

On the 20th of March 2020, the Chancellor released details on what help is going to be available for employers and employees during the COVID-19 crisis. This is called the Job Retention Scheme.

Further Government information, as it stands, can be found at the following links:

Guidance for employers

<https://www.gov.uk/guidance/claim-for-wage-costs-through-the-coronavirus-job-retention-scheme>

Guidance for employees

<https://www.gov.uk/guidance/check-if-you-could-be-covered-by-the-coronavirus-job-retention-scheme>

From this information, we have summarised the **key information** for our clients:

- 1) All employees on your PAYE payroll on 28 February 2020 can potentially qualify, whether part time or full time. For directors, please see our additional guidance at point 17.
- 2) For an individual employee to qualify, you will need to make an agreement with them on an individual basis to go on **furlough (leave of absence)**. You should obtain this **agreement in writing**.
- 3) Once an employee is on **furlough**, they must **not undertake any work further work** for you of any nature until the agreed period of furlough is finished. The scheme is therefore not open to employees working reduced hours.
- 4) You can choose whether to put all your employees or just some on furlough.
- 5) An employee can come in and out of furlough i.e. to work for you for intermittent periods, however each period of furlough must last a minimum of 3 weeks. You will only be able to claim under the scheme for periods when they are on furlough.
- 6) Agreeing with an employee to go on a period of furlough has potential employment law implications. We strongly advise you to follow advice from ACAS in making furlough agreements with your employees (<https://www.acas.org.uk/coronavirus/if-the-employer-needs-to-close-the-workplace>) or a firm of employment lawyers. Cowan and Partners are unable to give you employment law advice or draft furlough agreements for you.
- 7) Once you agree with an employee to go on a period of furlough, you must **continue to pay wages through the normal PAYE processing system** and tax will be deducted in the usual way. The Government will not pay your employee directly, employers need to do this in the normal way and later claim it back from the Government.
- 8) HMRC's online system for applications for reimbursement to employers is not expected to be open until the end of April, and the date you receive your initial payment may be some time after that. Once the application system is open, you will be able to make a claim at least every 3 weeks. This means there will be a period where you are expected to pay out wages, before receiving a payment from the Government in the form of a reimbursement. You may need to apply to your bank for an overdraft facility or loan to cover this period. There is a separate Government backed loan scheme, which may assist you, and we have separate information sheet on this.
- 9) You will be able to backdate claims up to 1 March; however, you are unable to claim for a period prior to the start of the agreed period of furlough made with your employee. This means that you will not be eligible to claim for periods when your employees were still performing work duties.
- 10) If you previously laid off staff due to the closure of your business, it is permissible to make an agreement with your employee to start the period of furlough from the date they stopped working from you.
- 11) **Example of a café business closing its doors.** If your café closed on 10 March and all staff were sent home or made redundant, it is permissible to go back to your employees now and make an agreement with them to go on a period of furlough from 10 March and be covered under the

scheme. Your agreement will still be dated when it is signed, but the period in the written agreement can state the date from when they actually stopped working for you. You still need the agreement of your employee to this date.

- 12) **Employers will be able to claim for reimbursement from the Government for 80% of furloughed employees' regular monthly wage, up to £2,500 a month**, plus the associated Employer National Insurance contributions and minimum automatic enrolment employer pension contributions on that wage. Bonuses are not within the scheme.
- 13) For **employees on variable monthly earnings** you can claim for the higher of either the same month's earnings in the previous year or an average of their monthly earnings for 2019/20. If your employee has worked for you for less than a year, you can claim for an average of their monthly earnings since they started work. If your employee only start in February, you will need to pro rata their earnings.
- 14) It is open to the employer to top-up the employees' wages over and above the amount they can reclaim from the Government i.e. pay up to the 20% balance of their usual wages or wages above £2,500 a month. This is matter of contractual agreement between you and your employee. You will not be able to reclaim this top up pay or the associated national insurance and automatic enrolment employer pension contributions due on the top up pay from the Government.
- 15) Employees in a period of furlough have the same rights as they previously did e.g. statutory sick pay.
- 16) **The scheme is open for an initial period of 3 months** starting 1 March, however the Government may extend this period.
- 17) **Directors** can qualify under the scheme in the same way as anyone else. The Government has advised though that when you are on a period of furlough, you *'can not undertake work for or on behalf of the organisation. This includes providing services or generating revenue.'* Directors will therefore have to consider very carefully whether a period of furlough applies to them. Our view is that any work undertaken towards generating sales income would disqualify a claim. We are awaiting further Government guidance on the impact of continuing to undertake company administration. Please note that for directors, only your salary under PAYE counts. Currently there is no Government assistance for the loss of dividends. You will also not be eligible for the self-employment assistance, unless you have separate sole trade or partnership business.

These are the main points as the information currently stands. Further details of the scheme will be released in due course from HMRC.

Information accurate as at 27 March 2020