

## CORONAVIRUS JOB RETENTION SCHEME

### What has been released to date on the Scheme?

<b>Overview</b>	Under the Coronavirus Job Retention Scheme (“CJRS” or “the Scheme”), all UK employers who have been severely impacted by COVID -19 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. These workers will be designated as ‘furloughed workers’.
<b>What will the grant cover?</b>	Employers will receive a grant to cover the lower of 80% of an employee’s regular wage or £2,500 per month, plus <ul style="list-style-type: none"> <li>◆ the associated Employer National Insurance contributions; and</li> <li>◆ minimum automatic enrolment employer pension contributions</li> </ul> on that subsidised wage. Further guidance is to be issued on how employers should calculate their claims for Employer National Insurance Contributions and minimum automatic enrolment employer pension contributions <b>Minimum:</b> At a minimum, employers must pay their employee the lower of 80% of their regular wage or £2,500 per month
<b>Does the employer have to “top up” salary costs?</b>	An employer can also choose to top up an employee’s salary beyond this but is not obliged to under this scheme.
<b>What period can be claimed?</b>	The scheme will be back dated to 1 <sup>st</sup> March 2020 and open for at least 3 months but will be extended if required. Employers can use this scheme anytime during this period.
<b>When will employers receive the grant?</b>	The scheme is due to open on the week commencing 20 <sup>th</sup> April 2020, with the first grants anticipated before the end of April.
<b>Can employees claim any other benefits?</b>	If employees’ salaries are reduced as a result of these changes, they may be eligible for support through the welfare system, including Universal Credit.

### What employers are eligible?

<b>What employers are eligible?</b>	All UK employers that had created and started a PAYE payroll scheme on 28 <sup>th</sup> February 2020 are eligible. Any UK organisation with employees can apply, including: <ul style="list-style-type: none"> <li>◆ businesses</li> <li>◆ charities</li> <li>◆ recruitment agencies (agency workers paid through PAYE)</li> <li>◆ public authorities</li> </ul> An Administrator may also access the Job Retention Scheme. <b>Note:</b> If employers receive public funding for staff costs, and that funding is continuing, employers are expected 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.
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*What does “furlough worker” mean and who can be furloughed?*

<p><b>What does a furloughed worker mean?</b></p>	<p>A furloughed worker is an employee who continues to be employed by their employer but does not undertake work for the employer while they are furloughed.</p>
<p><b>What employees are eligible?</b></p>	<p>Furloughed employees must have been on the PAYE payroll on 28<sup>th</sup> February 2020, and can be on any type of contract, including:</p> <ul style="list-style-type: none"> <li>◆ full-time employees</li> <li>◆ part-time employees</li> <li>◆ employees on agency contracts</li> <li>◆ employees on flexible or zero-hour contracts</li> </ul> <p><b>Foreign nationals</b> are eligible to be furloughed. Grants under the scheme are not counted as ‘access to public funds’, and you can furlough employees on all categories of visa.</p>
<p><b>Is there any conditions?</b></p>	<p>There are a number of conditions to be eligible for the scheme:</p> <ul style="list-style-type: none"> <li>◆ <b>No work:</b> When on furlough, an employee can not undertake work for or on behalf of the organisation. This includes providing services or generating revenue. This includes work for another linked or associated company.</li> <li>◆ <b>Volunteer work/training:</b> A furloughed employee can take part in volunteer work or training, as long as it does not provide services to or generate revenue for, or on behalf of your organisation.</li> <li>◆ <b>Reduced hours:</b> Employees working on reduced hours, or for reduced pay, will not be eligible for this scheme.</li> </ul> <p>Businesses do not need to place all their employees on furlough.</p>
<p><b>What if an employee is currently on unpaid leave?</b></p>	<p>Employees on unpaid leave cannot be furloughed, unless they were placed on unpaid leave after 28<sup>th</sup> February.</p>
<p><b>If an employee has one more than job are they eligible?</b></p>	<p>if an employee has multiple employers then :</p> <ul style="list-style-type: none"> <li>◆ they can be furloughed for each job</li> <li>◆ can continue working in one job and receive normal wages</li> <li>◆ each job is separate</li> <li>◆ the rules of the scheme apply to each employer separately</li> </ul>
<p><b>What about vulnerable individuals or carers?</b></p>	<ul style="list-style-type: none"> <li>◆ <b>Employees with caring responsibilities:</b> 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.</li> <li>◆ <b>Employees who are shielding or long term sick:</b> Employers are also entitled to furlough employees who are being shielded or off on long-term sick leave. It is up to employers to decide whether to furlough these employees.</li> </ul>
<p><b>What if an employee is sick?</b></p>	<p>If your employee is on sick leave or self-isolating as a result of Coronavirus, they’ll be able to get Statutory Sick Pay, subject to other eligibility conditions applying.</p> <p>If, however, employers want to furlough employees for business reasons and they are currently off sick, they are eligible to do so, as with other employees. In these cases, the employee should no longer receive sick pay and would be classified as a furloughed employee.</p> <p>When an employee is on furlough, you can only reclaim expenditure through the Coronavirus Job Retention Scheme, and not the SSP rebate scheme.</p>
<p><b>What if an employee becomes sick while furloughed?</b></p>	<p>Furloughed employees retain their statutory rights, including their right to Statutory Sick Pay. This means that furloughed employees who become ill must be paid at least Statutory Sick Pay. It is up to employers to decide whether to move these employees onto Statutory Sick Pay or to keep them on furlough, at their furloughed rate.</p> <p>If a furloughed employee who becomes sick is moved onto SSP, employers can no longer claim for the furloughed salary. Employers are required to pay SSP themselves, although may qualify for a rebate for up to 2 weeks of SSP. If employers keep the sick furloughed employee on the furloughed rate, they remain eligible to claim for these costs through the furloughed scheme.</p>

**What if an employee is going on Maternity leave, contractual adoption pay, paternity leave or shared parental pay?**

For SMP the normal rules apply, and they are entitled to claim up to 39 weeks of statutory pay or allowance.

The same principles apply where your employee qualifies for contractual adoption, paternity or shared parental pay.

*What other individuals are eligible?*

**Can directors be furloughed?**

Salaried company directors are eligible to be furloughed and receive support through this scheme. 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 any 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).

**Can Salaried Members of an LLP be furloughed?**

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. 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.

**Other individuals**

- ◆ **Apprentices:** Apprentices can be furloughed in the same way as other employees and they can continue to train whilst furloughed
- ◆ **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 to claim grant for them.
- ◆ **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.
- ◆ **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 SEISS.

*What wage costs are covered by the scheme and how will the wage be calculated?*

<p><b>What wage cost is covered by the scheme?</b></p>	<ul style="list-style-type: none"> <li>◆ <b>Past Overtime, Fees, Commission, Bonuses and non-cash payments:</b> Employers 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.</li> <li>◆ <b>Apprenticeship Levy and Student Loans:</b> Both the Apprenticeship Levy and Student Loans should continue to be paid as usual, although grants from the Job Retention Scheme do not cover these.</li> <li>◆ <b>Benefits in Kind and Salary Sacrifice Schemes:</b> 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.</li> </ul>
<p><b>How will the wage cost be calculated?</b></p>	<ul style="list-style-type: none"> <li>◆ <b>Full and part time salaried employees:</b> the employee's actual salary before tax, as of 28<sup>th</sup> February should be used to calculate the 80%.</li> <li>◆ <b>Employees whose pay varies:</b> If the employee has been             <ul style="list-style-type: none"> <li>○ employed (or engaged by an employment business) for a full twelve months prior to the claim, you can claim for the higher of either:                 <ul style="list-style-type: none"> <li>○ the same month's earning from the previous year</li> <li>○ average monthly earnings from the 2019-20 tax year</li> </ul> </li> <li>○ employed for less than a year: you can claim for an average of their monthly earnings since they started work.</li> <li>○ only started in February 2020: use a pro-rata for their earnings so far to claim.</li> </ul> </li> </ul>
<p><b>What about an employee returning from statutory leave?</b></p>	<p>Statutory leave includes maternity leave, paternity leave, shared parental leave, adoption leave, sick leave and parental bereavement leave.</p> <p>In line with other employees, claims for full or part time employees returning from statutory leave after 28 February 2020 should be calculated against their salary, before tax, not the pay they received whilst on statutory leave.</p> <p>Claims for those on variable pay, returning from statutory leave should be calculated using either the:</p> <ul style="list-style-type: none"> <li>◆ same month's earning from the previous year</li> <li>◆ average monthly earnings for the 2019-2020 tax year.</li> </ul>
<p><b>Does the NLW/NMW need to be paid?</b></p>	<p>The furloughed workers, who are not working, must be paid the lower of 80% of their salary, or £2,500 even if, based on their usual working hours, this would be below NLW/NMW.</p> <p>If workers are required to for example, complete online training courses whilst they are furloughed, then they must be paid at least the NLW/NMW for the time spent training, even if this is more than the 80% of their wage that will be subsidised.</p>

*How is the Scheme to be administered?*

<p><b>How do you make a claim?</b></p>	<p>The process involves:</p> <ul style="list-style-type: none"> <li>◆ businesses will designate affected employees as ‘furloughed workers,’ and notify their employees of this change;</li> <li>◆ businesses will submit information to HMRC about the number of employees that have been furloughed, the amount claimed, the claim period etc. through a new online portal</li> <li>◆ claims should be made in accordance with actual payroll amounts at the point at which payroll is run or in advance of an imminent payroll; and</li> <li>◆ once HMRC have received the claim and the business is eligible for the grant, they will pay it via BACS payment to a UK bank account.</li> </ul>
<p><b>What is needed to claim?</b></p>	<p>To claim, you will need:</p> <ul style="list-style-type: none"> <li>◆ your employer PAYE reference number</li> <li>◆ the number of employees being furloughed</li> <li>◆ National Insurance Numbers for the employees you want to furlough</li> <li>◆ Names of the employees you want to furlough</li> <li>◆ Payroll/works number for the employees you want to furlough</li> <li>◆ your Self-Assessment Unique Taxpayer Reference or Corporation Tax Unique Taxpayer Reference or Company Registration Number</li> <li>◆ the claim period (start and end date)</li> <li>◆ amount claimed (per the minimum length of furloughing of 3 consecutive weeks)</li> <li>◆ your bank account number and sort code</li> <li>◆ your contact name</li> <li>◆ your phone number</li> </ul> <p>You will need to calculate the amount you are claiming. HMRC will retain the right to retrospectively audit all aspects of your claim.</p> <p>If you use an agent who is authorised to act for you for PAYE purposes, they will be able to make a claim on your behalf. If you use a file only agent (who files your RTI return but doesn’t act for you on any other matters) they won’t be authorised to make a claim for you and you will need to make the claim yourself. Your file only agent can assist you in obtaining the information you need to claim (which is listed above). We are making the claim process as straightforward as possible.</p>
<p><b>How often will a claim be submitted?</b></p>	<p>Employers can only submit one claim at least every 3 weeks, which is the minimum length an employee can be furloughed for. Claims can be backdated until the 1 March if applicable.</p>
<p><b>When will the CJRS scheme portal be available?</b></p>	<p>The Coronavirus Job Retention Scheme portal is due to open on Monday 20<sup>th</sup> April. HMRC will be contacting employers shortly to advise them of the launch date and what they need to do.</p>
<p><b>Can I obtain further information on the scheme?</b></p>	<p>Further information on the scheme is available at the following link:  <a href="https://www.gov.uk/guidance/claim-for-wage-costs-through-the-coronavirus-job-retention-scheme">https://www.gov.uk/guidance/claim-for-wage-costs-through-the-coronavirus-job-retention-scheme</a></p>

*What are the conditions of a furlough worker?*

<p><b>How do you designate employees as “furloughed workers”?</b></p>	<p>To avail of the scheme affected employees should be designated as ‘furloughed workers’:</p> <ul style="list-style-type: none"> <li>◆ To be eligible for the subsidy employers should write to their employee confirming that they have been furloughed and keep a record of this communication.</li> <li>◆ Employers should discuss with their staff and make any changes to the employment contract by agreement.</li> </ul> <p>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.</p>
<p><b>How long is furloughing to last?</b></p>	<p>Employees can be furloughed multiple times, but each separate instance must be for a minimum period of 3 consecutive weeks.</p>
<p><b>What rights do furloughed employees have?</b></p>	<p>Employees that have been furloughed have the same rights as they did previously. That includes Statutory Sick Pay entitlement, maternity rights, other parental rights, rights against unfair dismissal and to redundancy payments.</p> <p>When the government ends the scheme, employers 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).</p>
<p><b>Can furlough employees work for another employer?</b></p>	<p>If contractually allowed, your employees are permitted to work for another employer whilst you have placed them on furlough.</p> <p>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.</p>

*Key concerns for Employers regarding the Scheme*

<p><b>What happens when the Government ends the Scheme?</b></p>	<p>When the Government ends the Scheme, employers must make a decision depending on their circumstances, as to whether employees can return to their duties. If not, it may be necessary to consider redundancies.</p> <p>Employers may wish to start any redundancy consultation process in advance of the Scheme ending, particularly if collective consultation obligations will be triggered.</p> <p>Grants under the Scheme cannot be used to substitute redundancy payments.</p>
<p><b>Does annual leave accrue during furlough and can employees be required to use up annual leave?</b></p>	<p>Employees will continue to accrue annual leave during furlough.</p> <p>However guidance is unclear whether employees can elect to take holiday or be required to take holiday during furlough</p> <p>In general it is possible for employers to require an employee to take holiday at a certain time as long as it gives the notice required under the Working Time Regulations.</p> <p>Note that Regulations have been introduced in the UK allowing up to 4 weeks unused leave to be carried into the next two leave years, easing the potential impact of a workforce with a significant amount of annual leave to take after the crisis (these will be replicated in Northern Ireland).</p>

## COVID-19 Support: 09.04.20

ASM is geared to continue operating at full capacity at present and are therefore available to assist your needs. We will continue to monitor the ongoing situation to provide our clients with the information we consider will support them and may benefit them at this time.

However, if you have any specific queries that you need assistance with, please do not hesitate to contact our offices and you will be directed to the appropriate person for help.

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