



COVID-19 RESPONSE

In partnership with [A&L Goodbody](#)

Covid-19: Job Retention

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Guidance in this presentation is correct at date of publication

A&L Goodbody



What we will cover

Overview of the Job
Retention Scheme
& Eligibility

Potential alternative
options and support



Key Business
Concerns

How to 'Furlough'
Workers

Job Retention Scheme

Overview and eligibility

Overview

- Temporary Scheme designed to encourage employers considering redundancies or lay-off to retain employees on their payroll and to ‘furlough’ them instead.
- Available for all UK organisations with employees on PAYE.
- Currently anticipated that the Scheme will run for three months from 1 March 2020.
- It will be accessed via an HMRC “Portal”.



What can you claim?

- Employers will be able to access grants of 80% of wages up to a cap of £2,500 per month in relation to each furloughed worker.
- In addition Employers can claim Employer National Insurance contributions and minimum automatic enrolment employer pension contributions (on the subsidised wage).
- Wages, past overtime, fees and compulsory commission are included. Fees, commission payments, bonuses and BIKs should not be included.
- Claims can be back dated to 1 March if applicable.
- While on furlough, the employee's wage will be subject to usual income tax and other deductions.
- Employers can choose to 'top up' salary payments with the additional 20% but do not have to.

What can you claim?

- How is 80% of wages calculated for employees whose pay varies?
For those employees whose pay varies, the employer can use the following reference periods and can claim for the higher of:
 - the same month's earning from the previous year (for example earnings from March 2019); or
 - average monthly earnings in the 2019-20 tax year.
- This is likely to be applicable to Casual Workers as long as they are paid through PAYE.

When can you claim?



The online service you'll use to claim is not available yet.
We expect it to be available by the end of April 2020.

...and what should you do in the meantime?

- Coronavirus Business Interruption Loan Scheme
- Grant funding (where available)
- Cash reserves
- Defer salary payments?

Eligibility

- Businesses must have started a PAYE payroll scheme on or before 28 February 2020.
- Claims can be made only for those employed via PAYE:
 - Full-time & part-time employees
 - Employees on agency contracts (claims are made by the agency)
 - Zero hours/Casual workers
- Claims can also be made for office holders (including company directors), salaried members of Limited Liability Partnerships & “limb (b) workers” paid via PAYE.

Eligibility

- The Scheme also covers employees who have left their employment with a business (for any reason) after 28 February 2020 if they are rehired.
- When on furlough an employee cannot undertake work for or on behalf of the organisation.
- Employees hired after **28 February 2020** cannot be furloughed.
- The **minimum** length of time an employee can be furloughed is **3 weeks**.

How to 'Furlough' Workers

Do you need an employee's consent?

- Employment law rules governing contracts of employment are not overridden by the Scheme.
- Any decision to designate an employee as furloughed and reduce their pay must be made by agreement.
- In most cases express written consent must be obtained to avoid claims of unlawful deduction from wages.
- Notice of Furlough: Guidance states that employers must have written to their employees confirming that they have been furloughed. A record of this communication must be kept for five years.
- Guidance also suggests that in some cases it may be necessary to “collectively consult” with trade unions or employee representatives to achieve agreement to changes to terms of employment.

How to select which employees to furlough?

- In some cases this will be simple where there is a large scale shutdown.
- Where operations are only being reduced fair & reasonable selection criteria should be applied.
- Equality & discrimination laws will apply as normal.
- Prioritising vulnerable workers is unlikely to be discrimination.



Key Concerns for Employers

Key Concerns for Employers

- **Can we rotate employees on furlough?**
 - The minimum period for which an employee can be furloughed is 3 consecutive weeks.
 - It is possible to take employees off furlough and then re-designate them as furloughed again on a 3-weekly (or more) basis.
- **What if an employees refuses to be placed on furlough?**
 - By definition the employer is facing the prospect of compulsory redundancy or lay-off. If the employee is not prepared to consent to this scheme, then lay-off or compulsory redundancy may be considered.

Key Concerns for Employers

- **What about employees on unpaid leave, sick leave, self-isolating or shielding?**
 - Those on unpaid leave are not eligible unless they were placed on unpaid leave after 28 February 2020.
 - Those on sick leave or self-isolating should be eligible for SSP. They can then be furloughed for any period after they would otherwise have returned to work.
 - Employees 'shielding' (or who need to stay home with someone who is shielding) in line with public health guidance can be placed on furlough.
- **What about employees on (or about to go on) maternity, paternity, adoption or shared parental leave?**
 - The normal rules on statutory leave and pay will still apply. Employers will therefore need to ensure they continue to pay no less than the relevant statutory pay.
 - Employers can claim through the scheme for any enhanced, contractual pay for employees who qualify for the relevant statutory pay.

Key Concerns for Employers

- **What if 80% of wages is below National Minimum Wage?**
 - Individuals are only entitled to the National Minimum Wage (NMW) for hours they work.
 - Furloughed workers, can be paid 80% of their salary (up to £2,500) even if this would be below NMW based on usual working hours.
- **What if employees take up a second job during Furlough?**
 - This is fine if the employee is permitted to hold another job under their contract.
 - Contracts will usually govern employees holding a second job and will remain in force during Furlough.
- **Can employees volunteer or undertake training?**
 - Yes, as long as it does not provide services to or generate revenue for, or on behalf of the business.
 - Note: if workers are required to complete online training courses whilst they are furloughed, then they must be paid at least NMW.

Key Concerns for Employers

- **What about self-employed consultants and other service providers?**
 - This scheme will not apply to these categories of workers, but they may be eligible to apply for support under the Coronavirus Self-employment Income Support Scheme.
- **What about director-shareholders paid partly or mainly in dividends?**
 - The scheme is based on PAYE earnings only. So, it will not apply to dividend payments.

Key Concerns for Employers

- **Does annual leave accrue during furlough and can employees be required to use up annual leave?**
 - Employees will continue to accrue annual leave during furlough.
 - Guidance is unclear on whether employees can elect to take holiday or be required to take holiday during furlough.
 - In general it is possible for employers to require an employee to take holiday at a certain time as long it gives the notice required under the Working Time Regulations.
 - NOTE: Regulations have been introduced in the UK allowing up to 4 weeks unused leave to be carried into the next 2 leave years, easing the potential impact of a workforce with a significant amount of annual leave to take after the crisis (these will be replicated in NI).

Key Concerns for Employers

- **What happens 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 redundancies.
 - You may wish to start any redundancy consultation process in advance of the Scheme ending, particularly if collective consultation obligations will be triggered.
 - Grants under the Scheme cannot be used to substitute redundancy payments.

Alternative options & other support

Options

- Working From Home (this will already have been implemented where possible in most cases).
- Short-time working – reducing hours and pay.
 - This not presently covered under the Job Retention Scheme.
 - Where no contractual provision, consent should be sought.
- Redundancies
 - These should be approached with extreme caution – could be difficult to avoid unfair dismissal if it would have been reasonable to place employees on furlough.
 - Consultation should take place if likely after Furlough ends.
- Business interruption loans & grants to provide cash flow in interim.

Coronavirus Self-employment Income Support Scheme

- This scheme applies if you're self-employed or a member of a partnership.
- Grants will be based on 80% of average profits from the last three years, subject to a cap of £2,500 per month.
- Profits must be less than £50,000 per annum and must constitute more than half of average taxable income.
- Payments unlikely to materialize until June, backdated to March and will be taxable.
- HMRC will administer the scheme and contact eligible individuals for a form to complete.
- It does not cover those who pay themselves salary and dividends through a Personal Service Company.

Support and signposting

IF CORONAVIRUS AFFECTS YOUR BUSINESS HELP IS AVAILABLE

For advice, visit
www.nibusinessinfo.co.uk/coronavirus

A&L Goodbody People Services Careers Offices

WELCOME

COVID-19 (Coronavirus)

With circumstances surrounding COVID-19 evolving daily, we are very aware of the challenges for our people, clients and business community in Northern Ireland.

Our multi-disciplinary teams have been actively monitoring developments across all sectors & have provided practical legal guidance & latest thinking in a dedicated Northern Ireland COVID-19 Hub.

VISIT HUB

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Questions