

## CORONAVIRUS JOB RETENTION SCHEME - FURLOUGH

### Introduction

Government updated its guidance on the [Coronavirus Job Retention Scheme](#) on Saturday, 4 April 2020 to provide clarity on some of the key aspects of the Scheme.

The updated guidance is summarised below and is supplemented by a selection of frequently asked questions received by BESA's Employment Affairs Department over the past weeks.

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

### Summary of Updated Guidance

**Clarified:** to be eligible to make a claim employers must have an operational PAYE system in place as at 28 February 2020, but must also be enrolled for [PAYE online](#) which can take up to 10 days; so make sure you have enrolled.

**Clarified:** furloughed employees can undertake work for another employer whilst furloughed, provided the employment contract permits this. BESA would advise employers to agree sensible guidelines, if appropriate, in case employees need to come off furlough

**Clarified:** salaried (PAYE) Company Directors may be furloughed but this decision needs to be formally adopted by the company and recorded. Furloughed directors may continue to perform their statutory duties but should not do work to generate commercial revenue or provide services to or on behalf of the company.

**New:** 80% of 'compulsory' [i.e. contractual] commission can be re-claimed, as well as basic salary. BESA presumes this relates to past commission only. 80% of fees can also be re-claimed (earlier guidance stated fees were not covered by the Scheme).

**New:** employers to agree with, and notify, employees of their furloughed status in writing and must keep the record of that written notification for five years.

**Confirmed:** past overtime and other regular payments that an employer has been obliged to pay can be included in the calculation of wages. Discretionary and non-cash payments and taxable benefits in kind are excluded

**Clarified:** employees can be furloughed multiple times, i.e. they can be furloughed, brought back to work, then re-furloughed subject to each furlough period being a minimum of three weeks.

**New:** employees who are unable to work because they have caring responsibilities linked to COVID-19, such as looking after children, can now be furloughed.

**Confirmed:** various types of people paid via PAYE may be furloughed even though they are not 'employees' in the narrow, employment law sense. These include office holders (including company directors), salaried members of limited liability partnerships, agency workers and 'limb (b) workers'.



## FREQUENTLY ASKED QUESTIONS

<p>Can an employee undertake training whilst on Furlough?</p>	<p>Employees should be encouraged to undertake training, however, if employees are required to, for example, complete online training courses for the employer whilst 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.</p>
<p>Can an Apprentice continue to train whilst on furlough?</p>	<p>Yes, Apprentices can be furloughed in the same way as other employees and they can continue to train whilst furloughed, subject to being paid the apprenticeship minimum wage “for all the time they spend training”.</p> <p>Guidance for apprentices, employers, training providers, end-point assessment organisations and external quality assurance providers can be viewed <a href="#">here</a>.</p>
<p>How do I work out what I can reclaim from HMRC?</p>	<p>You can furlough employees and apply for a grant to cover 80% of their usual monthly wage costs, up to £2,500 a month, plus the associated Employer National Insurance contributions and minimum automatic enrolment employer pension contributions on that wage.</p> <p>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:</p> <p>the same month’s earning from the previous year average monthly earnings from the 2019-20 tax year</p> <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%.</p>
<p>What do I do if previous wages included overtime?</p>	<p>As above, the Scheme states that employers can claim for any regular payments that you are obliged to pay your employees including wages, past overtime, fees and compulsory commission payments. However, discretionary bonus (including tips), commission payments and non-cash payments are excluded.</p>
<p>Can I claim for the Job Retention Scheme if I do not have the money to pay employees until receiving monies from HMRC?</p>	<p>Workers who are placed on furlough are on temporary leave, the contractual requirement to pay them continues. The scheme is set up on the basis that you continue to pay them at least 80% of their wages up to a cap of £2,500 per month to be eligible for the scheme. If you do not pay them whilst on furlough this may affect your ability to claim monies from HMRC.</p>
<p>Can an employee take annual leave/bank holidays during furlough?</p>	<p><a href="#">ACAS Guidance</a> confirms that furloughed employees, they can still request and take their holiday in the usual way, including bank holidays.</p> <p>ACAS also confirms that employees and workers must get their usual <b>pay in full</b>, for any holidays they take.</p>
<p>Can the Job Retention Scheme be used if I go into Administration?</p>	<p>Where a company is being taken under the management of an administrator, the administrator will be able to access the Job Retention Scheme. The government would expect an administrator to only access the scheme if there is a reasonable likelihood of rehiring the workers. For instance, this could be as a result of an administration and pursuit of a sale of the business.</p>



<p>How do I agree furlough with employees?</p>	<p>Employers and employees need to reach agreement to make any changes to the employment contract, and the same applies to furlough.</p> <p>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 and retained for 5 years.</p> <p>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 and retain for 5 years.</p> <p>BESA has developed an updated template letter for furloughed workers for this purpose which can be found <a href="#">here</a>.</p> <p><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.</p> <p>Please contact <a href="mailto:employment.affairs@thebesa.com">employment.affairs@thebesa.com</a> if your employee does not agree to be furloughed.</p>
<p>How will this work for those on zero hour/flexible contracts/agency workers?</p>	<p>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).</p>
<p>Are any individuals eligible who may not be employees?</p>	<p>As well as employees, the grant can be claimed for any of the following groups, if they are paid via PAYE:</p> <ul style="list-style-type: none"> <li>• office holders (including company directors)</li> <li>• salaried members of Limited Liability Partnerships (LLPs)</li> <li>• agency workers (including those employed by umbrella companies)</li> <li>• limb (b) workers</li> </ul>
<p>Can an employee work for another employer after being furloughed</p>	<p>Yes, however if there is a contractual clause expressly stating they can not take a different job the employee must ask their employer first.</p>
<p>When will companies receive the money?</p>	<p>HMRC is working to get the new online portal that supports the scheme up and running. We understand HMRC hoping to make payments by the end of April and will pay the grant into a UK bank account. Entire grant to be paid to furloughed employee. <b>Note:</b> HMRC will retain right to claw back monies from employers where claims are found to have been made erroneously or fraudulently.</p>
<p>Can employers who uses the HVAC/BESA Operative National Agreement furlough Operatives?</p>	<p>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>.</p>

