



Coronavirus Job Retention Scheme – Furlough Leave

**This document is for your guidance only. Professional advice should be sought.
We are hopeful for clearer guidance from the government in the coming days.**

On Friday 20 March, the government announced its plans for financial assistance to help organisations retain employees for an extended period of time, despite 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, set out below what we do know.

What's the Job Retention Scheme?

It involves organisations 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 and receive no pay, but they are retained on an organisation's books to be brought back in when needed.

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

Which organisations can access the scheme?

All organisations can access it; there is no restriction on size or type.

How do I get the government grant?

Guidance sets out that organisations 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. A grant will then be received to cover the 80 per cent 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.

Chancellor Rishi Sunak 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 three 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 an organisation to be able to claim the grant for their wages. Guidance states that the 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 which contain a right to lay-off employees on no pay already gives organisations the right to send employees home and not pay them for a temporary period and so can likely be used to furlough employees.

The difference is that employees on lay-off will get, subject to service criteria, statutory guarantee pay (SGP) whereas furloughed employees will get 80 per cent of their wages. SGP is £29 per day for a maximum of five days in a rolling 13-week period, rising to £30 from 6 April, so furlough offers the employee a much more favourable option in terms of pay.



If contracts do not contain a right to unpaid lay-off, organisations can ask the employee to agree to furlough. Although 80 per cent of wages may not be an initially attractive option next to full pay, it is likely to be more attractive than redundancy, which may be the end result if alternative options cannot be found. It may also be useful for employees who are struggling to find childcare.

What if I have already laid-off employees?

In this situation, an organisation can get in touch with those employees and agree to change their current status from lay-off to furlough. This would simply involve changing their pay arrangements from nothing (if not entitled to SGP), or SGP to 80 per cent wages, as they are already not working.

Do I need to pick certain employees?

Organisations need to designate employees as furloughed, which means it is their choice. However, if organisations are not placing everyone on furlough, they should consider carefully who it should be. Think about whose skills will continue to be in demand through this difficult period. Whilst it may be assumed 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 per cent wages, may result in discrimination claims from those who allege they were made to do it because of their age, disability or pregnancy.

Where employees need to be selected 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 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 it is possible to re-organise reduced work patterns to allow for some of those on short time working to go back to full hours and the others to be furloughed. This should be discussed with employees first.

If I put employees on furlough and I get a grant to cover 80 per cent of their wages, do I have to make up the other 20 per cent?

There is no requirement to do this but an organisation can seek to if they wish.

What about zero hours employees who have no standard wages? How will the 80 per cent be calculated?

There is no clarity on this yet but the Chancellor has said the intention was to try to cover as broad a group of people as possible. Potentially it could be based on PAYE for February but this has not yet been confirmed.