

**4<sup>TH</sup> APRIL 2020**

# **CORONAVIRUS JOB RETENTION SCHEME**

## **DETAILED GUIDANCE**

### **COVID-19 (CORONAVIRUS)**

Coronavirus is a global health crisis with far reaching implications, the extent of which are still becoming apparent. The overwhelming priority is now to contain the virus and minimise its spread, reducing the impact it will have on individuals, families and communities around the world. Our thoughts are with all those that have been affected.

We at Pawley & Malyon are committed to supporting our clients through this period of extended uncertainty. Our staff are already working to provide guidance and support to our clients.

Events are moving very fast and information is constantly being updated in relation to the UK Government's funding response to Covid-19. Our aim is to summarise the information we are currently aware of and make this available to our clients and contacts.

### **DISCLAIMER**

This publication has been written in general terms and may not include all relevant information. We recommend that you obtain professional advice before acting or refraining from action on any of the contents of this publication. Pawley & Malyon Limited accepts no liability for any loss occasioned to any person acting or refraining from action as a result of any material in this publication. There are a few areas where we are expecting further clarification in relation to the process of defining and agreeing the relevant scheme's details, specifications and eligibility and therefore information is subject to change.

## WHAT IS IT?

The Coronavirus Job Retention Scheme is a temporary scheme open to all UK employers for at least three months starting from 1 March 2020. We expect the scheme to be up and running by the end of April. It is designed to support employers whose operations have been severely affected by coronavirus (COVID-19).

If you cannot maintain your current workforce because your operations have been severely affected by coronavirus (COVID-19), you can furlough employees and apply for a grant that covers 80% of their usual monthly wage costs, up to £2,500 a month, plus the associated Employer National Insurance contributions and minimum automatic enrolment employer pension contributions on that wage.

This is a temporary scheme in place for 3 months starting from 1 March 2020, but it may be extended if necessary and employers can use this scheme anytime during this period. It is designed to help employers whose operations have been severely affected by coronavirus (COVID-19) to retain their employees and protect the UK economy. However, all employers are eligible to claim under the scheme and the government recognises different businesses will face different impacts from coronavirus.

## AGREEING TO FURLOUGH EMPLOYEES

Employers should discuss with their staff and make any changes to the employment contract by agreement. When employers are making decisions in relation to the process, including deciding who to offer furlough to, equality and discrimination laws will apply in the usual way.

To be eligible for the grant employers must confirm in writing to their employee confirming that they have been furloughed. A record of this communication must be kept for five years.

You do not need to place all your employees on furlough. However, those employees who you do place on furlough cannot undertake work for you.

## WHO CAN CLAIM?

Any UK organisation with employees can apply, including:

- ✦ businesses
- ✦ charities
- ✦ recruitment agencies (agency workers paid through PAYE)
- ✦ public authorities

You must have:

- ✦ created and started a PAYE payroll scheme on or before 28 February 2020
- ✦ enrolled for PAYE online - this can take up to 10 days
- ✦ a UK bank account

Any entity with a UK payroll can apply, including businesses, charities, recruitment agencies and public authorities.

### Apprentices

Apprentices can be furloughed in the same way as other employees and they can continue to train whilst furloughed.

However, you must pay your Apprentices at least the Apprenticeship Minimum Wage, National Living Wage or National Minimum Wage (AMW/NLW/NMW) as appropriate for all the time they spend training. This means you must cover any shortfall between the amount you can claim for their wages through this scheme and their appropriate minimum wage.

Guidance is available for changes in apprenticeship learning arrangements because of COVID-19.

### Public sector organisations

The government expects that the scheme will not be used by many public sector organisations, as most public sector employees are continuing to provide essential public services or contribute to the response to the coronavirus outbreak.

Where employers receive public funding for staff costs, and that funding is continuing, we expect employers to use that money to continue to pay staff in the usual fashion – and correspondingly not furlough them. This also applies to non-public sector employers who receive public funding for staff costs.

Organisations who are receiving public funding specifically to provide services necessary to respond to COVID-19 are not expected to furlough staff.

In a small number of cases, for example where organisations are not primarily funded by the government and whose staff cannot be redeployed to assist with the coronavirus response, the scheme may be appropriate for some staff.

### Individuals

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.

### Administrators

Where a company is being taken under the management of an administrator, the administrator will be able to access the Job Retention Scheme. However, we would expect an administrator would only access the scheme if there is a reasonable likelihood of rehiring the workers. For instance, this could be as a result of an administration and pursuit of a sale of the business.

# EMPLOYEES YOU CAN CLAIM FOR?

You can only claim for furloughed employees that were on your PAYE payroll on or before 28 February 2020.

Employees hired after 28 February 2020 cannot be furloughed and claimed for in accordance with this scheme.

Employees can be on any type of employment contract, including full-time, part-time, agency, flexible or zero-hour contracts. Foreign nationals are eligible to be furloughed.

To be eligible for the grant, when on furlough, an employee cannot undertake work for, or on behalf, of the organisation. This includes providing services or generating revenue. Employers are free to consider allocating any critical business tasks to staff that are not furloughed. While on furlough, the employee's wage will be subject to usual income tax and other deductions.

## **If you made employees redundant or they stopped working for you after 28 February**

If you made employees redundant, or they stopped working for you on or after 28 February 2020, you can re-employ them, put them on furlough and claim for their wages through the scheme.

## **If your employees are working reduced hours**

If an employee is working, but on reduced hours, or for reduced pay, they will not be eligible for this scheme.

## **If your employee is on unpaid leave**

You can only claim for employees that started unpaid leave after 28 February 2020.

## **If your employee is self-isolating or on sick leave**

If your employee is on sick leave or self-isolating, they'll be able to get Statutory Sick Pay.

You cannot claim for employees while they're getting Statutory Sick Pay, but they can be furloughed and claimed for once they are no longer receiving Statutory Sick Pay.

## **Shielding Employees**

You can claim for furloughed employees who are shielding in line with public health guidance (or need to stay home with someone who is shielding) if they are unable to work from home and you would otherwise have to make them redundant.

## **Employees with caring responsibilities**

Employees who are unable to work because they have caring responsibilities resulting from coronavirus (COVID-19) can be furloughed. For example, employees that need to look after children can be furloughed.

## **If your employee has more than one job**

If your 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.

Employees can be furloughed in one job and receive a furloughed payment but continue working for another employer and receive their normal wages.

## **If your employee is on a fixed term contract**

Employees on fixed term contracts can be furloughed. Their contracts can be renewed or extended during the furlough period without breaking the terms of the scheme. Where a fixed term employee's contract ends because it is not extended or renewed you will no longer be able claim grant for them.

## **Eligible individuals who are not employees**

As well as employees, the grant can be claimed for any of the following groups, if they are paid via PAYE: \* office holders (including company directors) \* salaried members of Limited Liability Partnerships (LLPs) \* agency workers (including those employed by umbrella companies) \* limb (b) workers

The guidance below sets out specific considerations for those individuals who are paid via PAYE, but who are not necessarily employees in employment law. Unless explicitly set out below, all other guidance is applicable to these cases, and should be followed.

### **Office Holders**

Office holders can be furloughed and receive support through this scheme. The furlough, and any ongoing payment during furlough, will need to be agreed between the office holder and the party who operates PAYE on the income they receive for holding their office. Where the office holder is a company director or member of a Limited Liability Partnership (LLP), the furlough arrangements should be adopted formally as a decision of the company or LLP.

### **Company Directors**

As office holders, salaried company directors are eligible to be furloughed and receive support through this scheme. Company directors owe duties to their company which are set out in the Companies Act 2006. Where a company (acting through its board of directors) considers that it is in compliance with the statutory duties of one or more of its individual salaried directors, the board can decide that such directors should be furloughed. Where one or more individual directors' furlough is so decided by the board, this should be formally adopted as a decision of the company, noted in the company records and communicated in writing to the director(s) concerned.

Where furloughed directors need to carry out particular duties to fulfil the statutory obligations they owe to their company, they may do so provided they do no more than would reasonably be judged necessary for that purpose, for instance, they should not do work of a kind they would carry out in normal circumstances to generate commercial revenue or provides services to or on behalf of their company.

This also applies to salaried individuals who are directors of their own personal service company (PSC).

### **Salaried Members of Limited Liability Partnerships (LLPs)**

Members of LLPs who are designated as employees for tax purposes ('salaried members') under the Income Tax (Trading and Other Income) Act (ITTOIA) 2005 are eligible to be furloughed and receive support through this scheme.

The rights and duties of a member of an LLP are set out in an LLP agreement and in the absence of an agreement, default provisions in the LLP Act 2000, based upon company and partnership law. Such an agreement may include separate agreement between the LLP and an individual member setting out the terms applicable to that member's relationship with the LLP.

To furlough a member, the terms of the LLP agreement (or any such agreement between the LLP and the member) may need to be varied by a formal decision of the LLP, for example to reflect the fact that the member will perform no work in the LLP for the period of furlough, and the effect of this on their remuneration from the LLP. For an LLP member who is treated as being employed by the LLP (in accordance with s863A of ITTOIA 2005), the reference salary for this scheme is the LLP member's profit allocation, excluding any amounts which are determined by the LLP member's performance, or the overall performance of the LLP.

### **Agency Workers (including those employed by umbrella companies)**

Where agency workers are paid through PAYE, they are eligible to be furloughed and receive support through this scheme, including where they are employed by umbrella companies.

Furlough should be agreed between the agency, as the deemed employer, and the worker, though it would be advised to discuss the need to furlough with any end clients involved. As with employees, agency workers should perform no work for, through or on behalf of the agency that has furloughed them while they are furloughed, including for the agency's clients.

Where an agency supplies clients with workers who are employed by an umbrella company that operates the PAYE, it will be for the umbrella company and the worker to agree whether to furlough the worker or not.

### **Limb (b) Workers**

Where Limb (b) Workers are paid through PAYE, they can be furloughed and receive support through this scheme.

Those who pay tax on their trading profits through Income Tax Self-Assessment, may instead be eligible for the Self-Employed Income Support Scheme (SEISS), announced by the Chancellor on 26 March 2020.

Read more information on the Self-Employed Income Support Scheme, including eligibility criteria and how to claim.

### **Contingent workers in the public sector**

The Cabinet Office has issued guidance on how payments to suppliers of contingent workers impacted by COVID-19 should be dealt with where the party receiving the contingent worker's services is a Central Government Department, an Executive Agency of a Central Government Department or a Non-Departmental Public Body.

Read more information on contingent workers impacted by COVID-19. This guidance applies to agency workers paid through PAYE, as well as those paid through umbrella companies on PAYE and off-payroll workers supplying their services through a Personal Service Company (PSC).

### **If your employee does volunteer work**

A furloughed employee can take part in volunteer work, if it does not provide services to or generate revenue for, or on behalf of your organisation. Your organisation can agree to find furloughed employees new work or volunteering opportunities whilst on furlough if this is in line with public health guidance.





### **If your employee undertakes training**

Furloughed employees can engage in training, as long as in undertaking the training the employee does not provide services to, or generate revenue for, or on behalf of their organisation. Furloughed employees should be encouraged to undertake training.

Where training is undertaken by furloughed employees, at the request of their employer, they are entitled to be paid at least their appropriate national minimum wage for this time. In most cases, the furlough payment of 80% of an employee's regular wage, up to the value of £2,500, will provide sufficient monies to cover these training hours. However, where the time spent training attracts a minimum wage entitlement in excess of the furlough payment, employers will need to pay the additional wages (see National Minimum Wage Section for more details).

If your employee is on maternity leave, adoption leave, paternity leave or shared parental leave. The normal rules for maternity and other forms of parental leave and pay apply.

You can claim through the scheme for enhanced (earnings related) contractual pay for employees who qualify for either:

-  maternity pay
-  adoption pay
-  paternity pay
-  shared parental pay



## HOW MUCH CAN YOU CLAIM

You'll need to claim for:

- ✦ 80% of your employees' wages (even for employee's on National Minimum Wage) - up to a maximum of £2,500. Do not claim for the worker's previous salary.
- ✦ minimum automatic enrolment employer pension contributions on the subsidised wage

You can choose to top up your employee's salary, but you do not have to. Employees must not work or provide any services for the business while furloughed, even if they receive a top-up salary.

Grants will be prorated if your employee is only furloughed for part of a pay period.

Claims should be started from the date that the employee finishes work and starts furlough, not when the decision is made, or when they written to confirming their furloughed status.

The way you work out your employees' wages is different depending on what type of contract they're on, and when they started work.

### Full or part time employees on a salary

Claim for the 80% of the employee's salary, as of 28 February 2020, before tax.

### Employees whose pay varies

If the employee has been employed for 12 months or more, you can claim the highest of either the:

- ✦ same month's earning from the previous year
- ✦ average monthly earnings for the 2019-2020 tax year

If the employee has been employed for less than 12 months, claim for 80% of their average monthly earnings since they started work.

If the employee only started in February 2020, work out a pro-rata for their earnings so far, and claim for 80%.

### Employer National Insurance and Pension Contributions

You'll still need to pay employer National Insurance and pension contributions on behalf of your furloughed employees, and you can claim for these too.

You cannot claim for:

- ✦ additional National Insurance or pension contributions you make because you chose to top up your employee's salary
- ✦ any pension contributions you make that are above the mandatory employer contribution

### Past Overtime, Fees, Commission, Bonuses and non-cash payments

You can claim for any regular payments you are obliged to pay your employees. This includes wages, past overtime, fees and compulsory commission payments. However, discretionary bonus (including tips) and commission payments and non-cash payments should be excluded.

### Benefits in Kind and Salary Sacrifice Schemes

The reference salary should not include the cost of non-monetary benefits provided to employees, including taxable Benefits in Kind. Similarly, benefits provided through salary sacrifice schemes (including pension contributions) that reduce an employee's taxable pay should also not be included in the reference salary. Where the employer provides benefits to furloughed employees, this should be in addition to the wages that must be paid under the terms of the Job Retention Scheme.

Normally, an employee cannot switch freely out of a salary sacrifice scheme unless there is a life event. HMRC agrees that COVID-19 counts as a life event that could warrant changes to salary sacrifice arrangements, if the relevant employment contract is updated accordingly.

## Apprenticeship Levy and Student Loans

Both the Apprenticeship Levy and Student Loans should continue to be paid as usual. Grants from the Job Retention Scheme do not cover these.

## National Minimum Wage

Individuals are only entitled to the National Living Wage (NLW)/National Minimum Wage (NMW)/Apprentices Minimum Wage (AMW) for the hours they are working or treated as working under minimum wage rules.

This means that furloughed workers who are not working can be paid the lower of 80% of their salary or £2,500 even if, based on their usual working hours, this would be below their appropriate minimum wage. However, time spent training is treated as working time for the purposes of the minimum wage calculations and must be paid at the appropriate minimum wage, taking into account the increase in minimum wage rates from 1 April 2020. As such, employers will need to ensure that the furlough payment provides sufficient monies to cover these training hours. Where the furlough payment is less than the appropriate minimum wage entitlement for the training hours, the employer will need to pay the additional wages to ensure at least the appropriate minimum wage is paid for 100% of the training time.

Where a furloughed worker is paid close to minimum wage levels and asked to complete training courses for a substantial majority of their usual working time employers are recommended to seek independent advice.

## WHAT YOU WILL NEED TO MAKE A CLAIM

Employers should discuss with their staff and make any changes to the employment contract by agreement. Employers may need to seek legal advice on the process. If sufficient numbers of staff are involved, it may be necessary to engage collective consultation processes to procure agreement to changes to terms of employment.

To claim, you will need:

- ✦ 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 consecutive weeks)
- ✦ your bank account number and sort code
- ✦ your contact name
- ✦ your phone number

You will need to calculate the amount you are claiming. HMRC will retain the right to retrospectively audit all aspects of your claim.

## CLAIM?

You should make your claim using the amounts in your payroll - either shortly before or during running payroll. Claims can be backdated until the 1 March where employees have already been furloughed.

If appropriate, worker's wages should be reduced to 80% of their salary within your payroll before they are paid. This adjustment will not be made by HMRC.

## Minimum Furlough Periods

Any employees you place on furlough must be furloughed for a minimum period of 3 consecutive weeks. When they return to work, they must be taken off furlough. Employees can be furloughed multiple times, but each separate instance must be for a minimum period of 3 consecutive weeks



## AFTER YOU HAVE CLAIMED

Once HMRC have received your claim and you are eligible for the grant, they will pay it via BACS payment to a UK bank account.

You must pay the employee all the grant you receive for their gross pay, no fees can be charged from the money that is granted,

### When the government ends the scheme

When the government ends the scheme, you must make a decision, depending on your circumstances, as to whether employees can return to their duties. If not, it may be necessary to consider termination of employment (redundancy).

HMRC will process all claims made before the scheme ends.

## WHEN YOUR EMPLOYEES ARE ON FURLOUGH

You cannot ask your employee to do any work that:

- ✦ makes money for your organisation
- ✦ provides services for your organisation

They can take part in volunteer work or training.

### Employee taxes

Your employees will still pay the taxes they normally pay out of their wages.

This includes pension contributions (both employer contributions and automatic contributions from the employee), unless the employee has opted out or stopped saving into their pension.

### Employee rights

Employees still have the same rights at work, including:

- ✦ Statutory Sick Pay
- ✦ maternity and other parental rights
- ✦ rights against unfair dismissal
- ✦ redundancy payments

Grants cannot be used to substitute redundancy payments. HMRC will continue to monitor businesses after the scheme has closed.

### Working for a different employer

If contractually allowed, your employees are permitted to work for another employer whilst you have placed them on furlough.

For any employer that takes on a new employee, the new employer should ensure they complete the starter checklist form correctly. If the employee is furloughed from another employment, they should complete Statement C.

### Tax Treatment of the Coronavirus Job Retention Grant

Payments received by a business under the scheme are made to offset these deductible revenue costs. They must therefore be included as income in the business's calculation of its taxable profits for Income Tax and Corporation Tax purposes, in accordance with normal principles.

Businesses can deduct employment costs as normal when calculating taxable profits for Income Tax and Corporation Tax purposes.

## PAWLEY & MALYON CLIENTS

For clients where Pawley & Malyon (including via ABCO) administer the company payroll, [Amanda Grisley](#) will be contacting you in more detail about the Coronavirus Job Retention Scheme including a sample letter that can be used for employees to sign once you have had the initial discussion with them and agreed that they will be furloughed (which can be from 1 March 2020 onwards for up to 3 months at present). If you then have any employees who will be furloughed please can you convey this to Amanda as soon as possible and ideally by 10 April so that she can liaise with both you and ABCO to ensure we have all of the necessary information to include this in the April payroll.

## CONTACT US

In line with government advice, we are all currently working from home and therefore where possible please contact us by e-mail in the first instance

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