



Do you employ staff?

## Coronavirus Information for Employers

Following on from our other HR Updates provided on 4<sup>th</sup>, 10<sup>th</sup>, 17<sup>th</sup> and 24<sup>th</sup> March 2020, please find below further information about the Coronavirus Job Retention Scheme, based upon the update from HMRC which was published late on 26<sup>th</sup> March 2020 and also information from the Chartered Institute of Personnel and Development (CIPD) published on Friday 27 March 2020;

### Coronavirus Job Retention Scheme (CJRS)

Following on from our newsletter on 24<sup>th</sup> March 2020, further details have been provided on the new Coronavirus Job Retention Scheme that has been introduced by the Government. We have summarised the main points below:

#### Who is Eligible?

- Any UK employer with a UK bank account will be able to claim, but the employee must have been on PAYE payroll on 28 February 2020.
- The employee can be on any type of contract – part time, full time, employed agency, zero hours, or variable hours, etc.
- If an employee was made redundant after 28 February 2020, you can agree to re-employ them and place them on furlough instead.
- Employees hired after 28 February 2020 cannot be furloughed or claimed for in accordance with this scheme.
- Employees on sick leave or self-isolating should get Statutory Sick Pay (SSP), but they can be furloughed after their period of self-isolation / they recover from their illness.
- Employees who are classed as “Highly At Risk” and are therefore shielding in line with public health guidance can be placed on furlough. This applies to the 1.5 million “Highly At Risk” individuals who will receive

communication from the NHS, but does not apply to “At Risk” individuals. Please see our newsletter from 24<sup>th</sup> March 2020 for clarification on the differences between the two categories.

- Once agreed, you must write to your employee/s confirming they have been furloughed and that you will be claiming 80% of their wages from the Coronavirus Job Retention Scheme.
- Employees who have two different jobs can be furloughed from both of their jobs, you do not need to consider an employee's second job role when deciding if you will or will not place an employee on furlough.
- Nowhere in the forthcoming legislation or HMRC guidance does it state that employees cannot be “rotated” on furlough. If you find it difficult to choose which employees are placed on furlough, you can choose to “rotate” the furlough so employees “take turns”, but employees must be on a period of furlough for a minimum of 3 weeks, so you will need to consider this when deciding whether or not to rotate employees on furlough.
- Employees who refuse furlough may be at risk of redundancy or termination of employment, depending on the circumstances of your Company. However, any dismissal must be carried out in line with normal fair dismissal procedures and normal redundancy rules apply. You can still make the employee redundant while they are on furlough, or afterwards if there is still no work available for the employee. In this case, statutory redundancy pay, if applicable, and statutory notice, must be calculated on the employee's normal average or actual weekly pay, prior to furlough.
- Normal equality laws apply when deciding who should go on furlough. You should ensure that you do not inadvertently discriminate against an employee with a protected characteristic, in line with the Equality Act 2010, when making your decisions.

### Employee Agreement

- Unless there is a right to furlough in the employment contract, you must gain agreement with your employees on designating them as a furloughed worker and reducing their pay by 20%.
- It's unlikely that employees will withhold agreement when it is explained to them that the likely only other alternative is unpaid leave or redundancy.
- We have new template letters for placing employees on furlough, and others to help you manage the Coronavirus situation – please contact us if you would like more information on these.

### Public-Sector / Government Funding

- Where employers receive public funding for staff costs, and that funding is continuing, employers should 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.

### Calculating What to Claim

- You must pay your employees at least 80% of their usual monthly earnings, up to a maximum of £2,500.
- You can claim for a minimum of 3 weeks (the shortest amount of time an employee can be on furlough) and for up to 3 months, which is the current expected duration of the scheme – although this may be extended in the future.

- You can choose to “top up” the 80% provided by the Government, so that your employees’ pay remains the same as it was before they were furloughed. You do not have to do this though, it’s your choice.
- Your employees will still pay Income Tax, National Insurance contributions and any other deductions, such as pension contributions, from the wages they receive.
- For full time and part time salaried employees, the employee’s actual salary before tax, as of 28 February 2020, should be used to calculate the 80%. Fees, commission and bonuses should not be included.
- If your employee has been with the Company for less than a year, you should claim for an average of their monthly earnings since they started work.
- For employees who’s monthly pay varies, who have been employed / on PAYE for a full year, you can choose to claim the higher of either:
  - the amount the employee earned in the same month last year, or
  - an average of their monthly earnings from the last year
- If you have employees who started work in February 2020, you should pro-rata their earnings from that month to calculate what to claim.
- Once you have worked out how much of an employee’s salary you can claim for, you must then work out the amount of Employer National Insurance Contributions and minimum automatic enrolment employer pension contributions you must pay for each employee. These can be included in the amount you are entitled to claim.

### Family Friendly Leave and Furlough

- All employees must take at least 2 weeks Maternity Leave (4 weeks if in a factory or workshop) immediately following the birth of a baby. This is a health and safety requirement so an employee cannot be furloughed during this timeframe and cannot therefore be furloughed.
- In practice, most women start their Maternity Leave before they give birth.
- If an employee is eligible for Statutory Maternity Pay (SMP) or Maternity Allowance, then they will receive this rather than be furloughed. Normal rules apply and they will be entitled to claim up to 39 weeks of statutory pay or allowance. If they qualify for SMP, they will still be eligible for 90% of their average weekly earnings in the first 6 weeks, followed by 33 weeks of pay paid at 90% of their average weekly earnings or the statutory flat rate (whichever is lower).
- The statutory flat rate is currently £148.68 a week, rising to £151.20 a week from 6 April 2020. Some employers ‘top up’ Statutory Maternity Pay and their employees are eligible for an enhanced, earnings related rate of pay. If you do this, then you can claim the “enhanced” part of the maternity pay through the CJRS.
- If you have an employee who is currently pregnant and due to start Maternity Leave, they will start Maternity Leave as usual.
- If your employee’s earnings have reduced due to a period on furlough or statutory sick pay prior to their Maternity Leave starting, this may affect their Statutory Maternity Pay. We are in the process of clarifying this.
- The above information also applies to Adoption Leave, Paternity Leave and Shared Parental Leave.

### Tax, Employer National Insurance and Pension Contributions

- Wages of furloughed employees will be subject to Income Tax and National Insurance as usual. Your employees will also pay automatic enrolment contributions on qualifying earnings, unless they have chosen to opt-out or to cease saving into a workplace pension scheme.

- You will be liable to pay Employer National Insurance contributions on wages paid, as well as automatic enrolment contributions on qualifying earnings, unless your employee has opted out or has ceased saving into a workplace pension scheme.
- All employers remain liable for associated Employer National Insurance contributions and minimum automatic enrolment employer pension contributions on behalf of their furloughed employees.
- You can claim a grant from HMRC to cover wages for furloughed employees, equal to the lower of 80% of an employee's regular salary or £2,500 per month, plus the associated Employer National Insurance contributions and minimum automatic enrolment employer pension contributions on paying those wages.
- Employer National Insurance Contributions and automatic enrolment contribution on any additional top-up salary (where you choose to receive the 80% grant and pay the employee additional money on top of this) will not be funded through this scheme. Nor will any voluntary automatic enrolment contributions above the minimum mandatory employer contribution of 3% of income above the lower limit of qualifying earnings (which is £512 per month until 5th April and will be £520 per month from 6th April 2020 onwards).

### National Minimum Wage (NMW) / National Living Wage (NLW)

- When an employee is on furlough and receiving 80% of their normal wages, it does not matter if this amount is less than the NMW / NLW, because the employee is not working.
- However, if workers are required to complete online training courses whilst they are furloughed, then they must be paid at least the NMW / NLW for the time spent training, even if this is more than the 80% of their wage that will be subsidised.

### What You Will Need to Make a Claim

- Only one claim can be made at least every 3 weeks, which is the minimum amount of time an employee must be on furlough. To claim you will need:
- your PAYE reference number
- the number of employees being furloughed
- the claim period (start and end date of the furlough)
- the amount you are claiming (per the minimum length of furloughing of 3 weeks)
- your Company bank account number and sort code
- a contact name and phone number
- You should make the claim in accordance with actual payroll amounts at the point at which payroll is run, or in advance of an imminent payroll.
- You must pay the employee all the grant they receive for their gross pay, no fees can be charged from the money that is granted.

### Working During Furlough

- Once employees are on furlough, they will not be able to complete work for you, but they can undertake online training or volunteer (subject to public health guidance), as long as they are not making money for, or providing services to, the Company.

- If the employer chooses to place the employee on furlough, the employee will need to remain on furlough for a minimum of 3 weeks, but it can last longer if necessary, whilst the scheme is operational.

## Furlough and Annual Leave

Unfortunately, we do not currently have information that confirms how furlough interacts with pre-booked annual leave, or even the accrual of annual leave or forthcoming Public Holidays. What we do know, is that placing an employee on furlough does not remove their employment rights, which is why National Insurance Contributions, Tax and Auto-Enrolment compliant Pension Contributions are still required. We will provide more information about furlough and holidays as soon as we are able to.

We recommend that the above points are read in conjunction with the information provided in our newsletter dated 24<sup>th</sup> March 2020.

## How Can We Help?

We will endeavour to provide further employment related updates as and when further information becomes available. We have attempted to keep the information within this newsletter as concise as possible, whilst also ensuring essential details are kept in.

If you have any queries relating to the content of this newsletter, or any other HR related topic, please don't hesitate to contact us via [hradvice@hasslefreehr.co.uk](mailto:hradvice@hasslefreehr.co.uk)