

Coronavirus Job Retention Scheme explained: “furloughed employees”

On Friday 20 March 2020, the Chancellor announced a package of measures to help businesses through these times of economic uncertainty. This article explains what we know at the moment about the Coronavirus Job Retention Scheme which has been set up to allow “all UK employers... to access support to continue paying part of their employees’ salary for those employees that would otherwise have been laid off during this crisis.”

There is very little detailed guidance available yet, and many questions are unanswered so further updates will be necessary in the coming days. The scheme works by reimbursing the employer for the appropriate wage costs – so for the March payroll, it seems that you will pay your employees as normal and then claim reimbursement from HMRC once the system is set up.

In very brief terms, the steps are:

1. the employer needs to start by determining which of their employees are to be subject to furlough leave,
2. communicate with the relevant employees and, where possible, obtain their agreement to be furloughed. Note that employment law issues need to be considered here, then
3. the details of furloughed employees will be provided to HMRC through a new online portal that they are developing – but this is not yet available.

At the moment it appears that the scheme will apply to all employers including limited companies, LLPs, charities, partnerships and sole traders who employ staff. The Government says that this scheme will last at least 3 months from 1 March 2020.

What does ‘Furloughed employees’ mean?

First things first, how is the term ‘furloughed’ defined under this scheme?

According to the Chartered Institute of Payroll Professionals (CIPP), this is not a familiar term used in relation to employment law in the UK, until recently when the Coronavirus Job Retention Scheme was announced. The CIPP states that “the term ‘furlough’ relates to the temporary leave of an employee/employees due to the special needs of a company or employer, attributable to the economic conditions at a specific employer, or in the economy as a whole”, and essentially this scheme set up by the Chancellor states that “if employers cannot cover staff costs due to COVID-19, they may have the option of accessing support to continue paying a portion of employee wages, in order to avoid the difficult situation of having to make redundancies.”

What steps need to be taken by the employer?

The employer will need to determine which employees are to be subject to Furlough Leave (or, furloughed) and notify them of the decision, taking into account the usual employment law measures that might be needed to change terms of employment. For example, there must be some consultation and ideally agreement. The employer should also look at their existing contractual terms as there may already be a contractual right to withdraw work or reduce hours in certain circumstances, although this is unlikely in many cases.

What is the impact of furloughing an employee, by placing them on Furlough Leave

HMRC will reimburse, by way of a grant, up to 80% of the employee's wage costs. This is subject to a cap of £2,500 per month. It is not yet known what elements of pay are included in the reimbursement calculation.

There is speculation that the wages figure will be based on the payroll for February 2020, but this is not yet clear.

The guidance for employees states that "your employer could choose to fund the differences between this payment and your salary, but does not have to." If the employer chooses not to pay the full difference between the furlough payment and the employee's salary, this may be a temporary change to the employment contract so we recommend that legal advice is sought in such cases.

A furloughed employee must not work for their employer whilst on Furlough Leave.

Does the scheme apply to directors of a small limited company?

There is nothing to suggest that directors of a company will not be eligible for the scheme. However, if the speculation referred to above is correct that the wages available for the furlough grant will be based on the amounts paid in the February 2020 payroll, this could limit the amounts available that can be reimbursed in cases where a director has been paid a "small" salary with the balance as dividends.

Also note the requirement that employees and directors who are furloughed must not work for the company during this period – this scheme is not available to pay people who then continue to work.

Will furloughed employees retain continuity of service?

The guidance states that furloughed employees will remain on the payroll as employees so it would appear that continuity of service should be maintained.

How will the scheme be implemented for businesses that pay hourly?

Particularly for businesses in the hospitality sector with serving staff and shift work, hourly rate payment tends to be common. In those cases, payment under the Coronavirus Job Retention Scheme depends strongly on specific contracts between the employer and their employees, and/or what the employees have been paid previously.

If such contracts do not exist or are not detailed enough to decide, employers may be able to use payroll records of the past 3 months to roughly define an approximate weekly salary. You should speak to your HR adviser or an employment lawyer to make sure you stay compliant whatever method you adopt.

Furlough vs Lay-off – Which route should your business adopt?

While a lay-off is a temporary separation from payroll, employees on furlough leave remain in the company payroll, with the main aim of not having to cut jobs for certain employees.

Employees that are laid off are entitled to ‘statutory guarantee pay’ from their employer during the layoff period. According to guidance from the Government, the maximum employees can get during lay-offs is £29 a day for 5 days in any 3-month period - so a maximum of £145.

From an employer’s point of view, it is worth noting that a lay-off may entitle employees to claim redundancy pay ([more info here](#)). Therefore, unless a business is considering redundancies, lay-offs may not be the optimal route for them. Businesses should consult an HR adviser or employment lawyer for more thorough advice based on their individual circumstances.

How we can help

Once the employer has identified the employees to be put on furlough leave and where appropriate has taken steps to communicate and agree with the relevant employees this change in employment terms, the next step will be to complete the online portal to provide the details to HMRC. You can start preparation for this by pulling together all the details of your employees e.g. name, NI number, salary/pay costs in recent months etc.

DTE can assist you to compile and report this information to HMRC as soon as the online portal is available. Please contact us today for further support.

DTE Bury Office

The Exchange
5 Bank Street
Bury
BL 9 0DN
Tel: 0161 767 1200
Fax: 0161 767 1201

DTE Manchester Office

6th Floor, Royal Exchange Building
St Ann’s Square
Manchester
M2 7FE
Tel: 0161 819 1910
Fax: 0161 819 4749



www.dtegroup.com



enquiries@dtegroup.com

