



RealityHR

People Driven Business Growth

FURLOUGH SCHEME

(JOB RETENTION SCHEME)

JULY 2020

GET IN TOUCH TO FIND OUT HOW WE
CAN HELP...



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Changes to the Government's Coronavirus Job Retention Scheme (CJRS) were announced which come into effect from 1st July. The Government's factsheet can be found [here](#). This factsheet incorporates all of the details released so far, including further guidance on the 'new' Flexible Furlough scheme issued by HMRC on 12th June.

CORONAVIRUS JOB RETENTION SCHEME (FURLOUGHED WORKERS)

The Coronavirus Job Retention Scheme is a temporary scheme designed to support employers whose operations have been severely affected by coronavirus (COVID-19).

If work activity or revenue has diminished to a point where an employer might be considering redundancy or layoffs for some or all staff, then this scheme has been introduced to enable them to continue employing those staff and instead place them on a leave of absence (furlough) whilst paying them at least some wage which they can claim back from HMRC.

The scheme has been backdated to 1st March, and has been extended three times, with a final closing date of 31st October 2020. The online portal opened on 20th April 2020.

All UK businesses are eligible to participate (including limited companies, sole traders, charities etc) as long as they had made an RTI submission notifying payment in respect of the employee to HMRC on or before 19th March 2020.

Employers can claim for all employees who were on the payroll at 19th March, including:

- full-time employees
- part-time employees
- employees on agency contracts
- employees on flexible or zero-hour contracts
- Apprentices
- Directors (can claim against their PAYE salary only, not dividends)

FLEXIBLE FURLOUGH

The 'new' flexible furlough scheme, which starts on 1st July, extends the existing furlough scheme until the end of October 2020 but with some amended conditions. The furlough scheme was originally introduced by the Government in April for employers who were unable to maintain their normal operations or had no work because of the coronavirus pandemic. The purpose of the scheme was, and still is, to prevent redundancies and save jobs and the economy by ensuring the Government pays a proportion of employees' salaries up to a maximum of £2500 per month.

For those employees who are eligible under the new rules, their employer can choose to either fully furlough them as before, or can furlough them for just a proportion of their usual contractual hours whilst they work normally (and are paid) for the rest. The employer must pay the employee 80% (capped etc) of their hourly pay for hours not worked and can claim at least some of this back from the Government.

The 'new' arrangements still allow the full furloughing of previously furloughed employees but also provides flexibility to bring employees back to work on a part time basis (flexible furlough) for any period of time. The employer can still, under the 'new' scheme, claim for unworked hours. Under the 'new' scheme there is also a reduction, on a sliding scale, in the grant an employer can claim from 1st August 2020.

EMPLOYER CONTRIBUTIONS

The scheme will remain fully funded by HMRC during June and July, with a "furloughed worker" remaining on your payroll and receiving 80% of their salary (capped at £2500, and less tax and NI as usual).

The employer's contributions will commence from 1st August, as detailed below:

Date from	HMRC Scheme Contribution	Employer Contribution
1st June to 31 July	80% of the employee salary (capped at £2500, and less tax and NI as usual)	None
1st August	Lower 80% of the employee salary (capped at £2500, and less tax and NI as usual)	National Insurance and pension contributions
1st September	70% of the employee salary (capped at £2187.50, and less tax and NI as usual)	10% of wages plus National Insurance and pension contributions
1st October	60% of the employee salary (capped at £1,875, and less tax and NI as usual)	20% of wages plus National Insurance and pension contributions

Employers can top up wages, but as under the previous scheme, there is no obligation to do so.

WHO SHOULD BE FURLOUGHED?

The scheme was implemented to provide an alternative to unpaid layoffs and redundancies, so initially any employees whose work had reduced due to the impact of Coronavirus could be selected to be furloughed (in line with equality and discrimination laws).

All employees selected must consent to be furloughed. The details of the furlough must be provided to the employee in writing, and they should respond in writing (email is acceptable) to confirm their understanding and agreement.

If an employee does not agree to be furloughed, they must remain on their normal terms and conditions of work, however you should discuss with them the potential implications of this (such as insolvency of the business or compulsory redundancies).

Between 1st March and 30th June, all furloughed employees must be fully furloughed – so if you wish an employee to work part time instead of their normal hours they cannot be furloughed. You can consult with them and agree any reduction in working hours and/or pay with them. You will remain liable for their wage costs as you will not be able to claim back any wage costs from HMRC.

From 1st July you can continue to furlough anyone who has been previously furloughed, but cannot add anyone new to the HMRC portal. You must agree any changes to the furlough arrangements in writing with employees.

WHO CAN TAKE PART IN THE FLEXIBLE FURLOUGH SCHEME?

An employee does not have to be on furlough on 30th June, but does need to have completed a minimum 3 week furlough period at some point between 1st March and 30th June. This means that the last date that previously unfurloughed employees could be furloughed was 10th June.

From 1st July, employers can use the flexible furlough scheme to ask furloughed employees to work for any amount of time and any work pattern, while still being able to claim the grant for the hours not being worked.

DURING FURLOUGH

Employees remain employed, and length of service and all other contractual entitlements continue to accrue.

A “furloughed worker” will remain on your payroll and will receive 80% of their salary (capped at £2500, and less tax and NI as usual).

During any period of furlough, an employee must not do any work for you. They may undertake training as long as this does not generate any revenue for the company.

CAN I ONLY USE THE SCHEME FOR PART TIME HOURS FROM JULY 1ST?

You can still use the scheme to fully furlough employees from 1st July i.e. not asking them to work any hours or you can use the scheme to ask them to work a mixture of part time hours some weeks. However you choose to use the scheme, you must always pay the employees for the hours they work and you will claim under the CJRS for the hours they don't work.

Flexible furlough agreements can last any amount of time. This means that they do not need to last for a minimum of 3 weeks. However, the period that you claim for must be for a minimum period of 7 calendar days. Any flexible furlough period of less than this cannot be claimed for via the scheme.

Employees can enter into a flexible furlough agreement more than once.

From 1st July, until the scheme ends, you will need to agree with each employee how many hours they will work each week. This should be put in writing but a simple email exchange will be sufficient.



CLAIMING UNDER THE NEW FLEXIBLE FURLOUGH SCHEME

If a furlough period started prior to 30th June and has not ended by 1st July, then that employee must complete a 3 week period in order for you to make a claim. From 1st July a furlough can last any amount of time, but each claim period must be a minimum of 1 week/7 days.

Up until 31st July 2020 an employer can claim 80% of wages up to a maximum of £2,500 per month per furloughed employee plus employer's NICs and 3% pension contributions. This will change from 1st August onwards.

From 1st August 2020 the employer will no longer be able to reclaim employer's NICs or 3% pension but can still claim 80% of wages capped at £2,500 per month.

From 1st September the employer can only reclaim 70% of wages capped at £2,187.50 per month and must pay to the employee 10% of wages to make it up to 80% of wages up to a cap of £2,500 per month.

From 1st October the employer can reclaim 60% of wages capped at £1,875 per month and the employer must pay 20% of wages to make it up to 80% of wages up to a cap of £2,500 per month.

There is no longer a three week minimum period for a furlough claim from 1st July. From 1st July, claim periods must start and end within the same calendar month and must last at least 1 week/7 days (unless you are claiming for the first or last few days in the month in which case the claim period can be shorter).

You can only make one claim for any period, so you must include all fully furloughed employees (those not working at all) and all flexibly furloughed employees (those working part time) in one claim, even if some are monthly paid and some are weekly paid and may therefore have different pay dates.

In any claim period employers are limited in the number of employees they can claim for up to the maximum number of employees they claimed for under any previous claim under the current CJRS. For example, if they furloughed 20 employees in April and 30 employees in May and 50 in June, the maximum they can claim for is 50 employees.

The only exceptions to this are:

- TUPE situations where employees who were furloughed for at least three weeks prior to 30th June have been transferred to a new employer (transferee) under TUPE can be counted in addition to the transferee's other furloughed employees
- those transferring from a company in liquidation where TUPE would otherwise have applied and employees who were on a form of family leave (e.g. maternity leave) before 10th June and who returned after 10th June (see further detail below).

Employees who were on maternity, shared parental, adoption, paternity or parental bereavement leave before 10th June and who returned after 10th June, can be furloughed after 1st July provided that an RTI submission had been made in respect of them by 19th March 2020 and the employer had also furloughed other employees.

HOW DO EMPLOYERS CALCULATE THE 80%?

For salaried staff (whether full or part time), the usual salary before tax, as of the last pay period before March 2020 should be used to calculate the 80%. Fees, commission and bonuses should not be included.

Zero hours/irregular workers - 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 figure for their earnings so far to claim.

Examples of how to calculate 80% of an employee's usual wage are shown on the GOV.UK website: <https://www.gov.uk/guidance/work-out-80-of-your-employees-wages-to-claim-through-the-coronavirus-job-retention-scheme>. Further guidance on how to calculate the

If your employee is to be flexibly furloughed, you'll need to work out your employee's usual hours and record the actual hours they work as well as their furloughed hours for each claim period.

There are two different calculations you can use to work out your employee's usual hours, depending on whether they work fixed or variable hours.

An employee works variable hours if either:

- the employee is not contracted to a fixed number of hours, or;
- the employee's pay depends on the number of hours they work

If neither of these apply, they are classed as working fixed hours.

WHAT IS INCLUDED IN THE 'USUAL' SALARY?

The amount the employer should use when calculating 80% of the employee's wages is regular payments they are obliged to make, including:

- regular wages paid to the employee
- non-discretionary overtime
- non-discretionary fees (awaiting clarification on what is covered by fees)
- non-discretionary commission payments
- piece rate payments

There are a number of payments which **should not** be included when calculating wages:

- Non-monetary benefits such as benefits in kind (a company car) and salary sacrifice schemes (pension contributions) that reduce an employee's taxable pay
- Payments made at the discretion of the employer – where the employer was under no contractual obligation to pay, including tips and discretionary commission payments.

HOW DO EMPLOYERS CLAIM THE SUBSIDY?

Employers access the scheme through an online portal, providing details of the affected employees and information on their earnings. There is detailed guidance on the Government website for making a claim.

You must retain all records and calculations relating to the claims being made for a period of 5 years.

You cannot make more than one claim during a claim period. This means you should include all of the employees that you want to furlough for that claim period, because you won't be able to make another claim for the same period or one that overlaps, and you can't make changes to your claim once it is submitted.

Payments are made to the employer within approximately 6 days of entering the employee data onto the portal.

HOW IS THE NATIONAL MINIMUM WAGE AFFECTED?

Employees are entitled to the National Minimum Wage ONLY when they are actually working, so if 80% of their salary as at 28th February takes them below the NMW that is acceptable.

If an employee was due an increase because of the NMW increase on 1st April 2020, but is furloughed then you do not have to increase their salary at that point to be in line with the new NMW because they are not working. "Actual salary" for furlough purposes should continue to be calculated at the February/March reference point.

The only exception to this, is if an employee is carrying out training for you during their furlough – you must ensure they are being paid at least the current minimum wage for each hour of training, but their 80% furlough pay may already exceed this.

CAN AN EMPLOYEE TAKE HOLIDAY WHILE ON FURLOUGH?

Yes, employees can take holiday whilst on furlough without breaking the continuous furlough period.

EITHER employees can request holiday on particular dates OR employers can ask employees to take holiday on particular dates. It is legal for an employer to insist an employee takes holiday on a particular date as long as they give notice of double the length of holiday to be taken.

Employers should be mindful of the fact that the fundamental purpose of holiday is for rest and recuperation, and consider whether any restrictions the worker is under, such as the need to socially distance or self-isolate, would impact this before allocating dates.

For any day's holiday taken, furloughed employees' pay should be topped up to their usual full pay amount. This will also apply where a bank holiday falls during a furlough period and they would usually take this as holiday. Employers would still be able to claim back 80% (or 70% in September and 60% in October) of the furloughed employees pay for these days of holiday.

Employers who are not in a financial position to pay furloughed employees in full during annual leave can refuse employees' requests for holiday in what would otherwise be a furlough period. The employer must give as much notice of a refusal as the amount of leave requested, so two weeks' notice if the leave requested was for two weeks.

Special provision has been made to allow the carry-over of up to 4 weeks' holiday into the next two holiday years. Allowing this carry-over is at the employer's discretion.

WHAT ABOUT PEOPLE WHO ARE UNWELL OR SELF-ISOLATING?

Employees on short-term sickness or those who are self-isolating in line with government guidance (i.e. if they or a family member have Coronavirus symptoms) should normally be paid Statutory Sick Pay. Once a period of sickness or self-isolation finishes, these employees may be furloughed (if they meet the criteria for the new scheme – ie they have been previously furloughed under the old scheme).

If an employee falls ill whilst on furlough, they can remain on furlough or move to SSP or Company Sick Pay if applicable (note – they cannot be on both SSP and furlough simultaneously).

Employees who are on long-term sick leave can be furloughed. HMRC guidance on the scheme was updated to confirm that the scheme is not intended as an alternative for short-term sickness absences, but employers can furlough employees who are on sick including those off on long-term sick leave if there is a business reason, and they meet the date deadlines regarding previous furloughing.

Employers may qualify for a rebate for up to two weeks of Statutory Sick Pay per employee. Employers can claim a grant under both the furlough scheme and the sick pay rebate scheme for the same employee, but not for the same period of time.

SHIELDING EMPLOYEES

You can furlough an employee who is shielding in line with public health guidance or an employee who needs to stay home with someone who is shielding – as long as they have been placed on the furlough scheme on (or before) 10 June.

Shielding employees are those who are extremely vulnerable (for example, due to organ transplants, lung cancer, severe chest conditions or immunosuppressed conditions) and who have been notified by the NHS to isolate for 12 weeks. If shielding employees can work at home, then they can continue to do this unless they become unwell. However, if there is no work to do at home, the shielding employees can be furloughed.

CARING RESPONSIBILITIES

You can furlough an employee who is unable to work because of caring responsibilities arising from coronavirus (COVID-19). This could be to care for children who are at home because school and childcare facilities are closed or to care for a vulnerable individual in their household. These employees must be placed onto furlough before the old scheme closes on or before 10 June.

CAN PEOPLE BE SWAPPED IN AND OUT OF FURLOUGH?

Yes, but you must ensure that all employees you may wish to furlough during July, August, September or October have been on the “old” scheme, so placed onto furlough by 10 June at the latest.

This pool of previously furloughed employees can then be furloughed flexibly during the “new” scheme, which means their working hours can be flexed up or down each week as required by the needs of the business.

For example, you could set up two “teams” of employees, and rotate their working weeks or days, so they in effect work “back to back” like a traditional job share.

WHAT IF AN EMPLOYEE HAS A SECOND JOB?

Employees with an existing second job can be furloughed by one employer and continue to work for another employer, if there is nothing preventing it within their contract (e.g. there is no conflict of interest etc). Employees can be furloughed from each job, as each job is separate, and the cap applies to each employer individually.

It is permissible for employees to take on a second job whilst furloughed, as long as there is nothing in their contract of employment that prevents it, or their current employer gives permission.

RECORDS

The HMRC has advised they will have the power to audit claims made for up to 5 years after an application, so you need to retain all records associated with any claims.

RETURNING TO WORK

Consideration should be given to planning and preparing for people to return to work from furlough. Employees may be feeling anxious about returning to the workplace, or feeling left out, forgotten or disengaged and will need reassurance that they are safe and valued as part of the team.

The employer must agree the work pattern with the employee, we would suggest this is recorded in writing. Employers must give due consideration to consulting with employees who are returning to work, and provide reasonable notice.

You may wish to arrange a mini-induction for all employees returning from furlough, along with Health & Safety training to ensure they are aware of the social distancing measures in place.

RESTRUCTURE AND REDUNDANCIES

During this time, employers may decide they need to consider restructuring and/or redundancies. This should be a last resort once all other measures have been exhausted.

You can commence a redundancy process while an employee is on furlough, but you must still follow a fair redundancy process, with consultation and full notice periods.

Contact us for specific advice if you wish to go ahead with redundancies for any reason.

CONTACT AND UPDATES

Some areas of the government guidance still remain unclear, and the information within this documentation is our interpretation. We will continue to keep our website updated with the latest information. Please ensure you speak with us regarding your individual circumstances.

Please contact us should you require support when furloughing your employees (i.e. written communications and documents to support your process), or when planning the return to the workplace.



PROCESS TO FOLLOW

1. Open consultation with affected employees and set out the business reasons for the situation. Select those fairly (maybe through a shortened redundancy scoring exercise) if not furloughing the entire workforce. Be able to justify why these employees have been selected (avoiding any factors which may be discriminatory).
2. Explain that employees will not be required to work for a specified period of time, and that they will be paid 80% of their usual salary during this time (capped at £2,500 per month).
3. Confirm the details of the furlough in writing to the employee, and wherever possible ask them to confirm in writing (email or letter) their understanding and agreement. Having their written agreement is not compulsory but advised.
4. Place them on leave for the designated period of time, and pay them 80% of their usual salary (capped at £2,500 per month).
5. Register for furlough pay once the online portal is live, and claim back all relevant payments.

Please contact us should you require support when furloughing your employees (i.e. written communications and documents to support your process)

The number of employees an employer can claim for in any claim period cannot exceed the maximum number they have claimed for under any previous claim under the current CJRS.

Claim periods will be a minimum of one week but can be longer, but cannot overlap months.

RECORDS

The HMRC has advised they will have the power to “audit” claims made for up to 5 years after an application, so you need to retain all records associated with any claims.

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