

Written 25 March 2020

PLEASE NOTE: NOTE THIS GUIDANCE IS STILL INCOMPLETE AND THE GOVERNMENT NEED TO ISSUE FURTHER BRIEFING NOTES ON THE DETAIL.

Introduction

Under the coronavirus Job Retention Scheme, all UK employers with a PAYE scheme will be able to access support to continue paying part of their employees' salary for those that would otherwise have been laid off during this crisis. This applies to employees who have been asked to stop working, but who are being kept on the payroll, otherwise described as "furloughed workers". HMRC will reimburse 80% of their wages, up to £2,500 per month. This is to safeguard workers from being made redundant. The Coronavirus Job Retention Scheme will cover the cost of wages backdated to 1ST March and is initially open for 3 months but will be extended if necessary.

All UK-wide employers with a PAYE scheme will be eligible – this includes the public sector, Local Authorities and Charities.

What we know so far:

- If your businesses has been severely affected by the Pandemic and you were about to make employees redundant, the CJRS offers the alternative of "Furlough". The 'furloughed workers' will be on 'furlough leave'. During this time, they will continue to be employed by the employer, but they will not be required to work for a temporary period of time. The CJRS will assist employers by reimbursing them up to 80% of the wages of each 'furloughed worker', up to a maximum of £2,500 a month. (We will update you once the government confirms whether this means £2,500 a month before or after tax).
- The CJRS will run from April 2020 (date to be confirmed) but will be backdated to 1 March 2020 (such that anyone who has been laid off since 1 March and has not left the business under redundancy can be caught by the scheme) and is expected to run for at least 3 months (although the government may decide to extend it as things progress).
- The current guidance around the CJRS talks about "reimbursing" employers for wage costs and so our expectation is that employers will need to pay their employees at least 80% of their normal wages during any lay off period and then they apply for a grant which will reimburse them. This means that employers are likely to have to deal with cash flow issues in the interim.

CJRS Guidance:

We have had many clients asking us about the mechanics of the CJRS and below we outline (as best we can) the order of actions an employer should take to comply with the scheme:

1. Employers will need to designate affected employees as 'furloughed workers' and notify those employees of this change and agree this with them.
2. You should check employee contracts of employment to see if there is a contractual right to lay employees off if there is a downturn in work. If not you will need to discuss and agree with employees that they are "Furloughed". This may involve a negotiation. Either way you will probably need employees' consent. Given the alternative of redundancy one assumes common sense will prevail. Note if you have more than 20 employees whose contracts need to be changed a more formal consultation process will need to be done and we recommend legal advice at this point.
3. Employers should notify employees in writing and explain why the decision was necessary (Covid-19 Pandemic).
4. Please note it is solely the employer's choice to Furlough and not the employee. If the employee requests to be furloughed, the employer can refuse to agree e.g. if there is still work for them to do.
5. Employers then need to submit information to HMRC about those employees who have been designated as 'furloughed' and their earnings via a new online portal which is being set up. If you are doing this for the March payroll run you should keep a list of Furloughed employees and salary details.
6. HMRC will then reimburse 80% of wage costs for 'furloughed workers' up to a cap of £2,500 per month, per 'furloughed worker'. Exactly when these funds will be available is currently unknown. (We will advise you when the Portal is "live").
7. Furloughed employees could be paid 80% of their pay or higher if the employer chooses (bearing in mind the CJRS will reimburse a maximum of 80% to a maximum of £2500 per employee).
8. Points 8 and 9 below need Government clarification.
9. In the government's guidance to employees on this subject, it mentions that employers can claim a grant of up to 80% of a 'furloughed employee's' wages 'for all employment costs, up to a cap of £2,500 per month'. This suggests that this covers things such as pension contributions, employer's NICs etc.
10. Further information on this point is awaited so it can be confirmed whether employers can only use the CJRS grant in respect of an employee's basic pay or their average take-home pay (which may, for example, include overtime and commission too).
11. Employees should not undertake any work for their employer while they are 'furloughed'. The fact that the employer is unable to give its employees any work for the time they are 'furloughed' is what allows them to claim up to 80% of the employee's wage for all employment costs (up to £2,500 a month).

12. This scheme does not seem to apply to those on short-time working (e.g. shorter days) or those working certain days of a working week, although this is not yet clear. We will update you when we have further information.
13. Guidance is needed on whether employees can work “elsewhere” to make up the 20%
14. Further guidance is awaited on employees on holiday, maternity, sick or self-isolating.

Key points for employers:

- Ensure that you document your thought processes and discussions when deciding which employees are to be designated as ‘furloughed’ - treat it as if it is a redundancy situation and think about how you would need to evidence your decision.
- Consider if putting employees on furlough leave is absolutely necessary and reasonable to do in the circumstances. Again, make sure you record your reasons (in writing).
- Ensure that you notify employees being designated as ‘furloughed’ in writing, giving your reasons, making clear any terms that will apply during this period, and offering reassurance that financial support via the CJRS will be available.
- The CJRS is intended to be a reimbursement scheme so it is envisaged that the employer will have to make the payments to employees first and then seek reimbursement from HMRC.
- Be understanding that there may be groups of employees that feel hard done to e.g. those who are genuinely sick with the Coronavirus, those having to self-isolate as a family member is sick, the over 70s and those in vulnerable groups who are only entitled to SSP or contractual sick pay (which may be less than 80% pay) and they feel it is unfair that those ‘furloughed’ are getting much more.