding this.

What if I am self-employed?

If you are self-employed or a member of a partnership and have lost income due to COVID-19, you may eligible to apply for the Self-employment Income Support Scheme. The scheme provides a taxable grant of 80% trading profits up to a maximum of £2,500. For more information on this scheme, please [click here](#).

Who do I contact for support and advice?

For more information on how we can support you during this time please contact a member of our Employment team.

Newbury Office

White Hart House
Market Place
Newbury
Berkshire
RG14 5BA

01635 508080

Maidenhead Office

First Floor
7 Frascati Way
Maidenhead
Berkshire
SL6 4UY

01628 671636

Thatcham Office

Winbolt House
The Broadway
Thatcham
Berkshire
RG19 3HX

01635 508080



Julie Taylor
Senior Associate

T: 01635 508181
E: j.taylor@gardner-leader.co.uk



Madia Aslam
Trainee Solicitor

T: 01635 508080
E: m.aslam@gardner-leader.co.uk



Rachael McAnulty
Paralegal

T: 01635 508080
E: r.mcanulty@gardner-leader.co.uk