



# FURLOUGH AND THE JOB RETENTION SCHEME

## Guidance Notes

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The Government has announced its plans for financial assistance to help employers retain employees for an extended period of time, although offering no work, and avoid lay offs. It is called the Job Retention Scheme and, whilst little information has been published as to how it will work, we have set out below what we do know and our insight into the practical implications. It is subject to continual review dependent on Government guidance.

### WHAT IS THE JOB RETENTION SCHEME?

It involves employers placing their employees on 'furlough'. This isn't a term we use in UK employment law, and it seems to originate in the USA. It essentially means putting employees on temporary leave of absence where they do no work but they are retained on your books to be brought back in when you need them.

Employers who do this will be able to obtain a grant from the Government to cover 80% of furloughed employees' wages, to a maximum of £2,500 per employee per month.

### HOW DO I GET THE GOVERNMENT GRANT?

Guidance sets out that you will need to designate which of your workforce will be furloughed employees and then submit that information to HMRC, along with each employee's earnings. You will then receive a grant to cover the 80% wages. More information is awaited from the Government on the online portal to be used to submit the information and what other information may be needed. The grant is a reimbursement to the employer therefore the employer should make the wage/salary payment to the furloughed worker as normal and then be reimbursed by HMRC. Employers who are struggling with salary payments because of the

current situation may be able to obtain assistance from the Coronavirus Business Interruption Loan Scheme (CBILS). This is open to employers who have a turnover of no more than £45 million per year, and meet other eligibility criteria. Larger companies may be able to receive assistance via the COVID-19 Corporate Financing Facility, which buys short term debt to allow the finance of short term liabilities.

The Chancellor has stated he hopes the first grants will be paid by the end of April 2020, and they will be backdated to 1 March 2020. The scheme is initially intended to run for 3 months but may be extended.

### WHICH EMPLOYEES CAN BE FURLOUGHED?

Theoretically any employee can be furloughed. They need to be on PAYE in order for you to be able to claim the grant for their wages. Guidance states that your ability to furlough an employee depends on their contract. It is not likely that employee contracts will include a specific right to use furlough. However, contracts may contain a right to lay off employees on no pay already so are likely to make the discussions around furlough a little smoother. In any case, even when there is a right to lay off, it will be prudent to gain the employee's agreement to furlough to avoid any confusion in the future. When faced with potential redundancies, a period of leave with 80% pay may seem an attractive option to employees.

If you have already taken the step to utilise lay off, you can get in touch with those employees and agree to change their current status from lay off to furlough. They still wouldn't be provided with any work, but their pay arrangements would be changed from nothing (if not entitled to SGP), or SGP, to 80% wages.



You need to designate employees as furloughed, which means it is your choice. However, if you are not placing everyone on furlough, you should consider carefully who it should be. Think about whose skills will continue to be in demand through this difficult period. Whilst you may assume that the best thing to do is furlough those employees labelled as high risk by the Government, forcing them on to furlough without their input (and therefore forcing them on to 80% wages) may result in discrimination claims from those who allege they were made to do it because of their age, disability or pregnancy. Where you need to select employees for furlough, it may be best to ask for volunteers across the workforce and if any high risk employees, who had previously been risk assessed as fine to still be in work, put themselves forward, it may well be appropriate to choose them first. There does not appear to be a maximum or minimum number of employees who can be furloughed.

### **CAN I FURLOUGH EMPLOYEES NOW?**

In the absence of full guidance from the government on how the Job Retention Scheme will work, it may be prudent to wait before taking action to place employees on furlough now.

### **CAN I FURLOUGH EMPLOYEES WHO ARE ON SHORT TIME WORKING?**

Furlough requires the employee to do no work, so short time working could not continue during furlough. However, consider whether you could re-organise work patterns that have been reduced to allow for some of those on short time working to go back to full hours and the others to be furloughed. You should discuss this with employees first.

### **IF I PUT EMPLOYEES ON FURLOUGH AND I GET A GRANT TO COVER 80% OF THEIR WAGES, DO I HAVE TO MAKE UP THE OTHER 20%?**

No, there is no requirement to do this but of course you can if you wish.

### **WHAT ABOUT ZERO HOURS EMPLOYEES WHO HAVE NO STANDARD WAGES – HOW WILL THE 80% BE CALCULATED?**

There is no clarity on this yet but the Chancellor said the intention was to try to cover as broad a group of people as possible.

### **WHAT ABOUT THOSE ON MATERNITY LEAVE?**

Those on maternity will remain on maternity leave until they wish to return, at which point you would need to assess whether there is work for them or reach agreement with them to be 'furloughed'. This could cause issues given that the payment to employees who are furloughed could be significantly higher than statutory maternity pay.