

The Coronavirus Job Retention Scheme **UPDATED 6 April 2020**

Currently the only official guidance is contained here (latest version 4/4/20):

- **For employers:** <https://www.gov.uk/guidance/claim-for-wage-costs-through-the-coronavirus-job-retention-scheme>
- **For employees:** <https://www.gov.uk/guidance/check-if-you-could-be-covered-by-the-coronavirus-job-retention-scheme>

The legislation for furloughing individuals has not yet been published which means there is still some uncertainty that could impact the contents of this document.

Key information

- The Coronavirus Job Retention Scheme (CJRS) is open from 1 March to 31 May 2020 but may be extended by Government
- Employers will only be able to claim wage costs for individuals who have been on payroll since 28th February
- Employers pay at least 80% of wages (capped at £2500 per month) and reclaim 80% plus NI and pension costs from HMRC
- **The definition of wages now includes any regular payments employers are obliged to pay your employees. This includes wages, past overtime, fees and compulsory commission payments. However, discretionary bonus (including tips) and commission payments and non-cash payments should be excluded**
- There is no requirement to top salary up to 100%
- There is no requirement to participate in the scheme, but not doing so should be justified
- Employers must formally agree a change of status to 'furloughed' for each employee in writing and a record kept **for 5 years** (get in touch if you need a letter)
- The period of furlough must be at least 3 weeks in order to make a claim from HMRC

Q&As

Question	Answer
Can I backdate furlough to 1 March and claim from then?	The ability to backdate covers <u>only</u> the ability to reinstate those employees who have already been made redundant, laid off or placed on unpaid leave due to coronavirus. These people can be reinstated and furloughed. For other individuals, furloughed status can only be backdated to the date the period of furlough started , and employers should keep a record of this agreement.
I have an employee with young children and it's very difficult for them to work from home. Can they be furloughed?	The update on 4 April 2020 now states that where employees cannot work because they have caring responsibilities resulting from coronavirus, eg looking after children because schools/nurseries are closed, they can be furloughed.
Can individuals currently off sick be furloughed?	Those on unwell, should continue to be off sick and receive SSP until they are fit to return to work. At that point they can be furloughed if no work is available for them.

Can individuals that are shielding be furloughed?	Yes - if they are unable to work from home, and agree to being furloughed. The update on 4 April 2020 also extends the option to furlough to employees who need to stay home with someone who is shielding) NB shielding must be in line with public health guidance
What if an employee becomes unwell whilst they are furloughed?	The furlough status would remain.
Do employers still need to make NI and Pension contributions to furloughed employees?	Yes, and the cost of these (applicable to the £2500 salary cap) is covered by the scheme.
Can an employee do alternative work whilst furloughed?	The updated guidance now confirms employees can start a new job when on furlough. Many contracts of employment prohibit other employment (although this could now be waived) but maintaining the provision or adding in this requirement in a furlough letter gives the flexibility to bring people back to work quickly as and when work does come in.
Is the £2500 cap gross or net pay?	The calculation should be based on an employee's actual gross salary as of 28th February 2020. This includes wages, past overtime, fees* and compulsory commission payments. However, discretionary bonus (including tips) and commission payments and non-cash payments should be excluded. *What 'fees' are is not explained
Will holidays continue to accrue while furloughed?	Yes
Can holidays be taken while furloughed?	There is still no formal Government guidance on this. Acas have changed their position and now state: <i>If an employee is 'furloughed', they can still request and take their holiday in the usual way. This includes taking bank holidays.</i> Official HMRC advice on Twitter confirmed periods of annual leave taken during a period of furlough will not affect the furlough. But whether 80% or 100% wages should be paid is still not addressed and the affordability of 100% pay for holidays will be a challenge for many businesses. There is growing pressure for the CJRS guidelines to be updated urgently as Easter approaches. We advise taking a holding position with employee queries until guidance regarding annual leave and furlough is published. On 27 March, the government announced <i>The Working Time (Coronavirus) (Amendment) Regulations 2020</i> which allow workers to carry over up to 4 weeks holiday into the next two leave years, where it is not reasonably practicable for them to take some, or all, of the holiday they are entitled to due to coronavirus.
Is there a minimum length of service to qualify for the scheme?	No. The criterion is that an individual must have been on payroll since 28th February. Anyone employed after this date cannot be furloughed and lay off or redundancy could be considered instead.

Is there any benefit for short-time working arrangements?	No. The scheme is designed to save jobs. Those on reduced hours should continue to be paid through the payroll for whatever hours they are working at the rate of pay agreed with them.
How will the scheme work for zero hours workers?	The scheme is open to zero hours workers and for any employees whose pay varies. Normal pay is calculated as: • the same month's earnings from the previous year • or, average monthly earnings from the 2019/20 tax year (if higher) • or, average monthly earnings if employed for less than a year
Is the scheme open to those on fixed term contracts?	Potentially, if the term still has some time to run. If a contract is not renewed is due to the coronavirus situation, then furlough might also apply.
What if 80% pay drops an individual to below minimum wage?	As there is no work being performed during the period of furlough, minimum wage thresholds do not need to be met (however if any training activity is undertaken, minimum wage should be paid for these hours)
Can redundancy pay be claimed after 4 weeks of no work? (as it can when temporarily laid off)	No. Furlough is a different system designed to retain jobs.
Can furloughed workers work ad-hoc days for the employer?	No. However they can undertake online training whilst on furlough. Employers will need to pay at least the National Minimum or Living Wage for time spent training.
What if an employee already has a second job?	An employee could be furloughed from each job and the cap applies separately to each employer.
What if an individual does not agree to be furloughed?	We suspect this will be rare, but it may occur when someone is not willing to reduce their pay by 20%. Such individuals may be at risk of redundancy, but this must be in line with normal redundancy rules and protections.
Does the scheme cover notice periods paid in lieu if making redundancies/dismissals?	Potentially – although it is not in the spirit of the scheme. The guidance suggests that provided work is not available to be done, then furlough is available. During a notice period there is little incentive for an employee to agree to furlough and reduced pay. They are entitled to be paid in full if they are ready and willing to work but no work is available to them. The larger the salary, the less likely it may be that someone will agree to be furloughed.
How does it affect the higher rate of SMP if receiving 80% pay in the QW pay reference period?	Higher rate SMP is based on earnings in the 8 weeks prior to the QW, therefore if 80% furlough pay is earned during this time, the higher rate SMP will be affected.
How quickly can I bring someone off furlough and back to work?	This is something an employer can agree with individuals. Employers may want to be able to act quickly to take advantage of opportunities, but may be disadvantaged if individuals have been given permission to work/volunteer elsewhere.
Can I rotate people on and off furlough?	Yes. This is a good solution so that a team each gets the opportunity to work/be furloughed. There must be a minimum period of 3 weeks for an employer to make a claim to HMRC.

How do I choose who is and is not furloughed?	Employers will need to make non-discriminatory and justified decisions. For example, placing all women with childcare responsibilities on furlough and therefore disadvantaging them by reducing their pay by 20% will have the risk of a sex discrimination claim. Care should also be taken with high risk employees who may fall under the definition of disability. Employers should also make reasonable justified decisions to ensure they are maintaining the trust and confidence of their workforce. It's reasonable to ask for volunteers and/or follow an objective selection procedure.
How do I claim?	Information is not available yet. So far we know that employers can only submit one claim every three weeks and that HMRC will pay the grant via BACS to a UK bank account.
What happens when the scheme ends?	An employer will have to assess whether there is work available and the individual can return to work, or whether alternative options such as lay-off, redundancy, contract changes etc should be considered.