



Employer Guidance: Coronavirus and Furlough

On Friday 20 March, the government announced its plans for financial assistance to help organisations retain employees for an extended period of time, despite offering no work, and avoid lay-offs. It is called the Job Retention Scheme and, whilst little information has been published as to how it will work, we have set out below what we do know.

What's the Job Retention Scheme?

It involves organisations placing their employees on 'furlough'. This isn't a term we use in UK employment law, and it seems to originate in the USA. It essentially means putting employees on temporary leave of absence where they do no work and receive no pay, but they are retained on an organisation's books to be brought back in when needed.

Organisations who do this will be able to obtain a grant from the Government to cover 80 per cent of furloughed employees' wages, to a maximum of £2,500 per employee per month.

Which organisations can access the scheme?

All organisations can access it; there is no restriction on size or type.

How do I get the government grant?

Guidance sets out that organisations 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. A grant will then be received to cover the 80 per cent wages. More information is awaited from the government on the online portal to be used to submit the information and what other information may be needed.

Chancellor Rishi Sunak has stated 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.

What does furlough mean?

It means that your employees and workers are not dismissed from their employment with you. So, when things have settled down and its business as usual, you still have the employees you need to carry out your normal work.

You are also able to claim back 80% of their wages (up to a maximum of £2,500 per month) from HMRC.

Which employees can be furloughed?

Theoretically any employee can be furloughed. They need to be on PAYE in order for an organisation to be able to claim the grant for their wages. Guidance states that the ability to

furlough an employee depends on their contract. It is not likely that employee contracts will include a specific right to use furlough. However, contracts which contain a right to lay-off employees on no pay already gives organisations the right to send employees home and not pay them for a temporary period and so can likely be used to furlough employees.

The difference is that employees on lay-off will get, subject to service criteria, statutory guarantee pay (SGP) whereas furloughed employees will get 80 per cent of their wages. SGP is £29 per day for a maximum of five days in a rolling 13-week period, rising to £30 from 6 April, so furlough offers the employee a much more favourable option in terms of pay.

If contracts do not contain a right to unpaid lay-off, organisations can ask the employee to agree to furlough. Although 80 per cent of wages may not be an initially attractive option next to full pay, it is likely to be more attractive than redundancy, which may be the end result if alternative options cannot be found. It may also be useful for employees who are struggling to find childcare.

What if I have already laid-off employees?

In this situation, an organisation can get in touch with those employees and agree to change their current status from lay-off to furlough. This would simply involve changing their pay arrangements from nothing (if not entitled to SGP), or SGP to 80 per cent wages, as they are already not working.

Do I need to pick certain employees?

Organisations need to designate employees as furloughed, which means it is their choice. However, if organisations are not placing everyone on furlough, they should consider carefully who it should be. Think about whose skills will continue to be in demand through this difficult period. Whilst it may be assumed that the best thing to do is furlough those employees labelled as high risk by the government, forcing them on to furlough without their input, and therefore forcing them on to 80 per cent wages, may result in discrimination claims from those who allege they were made to do it because of their age, disability or pregnancy.

Where employees need to be selected for furlough, it may be best to ask for volunteers across the workforce and if any high risk employees, who had previously been risk assessed as fine to still be in work, put themselves forward, it may well be appropriate to choose them first. There does not appear to be a maximum or minimum number of employees who can be furloughed.

Can I furlough employees who are on short-time working?

Furlough requires the employee to do no work, so short time working could not continue during furlough. However, consider whether it is possible to re-organise reduced 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.

If I put employees on furlough and I get a grant to cover 80 per cent of their wages, do I have to make up the other 20 per cent?

If you are in a position to, you can top up your employee's wages and pay the 20% yourself. However, if this is not something that is possible, then you do not have to do this.

What about zero hours employees who have no standard wages? How will the 80 per cent be calculated?

There is no clarity on this yet but the Chancellor has said the intention was to try to cover as broad a group of people as possible.

What do my employees need to do?

If you're looking to furlough your employees instead of laying them off, then you will need to have a conversation with them to tell them what you are proposing to do. During times like these, people will panic, so the more information you can give them, the better.

Explain that this is a solution to the problem. They will still receive 80% of their normal pay and their job is still there to come back to.

During the time your employee is classed as furloughed, they cannot do any work for you.

How do I reclaim the money?

HMRC are currently working on a system for employers to use to claim back any reimbursed wages. This will be rolled out as soon as it's ready to use.

In the meantime, if you do not have the finances to keep any employees on the payroll and classed as furlough, then you can look at accessing a Coronavirus Business interruption Loan.

Who pays them and how much?

You will be responsible for paying the employees and workers while they are classed as furloughed. Once the HMRC system has been set up, you will then reclaim the 80% of their wages via this system.

In terms of payment, you would pay them 80% of their normal wages. If your employee or worker does not have regular hours, then we would advise you work out their average pay based on the last 52 weeks they have been with you. If they have not been with you for 52 weeks, then use the full length of their employment / placement with you to work out their average pay.

I have an employee on maternity leave

If your employee is on maternity leave, there is currently no guidance to say that you make any changes to this arrangement. Carry on paying them their maternity pay as normal.

I have an employee off sick

Again, there is no guidance to say that you make any changes to this either. If your employee receives statutory sick pay, then continue to pay this as normal. If they are contractually entitled to company sick pay, then, we would advise you continue as normal.

Contractual terms

During the time your employees or workers are classed as furloughed, their other contractual terms continue as normal. This means that they will still accrue annual leave, they will still be classed as employed by you (so there's no break in their continuous service), and if you have any other contractual benefits, then these will still be applicable.

Working from home?

Again, if you employees are able to work from home, then you are NOT able to reclaim the 80% back from the government.

Can they do a little bit of work for me?

If you have classed any employee or worker as furloughed, then they CANNOT do any work for you.

If there is still work available for people to do then they cannot be classed as furloughed.

Do I have to take someone back?

At the moment, there is nothing to say that if you have already laid someone off, you have to take them back and class them as furloughed.

Ultimately, this means that the decision is down to you.

More information

There will be daily updates on the [NHS 111 online](#) service and the [Government website](#)

More information about furlough and support for businesses can be found using the link below.

<https://www.gov.uk/government/publications/guidance-to-employers-and-businesses-about-covid-19/covid-19-support-for-businesses#support-for-businesses-through-the-coronavirus-job-retention-scheme>

Disclaimer: While everything has been done to ensure the accuracy of the contents of this at the time of publication, it is a general guide only. It is not comprehensive and does not constitute specific HR advice. Specific HR advice should be sought in relation to the particular facts of a given situation and please refer to Government website for the most up to date information.