



RealityHR

People Driven Business Growth

USING FLEXIBLE FURLOUGH TO SUPPORT YOUR BUSINESS

REALITY HR RESET
JULY 2020

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



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As the pandemic took hold, organisations had to move quickly to adapt and survive. Swift decisions were made to close down operations or move workforces to home working arrangements. Furlough became part of our everyday language and many businesses took advantage of the scheme as they paused their operations and placed workers on paid leave to see out the lockdown.

Coming out of lockdown is a more complex and cautious process. Extensive planning is needed to ensure workers and customers are safe, but broader consideration is needed as markets and business strategies are reassessed and thought given to what resource will be needed to cover uncertain activity levels over the coming months.

The new flexible furlough scheme allows businesses to take a step-by-step approach. Some will remain closed and continue to fully furlough some or all workers. Some will bring back furloughed staff gradually; using phased returns or flexing workers week in week out to manage the peaks and troughs of unpredictable demand.

The previous furlough scheme prevented furloughed staff from doing any work creating a big constraint on many businesses, but that constraint has now disappeared. Allowing staff to do some work, rather than an all-or-nothing approach, will help businesses start to wake up, enable furloughed staff to refresh their skills and reintegrate into the workplace; they will be ready to go if there is a sudden peak of activity.

For businesses which remain in challenging situations, the scheme enables them to continue to limit their people costs in the short term and hopefully avoid permanent redundancies which could prove damaging in the long term.

For leaders and people managers, there are still some difficult questions; who should return? How many hours should they do? Should they return at all? This factsheet explores some practical considerations, but do refer to Factsheet [1] for technical details of the scheme first.

WHY IS THE FLEXIBLE FURLOUGH SCHEME BENEFICIAL FOR MY BUSINESS?

Whatever the challenges your business has faced, be it forced closure, supply chain problems or lack of demand, it is likely that the coming months will not be a steady and stable return to "normal". Being able to place workers on reduced hours or flex their working hours week-to-week gives you complete flexibility to deal with peaks and troughs.

We know of some businesses that hit problems using the old scheme having furloughed workers but then needing them back before the 3-week period was up. They were then forced to decide whether to see out the furlough period and suffer the damage of that worker's absence, or bring back the staff and write off the costs of paid absence as they couldn't claim the furlough grant. The flex furlough scheme eliminates this as workers can furlough or work as and when needed.

And with fewer people working fewer hours or days, there is a reduced risk of contamination and health and safety and social distancing can be better managed.

Coronavirus is not yet over and for some organisations, the future still looks uncertain. As some sectors start to unlock we are still seeing some geographical areas go back into lockdown which will again impact employment. Some businesses may have just re-opened only to find they are suddenly shut down again. The flexible furlough scheme will enable them to place staff back on furlough, without the 3-week minimum period, to counter those changes.



ARE THERE ANY THINGS I NEED TO BE AWARE OF?

Whilst your business may benefit from the flexibility and reduced people costs, it may not be ideal for your staff. Reduced hours will still have a financial impact on them. Complete flexibility may not work for them if they need to manage home responsibilities or childcare. They may be the type of person that cannot perform well with constant change and this will affect their performance. As with any employment situation, if you cannot offer your staff an arrangement that suits them, it may be that they start looking for another employer that can.

In your planning you also need to be conscious of the changes to the costs of the scheme from month to month; from August it will cost your business more to use the scheme as you have to start making contributions to the salary costs of the furloughed employee, which increase each month until the scheme ends in October. Your financial team will need to have good processes in place to claim at the right time and in the right month to comply with scheme rules.

WHY IS FLEXIBLE FURLOUGH BENEFICIAL FOR MY STAFF?

- Some work is better than none – they can start to earn a little more, and feel part of the team again. Staff will be able to refresh and retain their skills, and having interaction with others and having a feeling of contribution and value will support mental health. Whilst the costs of the scheme may increase gradually for employers, you can view it as an investment in your team's mental health and reintegration to your workplace.
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- Reduced risk of contamination from those who have been shielding – fewer work days will mean lesser exposure.
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- Phased returns for furloughed staff – mitigating and reducing the risk of contamination; reducing the stress of jumping straight back into full time work after months away

WHAT DO I NEED TO THINK ABOUT?

Having processes to regularly review demand and activity levels so you can forward plan the level of resource you will need at any particular time. The more notice you can give employees about increasing or decreasing their hours the better.

Consult with your staff about how to use the scheme – they will have ideas that you may not have thought of. They may also be feeling uncertain and in the dark about what the changes to the scheme mean for them – talk to them as early as possible so they know what is happening.

AN EMPLOYEE HAS PRE-BOOKED HOLIDAY THIS SUMMER, CAN I CLAIM FURLOUGH FUNDS WHILE THEY ARE ABSENT?

There doesn't appear to be anything in the guidance that prevents an employer from doing this, if the employee had previously been furloughed and so is eligible for the new scheme.

As the new scheme removes the requirement for a 3-week minimum furlough absence, any employee taking a day or more of holiday could, in theory, be placed on furlough leave instead and the employer claim furlough funds. It should be noted that this is not the intention of the scheme so there is a small risk that rules may change to prevent claims being made in this way.



AN EMPLOYEE IS UNABLE TO WORK AS THEY ARE SICK/ INJURED. CAN I CLAIM FURLOUGH FUNDS WHILE THEY ARE ABSENT?

Strictly an employee who is sick or injured and cannot work at all will be placed on sick leave and eligible for Statutory Sick Pay (or company sick pay if it is company policy).

An employer cannot claim SSP and furlough funds at the same time, although they may choose to place the absent employee back on furlough and claim furlough funds. It should be noted that this is not the intention of the scheme so there is a small risk that rules may change to prevent claims being made in this way.

AN EMPLOYEE IS SHARING CHILDCARE WITH THEIR EX-PARTNER. CAN I CLAIM FURLOUGH FUNDS FOR THE DAYS THEY HAVE THEIR CHILDREN AND ARE UNABLE TO WORK?

After much confusion, Government guidance for the “old” furlough scheme finally did state that workers who could not work because of childcare issues could be placed on furlough for this reason. There is nothing in the guidance to say that this has changed in the “new” scheme. Therefore, if you have a working parent that can now work some hours, you could place them on furlough for the hours they are unable to work due to childcare commitments.

I FURLOUGHED OUR ZERO-HOUR WORKERS BUT WE WON'T BE ABLE TO AFFORD THE EMPLOYER CONTRIBUTIONS TO FURLOUGH AFTER 31ST JULY. WHAT CAN I DO?

For a fixed hour worker, ending furlough but not having any work for them would usually lead to a redundancy situation. A zero hours worker has a contract that specifies there is no obligation for the employer to offer any hours of work. Therefore, a business could end the furlough arrangements for a zero hour worker, but not yet offer them any work without it immediately being a redundancy situation. There are some complexities around this, such as how regular might their hours have been previously, and so you should seek advice if this applies to your business.

I HAVE SOME WORK FOR OUR ZERO-HOURED WORKERS TO DO. I'D USUALLY PAY THEM ONLY FOR THE HOURS THEY WORK, BUT CAN I NOW CLAIM FOR THE OTHER HOURS TOO?

If you have furloughed zero hour workers you will already have calculated their "usual" hours. If the hours they are now offered and working are significantly less than they would otherwise have expected had it not been for the impact of coronavirus, then you may be able to claim furlough funds for them. Seek advice on this if it applies.

WHO SHOULD I BRING BACK?

This should of course be driven by where the activity in your business is returning, or where you need to focus efforts in order to drive demand and revenue. You can have some staff working fully, or on reduced hours, whilst others remain fully furloughed. However you must ensure you can fully justify your decisions about which individual will work which working pattern in case you are challenged. You must be sure that your decisions are objective, and not discriminatory in any way.

Do seek advice if you are having to choose between individuals within the same or similar team and we can help you establish fair criteria by which to do it. You can, and should, consult with these individuals though to understand who is able and willing to return, although the final decision should be yours.

OUR BUSINESS HAS NOT RETURNED ENOUGH, AND WE CAN'T AFFORD THE CONTRIBUTIONS UNDER THE NEW SCHEME. WHAT CAN WE DO?

If you cannot afford to furlough your staff anymore, but you do not have any work to offer them, then you may potentially be in a redundancy situation. Seek advice and support as you consider restructuring your business and making decisions about the roles and levels of resource you will need in the future. Do not just give notice of redundancy to all furloughed staff, you will still need to follow a fair process. Reality HR will be able to guide you through this in the timescales that is right for your business.

HOURS FOR SOME EMPLOYEES MAY FLEX FROM WEEK TO WEEK - DO I HAVE TO WRITE TO THEM WITH A NEW AGREEMENT EACH TIME?

Firstly talk to your workers about what is happening in the business and how you plan to use the scheme in the coming months. Answer any questions and address any concerns. You can then confirm all discussions and agreed arrangements in writing. This can also reference any previous letter which details the pay arrangements for any time furloughed – remember what the employee receives for furloughed time will not change from the old scheme.

Once this new agreement letter is in place and all T&Cs for any furloughed hours agreed, you will not need to write each time the hours change in the future. Simply verbally discuss any change with your workers, having agreed in the letter the notice you will give of hours increasing or decreasing (e.g. 48 hours). We would recommend that any verbal change is followed up with a simple email to create an audit trail in case of HMRC checks. Issuing a weekly roster may also meet this requirement.

I HAVE STAFF ON MATERNITY OR SHARED PARENTAL LEAVE WHEN CORONAVIRUS STARTED BUT THEY ARE DUE BACK BEFORE THE END OF OCTOBER AND I HAVE NO WORK FOR THEM.

Although they have not previously been furloughed, because of their parental absence then you may now furlough them.

IF STAFF PUT IN A FLEXIBLE WORKING REQUEST TO REDUCE THEIR HOURS AND I AGREE, CAN I CLAIM FURLOUGH FUNDS THROUGH THE SCHEME?

Technically yes, although this is not in the spirit of the scheme and not what the Government intended the scheme to support. It is designed to support hours that have been cut only because of the impact of coronavirus on this business. We know HMRC will begin audits of organisations that have used the furlough scheme and we don't know if this use of the scheme may fall foul of the rules and require funds to be repaid. We advise caution in this area.

I HAVE SOME TRAINING FOR MY TEAM TO DO, BUT SOME ARE WORKING NORMALLY AND SOME ARE FURLOUGHED. CAN THE FURLOUGHED STAFF DO IT OR DO I NEED TO BRING THEM BACK TO WORK AND PAY THEM NORMAL PAY FOR THE HOURS OF TRAINING?

If you can show you really have no work for the furloughed staff then they should remain furloughed, and so will only attract furloughed pay whilst training (although you must ensure it adheres to the National Minimum Wage for training hours). It may feel unfair to some and we advise you to discuss any concerns they have. You will need to balance the financial impact with damage to the goodwill and feeling of the staff.