

# Employer FAQs on Furlough

## The Government Job Retention Scheme

### 1 Who can claim?

Any UK organisation with employees can apply, including:

- Businesses
- Charities
- recruitment agencies (agency workers paid through PAYE) and
- public authorities (although there are some exceptions).

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.

### 2 Which 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 and
- employees on flexible or zero-hour contracts.

The scheme also covers employees who were made redundant since 28 February 2020, if you rehire them and then put them on furlough.

You can also furlough anyone who has been asked to **shield themselves on medical advice**.

### 3 Who is not eligible for the scheme?

Not everyone is eligible. You can't furlough anyone:

- who is sick or self isolating in accordance with government advice and being paid SSP

- who is still working for you - even if they are only doing a few hours here and there if they are **“providing services or generating income”**. But, staff can complete online training courses when furloughed. If they do this you may have to pay them for their time separately
- taking unpaid leave which started before 1 March 2020
- you engage as a self employed contractor - but they may be able to receive payments under the scheme available for **self employed contractors** announced by the Government on 26 March 2020

### 4 Can you furlough an employee who is currently on maternity leave?

If you pay contractual maternity pay (to top up Statutory Maternity Pay) you can furlough the employee to claim up to 80% of the cost of the contractual maternity pay, subject to the £2,500 cap (see 5 below).

If the employee is only receiving Statutory Maternity Pay, they cannot be furloughed so that they can receive their salary instead, as employees are not entitled to their usual remuneration whilst they are on maternity leave. Employees can end their maternity leave early in order to be furloughed (subject to the usual notice requirements). However once furlough has ended, employees cannot re start maternity leave - they must return to work.

### 5 How is the £2,500 cap applied?

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 NI contributions and minimum automatic enrolment employer pension contributions on that subsidised wage. Fees, commission and bonuses should **not** be included. It's not clear what is meant by 'fees'.

At a minimum, employers must pay their employee the lower of 80% of their regular wage or £2,500 per month. You can top this up, but you aren't obliged to do so. This is based on their gross earnings.

The Government has said that it will issue more guidance on how to calculate Employer NI and minimum automatic enrolment employer pension contributions, before the scheme becomes live.

## **6 How do you work out an employee's average pay?**

If the employee has been employed (or engaged by an employment business) for a full 12 months prior to the claim, you can claim for the higher of either:

- the same month's earning from the previous year or
- 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.

## **7 Will National Minimum Wage apply to furlough pay?**

Furloughed staff aren't working, therefore you don't need to worry if their hourly pay, once furloughed, falls below NMW rates. However, if staff do undertake any permitted training, you must make sure they are properly paid for this time. You can't offset from the 80% wage.

## **8 What happens to an employee's holiday entitlement during furlough?**

It's not entirely clear, but we believe that holiday will accrue as normal whilst employees are furloughed.

During furlough you may be able to compel staff to take some or all of their holiday entitlement provided you have served the proper notice. It's not clear if taking holiday ends the furlough period, so you should seek specific legal advice before asking staff to take holiday whilst they are furloughed.

## **9 Can employees work for another employer whilst they are furloughed?**

It appears so, however, employees remain employed by you whilst they are furloughed and may be prevented under their contracts of employment from working for anyone else without your permission.

If the employee already has a second job, they can continue to work for their other employer whilst they are furloughed by you.

## **10 Formalities - how do you implement furlough?**

You can only furlough staff if they agree to the arrangement. You'll need to confirm this in writing.

You can only furlough staff for a minimum period of three weeks.

The scheme guidance doesn't prevent you rotating which staff you furlough. The only requirement is that each staff member must be furloughed for at least three weeks at a time.

## **11 How do you make a claim?**

The scheme will be administered by HMRC. Once the online portal is up and running you can only make a claim once every three weeks for each furloughed employee. The guidance explains what information you'll need.

You'll also have to work out how much to claim. Do your best to get this right as HMRC retain the right to audit you and recover any overpayments.

You must pay the employee all the grant you receive unless you have already paid them whilst waiting for the grant. You can't deduct fees from the money that is granted.

## **12 When will the money be available?**

We still don't know the answer to the most pressing question for many employers. The Government has said that it expects the portal to be ready before the end of April.

Claims can, however, be backdated to the date you furloughed staff but can't go back further than 1 March 2020.

## Disclaimer

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**Review date: 2 April 2020**  
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