

Coronavirus Job Retention Scheme (also known as Furlough) Government & CIPD Guidance Information correct from Gov.uk as at 26th March 2020

Overview:

This scheme has been designed to support employers whose operations have been severely affected by Coronavirus (COVID-19). In short, if you have no work for your employees and you would otherwise be placing them on unpaid leave or making them redundant this scheme provides the following support:

- Temporary scheme for 3 months from 1st March to 31st May 2020
- Expected to be running by end of April 2020, but claims can be backdated to 1st March 2020
- Can claim for employees who have been on the PAYE payroll scheme on or before 28th February 2020
- Applies to any type of employment contract (Full time, part-time, agency, zero hours)
- Can claim per employee the lower of 80% of regular wage or £2,500 per month, plus the associated Employer National Insurance contributions and minimum automatic enrolment employer pension contributions on that subsidised wage.
- At a minimum, employers must pay their employee the lower of 80% of their regular wage or £2,500 per month. An employer can also choose to top up an employee's salary beyond this but is not obliged to.
- Employers **must have discussed and consulted with staff** to change employment contract status to "Furloughed" in line with current employment law.
- Employers must have written to employees confirming they have been furloughed and keep a record of the communication. **(Dakota Blue strongly advise seeking employee acceptance in writing for the records as it constitutes a change of contract which must be accepted by the employee).**
- Employees must be designated on Furlough for at least 3 weeks
- Employees **must not work** during the time they are on Furlough
- Employers can use this scheme anytime during this period.
- **HMRC retain right to retrospectively audit any aspect of your claim**

In depth (Obtained from [Gov.uk website](https://www.gov.uk) as at 26th March 2020 and [CIPD](https://www.cipd.co.uk) as at 23rd March 2020)

What does furlough mean?

The word furlough generally means temporary leave of absence from work. This can be due to economic conditions affecting one particular company or matters affecting the country as a whole. Until now the expression has not carried any meaning in UK employment law.

Furlough leave has been introduced by the government during the coronavirus pandemic to mean leave offered which keeps employees on the payroll without them working. As the furloughed staff are kept on the payroll, this is different to being laid off without pay or being made redundant.

People who get furloughed **must not work for the employer during the period of furlough** but usually return to their job afterwards unless redundancies follow.

Who can claim?

Any UK organisation with employees can apply, including:

- businesses
- charities
- recruitment agencies (agency workers paid through PAYE)
- public authorities

You must have created and started a PAYE payroll scheme on or before 28 February 2020 and have a UK bank account. Where a company is being taken under the management of an administrator, the administrator will be able to access the Job Retention Scheme.

Employees you can claim for

Furloughed employees must have been on your PAYE payroll on 28 February 2020, and can be on any type of contract, including:

- full-time employees
- part-time employees
- employees on agency contracts
- employees on flexible or zero-hour contracts

The scheme also covers employees who were made redundant since 28 February 2020, if they are rehired by their employer.

To be eligible for the subsidy, when on furlough, an employee can not undertake work for or on behalf of the organisation. This includes providing services or generating revenue. While on furlough, the employee's wage will be subject to usual income tax and other deductions.

This scheme is only for employees on agency contracts who are not working.

If an employee is working, but on reduced hours, or for reduced pay, they will not be eligible for this scheme and you will have to continue paying the employee through your payroll and pay their salary subject to the terms of the employment contract you agreed.

Employers should discuss with their staff and make any changes to the employment contract by agreement. 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.

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.

Employees hired after 28 February 2020 cannot be furloughed or claimed for in accordance with this scheme.

You do not need to place all your employees on furlough. However, those employees who you do place on furlough cannot undertake work for you.

Work out what you can claim

Employers need to make a claim for wage costs through this scheme.

You will receive a grant from HMRC to cover the lower of 80% of an employee's regular wage or £2,500 per month, plus the associated Employer National Insurance contributions and minimum automatic enrolment employer pension contributions on that subsidised wage. Fees, commission and bonuses should not be included.

At a minimum, employers must pay their employee the lower of 80% of their regular wage or £2,500 per month. An employer can also choose to top up an employee's salary beyond this but is not obliged to under this scheme. Any extra payment the employer chooses to make will be either the additional 20% of salary, or any amount in excess of £2,500. If management choose to pay more, it will depend upon the business' overall health and cashflow affecting the ability to fund payments. Concerns about staff retention once the crisis has passed may also affect decisions being made.

The employers affected will have greatly reduced or eliminated income during these three or more months. So many employers will not be able to supplement the government's payment.

There is no reason why employers could not choose to supplement the salaries initially and then choose not to in later months, although presumably then the employee's consent to the furlough could theoretically be withdrawn. An employee would be unlikely to withdraw consent when the alternative is redundancy.

More guidance on how employers should calculate their claims for Employer National Insurance Contributions and minimum automatic enrolment employer pension contributions, will be provided before the scheme becomes live.

Full time and part time employees

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 not be included.

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

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.

If the employee only started in February 2020, use a pro-rata for their earnings so far to claim.

Once you've 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 are entitled to claim.

Employer National Insurance and Pension Contributions

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 a furloughed employee, 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.

You can choose to provide top-up salary in addition to the grant. Employer National Insurance Contributions and automatic enrolment contribution on any additional top-up salary 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 Living Wage/National Minimum Wage

Individuals are only entitled to the National Living Wage (NLW)/National Minimum Wage (NMW) for the hours they are working.

Therefore, 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.

However, 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.

Do employees have to agree to be furloughed?

Yes, employees must be consulted and agree to being furloughed. ***Changing the status of an employee's contract is always subject to existing employment law.***

Depending on the wording of the employment contract there may be an ability to lay-off workers. Although lay-offs under the Employment Rights Act 1996 are a different legal concept the wording in contracts may enable some employers to impose a furlough period.

If there is no lay off provision in the existing contract the employer will need to agree with the employee that they going to become furloughed because no work is available. Inevitably employees will mostly agree to this. The main alternative would be dismissal by reason of redundancy with the possibility of a delayed redundancy payment or no redundancy payment (for employees who have worked for less than two years). In most cases employees will agree where the alternative is redundancy.

In a minority of cases there may be some negotiation. In sectors like hospitality, some staff may be needed and others not. Some employees may be resentful that they are having to work as they are classed as being essential whilst others are being furloughed on 80% of salary. Others may be resentful that they are classed as dispensable whilst others are working and receiving their full package. Discuss all of the options with employees and stay up to date with the latest on the [Government website](#).

If employees do not agree to be furloughed can we dismiss by reason of redundancy?

Yes, if employees do not agree to be furloughed employers can dismiss by reason of redundancy if the redundancy definitions are met and a proper process followed.

Some employers may feel that the long-term effect on their business will be inevitable closure or rationalisation. If employers feel furlough is likely to be followed by redundancies it may help to select employees for furlough using a process similar to redundancy selection. This would involve using objective criteria, such as a scores matrix based on skills, productivity, previous appraisals etc.

What you'll need to make a claim

To claim, you will need:

- your ePAYE reference number
- the number of employees being furloughed
- the claim period (start and end date)
- amount claimed (per the minimum length of furloughing of 3 weeks)
- your bank account number and sort code
- your contact name
- your phone number

You will need to calculate the amount you are claiming. HMRC will retain the right to retrospectively audit all aspects of your claim.

Claiming

You 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.

What to do after you've claimed

Once HMRC have received your claim and you are eligible for the grant, they will pay it via BACS payment to a UK bank account. You should make your claim in accordance with actual payroll amounts at the point at which you run your payroll or in advance of an imminent payroll.

You must pay the employee all the grant you receive for their gross pay, no fees can be charged from the money that is granted. You can choose to top up the employee's salary, but you do not have to.

When the government ends the scheme

When the government ends the scheme, you 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).

Employees that have been furloughed

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. Once the scheme has been closed by the government, HMRC will continue to process remaining claims before terminating the scheme.

Income tax and Employee National Insurance

Wages of furloughed employees will be subject to Income Tax and National Insurance as usual. 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.

Employers will be liable to pay Employer National Insurance contributions on wages paid, as well as automatic enrolment contributions on qualifying earnings unless an employee has opted out or has ceased saving into a workplace pension scheme.

Tax Treatment of the Coronavirus Job Retention Grant

Payments received by a business under the scheme are made to offset these deductible revenue costs. They must therefore be included as income in the business's calculation of its taxable profits for Income Tax and Corporation Tax purposes, in accordance with normal principles.

Businesses can deduct employment costs as normal when calculating taxable profits for Income Tax and Corporation Tax purposes.

Questions answered:

Are payments to the furloughed workers under the Coronavirus Job Retention scheme a loan or a grant?

All UK employers who would otherwise have dismissed employees during this crisis can access payments for part of the employees' salary. This is a grant which employers do not have to pay back.

If your employee is on unpaid leave

Employees on unpaid leave cannot be furloughed, unless they were placed on unpaid leave after 28 February.

If your employee is on Statutory Sick Pay

Employees on sick leave or self-isolating should get Statutory Sick Pay but can be furloughed after this. Employees who are shielding in line with public health guidance can be placed on furlough.

If your employee has more than one job

If your employee has more than one employer they can be furloughed for each job. Each job is separate, and the cap applies to each employer individually.

If your employee does volunteer work or training

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.

However, 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.

If your employee is on Maternity Leave, contractual adoption pay, paternity pay or shared parental pay

Individuals who are on or plan to take Maternity Leave must take at least 2 weeks off work (4 weeks if they work in a factory or workshop) immediately following the birth of their baby. This is a health and safety requirement. In practice, most women start their Maternity Leave before they give birth.

If your employee is eligible for Statutory Maternity Pay (SMP) or Maternity Allowance, the normal rules apply, and they are entitled to claim up to 39 weeks of statutory pay or allowance.

Employees who qualify for SMP, 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 April 2020.

If you offer enhanced (earnings related) contractual pay to women on Maternity Leave, this is included as wage costs that you can claim through the scheme. The same principles apply where your employee qualifies for contractual adoption, paternity or shared parental pay.

Public Sector organisations

The government expects that the scheme will not be used by many public sector organisations, as the majority of public sector employees are continuing to provide essential public services or contribute to the response to the coronavirus outbreak.

Where employers receive public funding for staff costs, and that funding is continuing, we expect employers 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.

Organisations who are receiving public funding specifically to provide services necessary to respond to COVID-19 are not expected to furlough staff. In a small number of cases, for example where organisations are not primarily funded by the government and whose staff cannot be redeployed to assist with the coronavirus response, the scheme may be appropriate for some staff.

What support is now available for employers to cope with coronavirus?

The support available for employers and individuals to cope with the coronavirus pandemic is changing almost daily. Keep checking the [Government website](#) for the latest information.

**For further information or more details on the Coronavirus Job Retention scheme,
Call us on 01233 662651 or email at j.brooker@dakotablueconsulting.com.**

Note: This majority of this information is copied from the [GOV.UK](#) and [CIPD](#) websites and is correct as at 26th March 2020.
It is for your guidance only. Professional HR or Legal advice should be sought before any action is taken.

01233 662651 | www.dakotablueconsulting.com | [f](#) [t](#) [in](#) [G+](#)

Dakota Blue Consulting Ltd, Finn Farm Oast, Finn Farm Road, Ashford, Kent, TN23 3EX

Registered in England (09072169)