

## UPDATED GUIDANCE ON THE CORONAVIRUS JOB RETENTION SCHEME

### Introduction

Issue 4 of [Workforce Matters](#) [25 March 2020] focused on the Government's [Coronavirus Job Retention Scheme](#) introduced as part of a package of financial measures designed to protect individuals and businesses. The Scheme also introduced the 'furlough worker' (an employee on a temporary leave of absence).

Since then, further [guidance](#) intended to provide more clarity on the Scheme has been published, and this is summarised below. In addition, we have included an updated selection of the most frequently asked questions received by the BESA's Employment Affairs Department over the past week or so.

**Note:** Government guidelines are updated on a regular basis so please keep up to date by visiting [www.gov.uk](http://www.gov.uk)

### Background

#### Coronavirus Job Retention Scheme – What Do We Know?

- employers can claim a grant from HMRC to cover 80% of the wages of a furloughed worker, who may otherwise have been laid off during this crisis, subject to a cap of £2,500 per month;
- Government will now also cover employer National Insurance Contributions and minimum auto-enrolment pension contributions, in addition to the 80% of wages mentioned above;
- the Scheme, open to any employer in the country, will cover the cost of wages backdated to 1 March 2020;
- the Scheme will continue for at least three months and include all employees in PAYE employment on 28 February 2020;
- employees taken on after 1 March 2020 are excluded;
- to qualify for payment, employee must be furloughed for a minimum of three weeks. At the moment they cannot be furloughed on/off on a daily/weekly/fortnightly basis;
- people made redundant since 1st March, can be re-hired then furloughed. The guidance is unclear about whether any redundancy pay received will need to be repaid by the employee;
- employees **cannot** undertake any paid work for the employer whilst furloughed;
- furloughed employees can undertake volunteering or training;
- the employer must pay all the grant received from HMRC to the employee, no fees can be levied against the employee from the money that is granted;
- employer must discuss and agree with the employee that they be designated a furloughed worker as this is a change to the employment contract. This must be confirmed in writing and a signed copy retained for your records.

#### What do we not know?

- whether, after the initial minimum three-week furloughed period, employees can be furloughed on/off for shorter periods;
- what the HMRC web portal that will underpin the Scheme will look like;

FREQUENTLY ASKED QUESTIONS

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Can an employee be furloughed for a short period of time, e.g. a week or a couple of days	An employee must be furloughed for a minimum of 3 weeks in order to be eligible under the Scheme.
What if the employee is on unpaid leave, can they be furloughed?	Employees on unpaid leave cannot be furloughed, unless they were placed on unpaid leave after 28 February.
Can an employee undertake work related activities, such as passing on messages, forwarding emails etc... whilst furloughed	Employees cannot undertake any work for the employer that generates income whilst on furlough. It makes sense for employees to be contactable whilst they are furloughed but they cannot complete work.
Are part-time workers covered by the Job Retention Scheme?	Yes. However, if an employee is working, but on reduced hours, or for reduced pay, they will not be eligible for the Scheme and the employer will have to continue paying the employee through payroll in line with the terms of the employment contract.
What happens if an employee is absent through sickness, but I plan to furlough their role?	If employees are absent through sickness you should pay statutory sick pay and/or company sick pay. Employees on sick leave or self-isolating can be furloughed after this; once they declare themselves as fit and available for work.
Can I place a 'shielded' employee on furlough	Yes, employees who are shielding in line with public health guidance can be placed on furlough.
Do employees accrue annual leave whilst furloughed?	Yes, employees continue to accrue annual leave while on furlough. The Government has recently announced measures to relax the Working Time Regulations 1998 to allow employees who have not been able to take their leave due to COVID-19 to carry over four weeks' statutory annual leave into the next two years. Further information: <a href="#">Gov.uk Guidance</a> <a href="#">ACAS Guidance</a>
Can a Director of a company be furloughed if they receive salary via PAYE?	The Scheme is open to all employees in PAYE employment on 28 February 2020.
How do I agree furlough with employees?	Employers and employees need to reach agreement to make any changes to the employment contract, and the same applies to furlough.  In the first instance employers should check the employment contract to see whether it contains a lay off clause. Where such a clause exists, this can be invoked almost immediately but should be confirmed in writing to the employee.  Where no lay-off clause exists, employers must consult and reach agreement with the employee to place them on furloughed leave. In terms of timeframe, consultation should take as long as it takes to reach agreement. Again, follow up in writing.  BESA has developed an updated template document for this purpose see <a href="#">here</a> .  <b>Note:</b> 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.  Please contact <a href="mailto:employment.affairs@thebesa.com">employment.affairs@thebesa.com</a> if your employee does not agree to be furloughed.
How do I work out what I can re-claim from HMRC?	For employees whose pay varies, 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

	<p>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.</p> <p>If the employee only started in February 2020, use a pro-rata for their earnings so far to claim.</p> <p>For full time and part time salaried employees, the employee's actual salary before tax, as of 28 February should be used to calculate the 80%. Fees, commission and bonuses should <b>not</b> be included.</p>
Do I have to pay the extra 20% to top up pay to 100%?	No, there is no obligation on employers to top up to 100%, but there is nothing to stop them from doing so if they wish.
Do I still need to deduct tax and pension contributions from the employee if they are on furlough?	Employers will pay individuals on furlough through payroll subject to the normal deductions of tax, NICs and pension contributions
How will this work for those on zero-hour/flexible contracts/agency workers?	This scheme aims to support all those employed through the PAYE system regardless of their employment contract, including those on zero-hour contracts. · Zero-hour and flexible contracts can cover a whole range of working arrangements. · The 80% grant is applied to the higher of: (1) the earnings in the same pay period in the previous year; or (2) the average earnings in the whole previous 12 months (or fewer if they have worked for less time than this, including a part month calculation if they were taken in February).
Can I make an employee redundant while they are on furlough?	No.  The purpose of the Scheme is to ensure employees will continue to be employed, paid at least 80% of their wages, and they will return to work at the end of furlough meaning. HMRC has confirmed there is no entitlement to statutory redundancy pay under the Scheme.
Can an employee work for another employer after being furloughed	In order to be eligible for the Scheme, a furloughed employee cannot undertake any work for their employer. However, employees with multiple jobs will be able to continue working for that employer if they have not placed them on furlough  However, if employees are required to, for example, complete online training courses whilst they are furloughed, then they must be paid at least the National Living Wage or National Minimum Wage for the time spent training, even if this is more than the 80% of their wage that will be subsidised.
Will a contractor only qualify once work has to cease because of supply shortages or the business runs into financial difficulties because clients withhold payment?	The scheme is intended to support employers who cannot cover staff costs due to COVID-19, in order to avoid redundancies. If individual companies within the industry are struggling due to the impact of the pandemic on their revenue they would be supported under the Scheme to ensure that their employees remain in work. It is not clear in the guidance but HMRC may in future require evidence of revenue shortfall.  Current guidance states that all UK businesses are eligible as long as they: <ul style="list-style-type: none"> <li>• Designate affected employees as 'furloughed workers'.</li> <li>• Notify those employees of this change – changing the status of employees is subject to existing employment law and employment contracts</li> </ul>
When will companies receive the money?	HMRC is working to get the new online portal that supports the scheme up and running. We understand that they are building the system from scratch. We expect the first grants to be paid within weeks and before the end of April and backdated to the start of the furlough period for the employee.
Can employers who uses the HVAC/BESA Operative National Agreement furlough Operatives?	Yes.  The parties to the Agreement – BESA and Unite the Union – recently agreed that employers may participate in the Scheme - <a href="#">BESA-Unite Agreement</a> .