

CORONAVIRUS – JOB RETENTION SCHEME FAQs

The Government has announced that all [UK employers will be able to access support to continue paying part of their employees' salary](#) for those employees that would otherwise have been laid off during this crisis. BCC has sought clarification from Ministers on the detail of the scheme and will update these FAQs as further information is obtained.

The official guidance states businesses will need to:

- designate affected employees as 'furloughed workers,' and notify your employees of this change - changing the status of employees remains subject to existing employment law and, depending on the employment contract, may be subject to negotiation
- submit information to HMRC about the employees that have been furloughed and their earnings through a new online portal (HMRC will set out further details on the information required)

HMRC will reimburse 80% of furloughed workers wage costs, up to a cap of £2,500 per month. HMRC are working urgently to set up a system for reimbursement. Existing systems are not set up to facilitate payments to employers. The scheme will cover the cost of wages backdated to March 1st and is initially open for 3 months but will be extended if necessary.

If your business needs short term cash flow support, you may be eligible for a [Coronavirus Business Interruption Loan](#).

Question	Answer
<p>1. EVIDENCE How do employers evidence to HMRC that an individual is a furloughed worker?</p>	<p>A schedule of furloughed workers will need to be produced and submitted to HMRC through a new portal being created for the purpose. Still waiting further guidance but would assume the following information will need to be included:</p> <ul style="list-style-type: none"> · Business ePAYE number · The number of employees being furloughed · The claim period you are claiming for (minimum period is 3 weeks) · Full name of employee · Employee NI number · Salary calculation (HMRC will retain the right to audit)
<p>2. REIMBURSEMENT In what time frame will firms be reimbursed for furloughed workers?</p>	<p>Full details are still awaited. HMRC are having to build a new portal for this and in effect will be reversing the normal flow of monies from collection, to payment. We understand that this will be via a grant from HMRC (not a loan). They are aiming to have this in place by the end of April You can only submit one claim for a minimum 3 week period which is also the minimum term an employee can be furloughed for</p>

<p>3. DURATION Is there a duration attached the furloughed status?</p>	<p>The scheme will continue for 3 months currently but will be reviewed by the government. We expect that you will be able to recall employees before 3 months should your business require them. The minimum term for an employee to be furloughed is 3 weeks The scheme is backdated to 1st March 2020 but only for employees who may already have been affected prior to the announcement on 20th March</p>
<p>4. SALARY What is the definition of "salary" on which 80% pay should be calculated on?</p>	<p>This has now been confirmed to be only on base salary and excludes commission and bonuses, but employers are able to employers National Insurance contributions and minimum automatic enrolment employer pension contributions. There is a maximum payment cap of £2,500 for employees however the employer is able to add the aforementioned Employers National Insurance and minimum automatic employer pension contributions to the calculation</p>
<p>5. SICK LEAVE Can employees who are certified as sick be made furloughed workers?</p> <p>6. Is it available for employees already receiving statutory or contracted sick pay?</p>	<p>5. Employees on sick leave should be paid SSP for the duration. They can subsequently be furloughed</p> <p>6 As above</p>
<p>7 OTHER LEAVE Can employees who are off on any other leave e.g. maternity leave or paternity leave etc be made furloughed workers?</p>	<p>No. For employees on maternity leave the normal rules apply. 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.</p>
<p>8 Will other periods of authorised absence be suspended during this time eg maternity leave?</p>	<p>Furlough is a temporary lay off and in this case the government have undertaken to pay up to 80% of salary as a mechanism to prevent mass unemployment where an employee may be expected to resume work again in the future. It will not replace other schemes such as Maternity leave which will remain in place. Most of the SMP can already be recovered by employers</p>
<p>WORKING WHILE FURLOUGHED</p> <p>9 Can we furlough workers on a rolling basis?</p>	<p>9. You can furlough additional workers during the period the scheme is in operation in line with business requirements in line with the claim periods</p>

<p>10 Can employees work for other employers whilst furloughed e.g. supermarkets, NHS?</p>	<p>At present, furloughed employees cannot work for you during this period and their NI number will be supplied to HMRC. This is a unique identifier so unless their work was voluntary and unpaid (and not for your organisation), they are not able to work for other organisations. They still remain your employees</p>
<p>11 Can employees intermittently be furloughed, punctuated by periods of paid holiday or working?</p>	<p>Further clarity is still required but theoretically each claim covers specific employees therefore you may be able to bring them back into work for the following period to undertake paid work. It should be noted that employees will continue to accrue annual leave whilst furloughed so you wouldn't change an employee's status from furlough due to holiday</p>
<p>12 Can furloughed workers be rotated back into the business?</p>	<p>As it is a separate claim for each period furloughed workers can be brought back into work on a gradual basis as required by the business recovery within the time parameters of the scheme (currently 3 months). Unless the government elect to extend the scheme other action may need to be considered beyond the initial term</p>
<p>13 Can furloughed workers undertake ad hoc work for the business?</p>	<p>Furloughed workers are not allowed, to undertake any work for the business. The BCC has asked the government for more flexibility in the scheme</p>
<p>ANNUAL LEAVE 14 Will employees continue to accrue annual leave while furloughed?</p>	<p>Holiday leave will continue to be accrued during the furloughed period.</p>
<p>15 How will holiday entitlement and pay be treated during the furlough period?</p>	<p>15 Whilst an employee is furloughed, no other payments, such as holiday pay should be made. The employee is in effect temporarily 'laid off' as opposed to permanently laid off</p>
<p>16 Do we need to pay-up all accrued but unused holiday to the point of furlough?</p>	<p>No. This is not necessary as holiday leave will continue to accrue whilst they are furloughed</p>
<p>17 Should I ask employees to take annual leave before furloughing?</p>	<p>This is a matter for each business to consider. The purpose of furloughing is to prevent unemployment and to ease financial pressures on a business in order that it can survive a temporary downturn in business. Asking an employee to take leave will result in the company continuing to pay the employee which in the current climate may not be an attractive proposition</p>
<p>18 Are we expected to deduct used but not accrued holidays to this point?</p>	<p>No. The worker will still remain an employee during the period of furlough and retain contractual benefits other than that around pay</p>
<p>19 PAYE</p>	<p>HMRC will pay a grant to the employer who will process through their payroll as normal so PAYE and</p>

<p>Will PAYE continue to be deducted in the normal way?</p>	<p>Employee National insurance contributions will be deducted. Employees will also continue to make automatic enrolment contributions on qualifying earnings unless they have elected to opt out or have ceased savings into a workplace pension plan</p>
<p>20 TRADE UNIONS Can Trade Unions negotiate on behalf of all employees in a collective agreement situation?</p>	<p>Yes, this is possible where such an agreement is in place.</p>
<p>21 PENSIONS Can we deduct pension, and other voluntary deductions from furloughed workers pay? Do pension contributions continue or are they suspended?</p>	<p>Employees will continue to make automatic enrolment contributions on qualifying earnings unless they have elected to opt out or have ceased savings into a workplace pension plan Pension contributions will continue as outlined above</p>
<p>22 ELIGIBILITY Does the scheme apply equally to all workers? Is it applicable to temporary staff and if so what is the eligibility?</p>	<p>The scheme is open to all UK employers that had created and started a PAYE payroll scheme on 28 February 2020. Therefore, it does not cover:</p> <ul style="list-style-type: none"> · Workers not on the payroll as at 28 February 2020. · self-employed individuals whether working as a sole trader or through a partnership or LLP. There has been a separate scheme announced for self-employed. <ul style="list-style-type: none"> • Workers who are working on personal contracts but do not satisfy the conditions to be an employee (those with no holiday or sick pay entitlement) <p>Any UK organisation with employees can apply, including:</p> <ul style="list-style-type: none"> · businesses · charities · recruitment agencies (agency workers paid through PAYE) · public authorities <p>Provided they were on the payroll before 28 February you can claim for any type of employee including:</p> <ul style="list-style-type: none"> • Full time • Part time • Employees on agency contracts • Employees on flexible or zero hours contracts
<p>23 How should an employer agree furloughed status with an employee i.e. in writing?</p>	<p>Your affected employees will need to be designated 'furloughed workers' and this will need to be confirmed in writing. It is important to note that changing employees' employment rights is still subject to employment law and unless lay off or short time working clauses are included in contracts of employment, separate negotiation may be required. It is best to take employment advice on this point.</p>

<p>24 Is a template letter available?</p>	<p>Yes, we have made a template furlough letter available, located in the ChamberHR reference library under the Redundancy section. Alternatively, if you don't have access to ChamberHR please send an email to hello@questcover.com and a free template letter will be sent to you</p>
<p>25 Will I need to top up the other 20%?</p>	<p>You can fund the difference if you wish but there is no obligation to do this under the scheme</p>
<p>26 Are there any conditions for the employer attached to applying furloughed status e.g. should we guarantee continued employment for a period?</p>	<p>The employee cannot work for you if furloughed. The scheme will continue for at least 3 months. The government has indicated that there is no requirement on the employer that employment needs to be guaranteed afterwards. At this point it may be necessary to consider termination of employment. It is important that you seek further advice on this prior to taking any action as employment law still applies and if carried out incorrectly you may find yourself subject to an employment tribunal claim</p>
<p>27 What options do we have to give our employees alongside the option to become a furloughed worker e.g. statutory redundancy?</p>	<p>The idea behind the Coronavirus Job Retention Scheme is for businesses to retain employees during the period in order that they can bring them back when the business situation improves (subject to the current scheme duration)</p>
<p>28 Can workers be required to take furlough leave?</p>	<p>Furlough is an alternative to permanent lay off/redundancy. Provided your contracts of employment include the appropriate clauses to enable you to change their status you can impose this.</p>
<p>29 Can employers continue to contact furloughed employees?</p>	<p>The employee cannot work for you during this period (even making phone calls or sending email); however, we would imagine that it would be okay to periodically keep in touch from an employee welfare aspect</p>
<p>30 Can I re-hire staff who I have recently made redundant?</p>	<p>The scheme is to be backdated to 1st March 2020 so therefore you could theoretically withdraw the redundancy notice if it took place within this period. You would need to seek employment advice as to how to achieve this through the ChamberHR advice lines. Anyone made redundant prior to this date is not eligible for this scheme</p>
<p>31 Can we use the scheme for staff whose start date has been deferred or where offers have been withdrawn?</p>	<p>No. You can only furlough employees who were on the payroll as at 28 February 2020.</p>
<p>32 How will pay be calculated in the case of employees with varying remuneration e.g. those working on commission?</p>	<p>Commission and bonus earnings are excluded. For employees whose earnings fluctuate for other reasons you can claim the following</p> <ul style="list-style-type: none"> · If an employee has been engaged for a full 12 months you can claim the higher of the same

	<p>month's earnings from the previous year, or, the average earnings for the 2019/20 tax year</p> <ul style="list-style-type: none"> • If an employee has been employed for less than a year you can claim an average of their monthly earnings since they started their employment <ul style="list-style-type: none"> • If an employee only started in February 2020 a pro rata amount can be claimed.
33 Can furloughed workers receive training?	A furloughed employee can take part in training as long as it does not provide services or revenue to the business. If workers are required to complete training in connection with the business, they must be paid the National Living Wage or National Minimum Wage for the time spent training.
34 Will redundancies be considered unfair in circumstances where employers could have applied for the scheme?	Companies should explore all options and adopt the best option for their company. The job retention scheme is to avoid mass redundancies and unemployment; however, in some cases there may be no alternative.
35 Will any 'special circumstances' defence be compromised by the scheme where the employer feels financially compelled to ignore the obligation to consult on collective redundancies prior to any dismissals or seeks to shorten the mandatory collective consultation period?	Companies must ensure they always follow due process; failure to do so may result in unfair dismissal claims. Employment Tribunals may be sympathetic to the current situation but will not look favourably where companies have deliberately failed to follow a fair and reasonable process.
36 Will the scheme be extended beyond 3 months?	Possibly, depending on how long the crisis continues but the decision lies with the government and currently there is no guarantee beyond the 3 month period.
37 What does the scheme offer to charities?	The scheme is available to employees remunerated through the PAYE. Charity workers remunerated this way will qualify
38 Can employers furlough Tier 2 migrants under the scheme? If so, what are the notification requirements for employers? Are furloughed employees still required to meet minimum salary thresholds?	The Home Office has confirmed that migrants can be furloughed, as this does not count as a benefit.
39 For seasonal workers that would have returned to work over Easter break (2 weeks April) and June- qualify for some furlough earnings?	

<p>40 Can directors furlough themselves?</p>	<p>If a director is on the payroll, they can technically furlough themselves; however, the concern for directors is that they will often take a lower or even no salary from the business. Instead they will often utilise dividends to top up their income, as and when they have the profits to do so. As dividends are not subject to PAYE, the dividend amounts are unlikely to form part of the calculation for the director. Directors in this position are likely to find that should they qualify for a CJRS grant, the amount paid would likely be 80% of a low salary. A further concern is that a director must be non-active to be furloughed but given they will continue to need to manage the business in some way, they are unlikely to be completely in-active and therefore may fail the CJRS requirements.</p>
<p>41 Can staff refuse to be furloughed?</p>	<p>Yes; staff must agree to be furloughed and cannot be forced. If an employee refuses; the company should consider alternative options, for example redundancy.</p>
<p>42 I understand that the employment contract has to allow variation in terms at company discretion otherwise a consultation period of a month is needed. If this is done, I assume the company can still back date the application of the furlong?</p>	<p>Typically, where there is no contractual clause to vary the contract or lay off employees; employers must enter a period of consultation and seek employee agreement prior to applying the changes to the contract. However, this is an exceptional situation and many companies do not have time to conduct a consultation period. The government have offered the CJRS and therefore companies should discuss the options with their staff openly and frankly and seek agreements from staff. The aim is to avoid redundancy situation.</p>
<p>43 Does the company have to prepare a continuity plan to apply for furlong?</p>	<p>No continuity plan is required to apply for a CJRS grant, however when selecting employees, employers should be aware that equality and discrimination laws will apply in the usual way.</p>