

Coronavirus Job Retention Scheme (the “Scheme”) FAQs for employees

Overview of the Scheme .

What does the Scheme offer?

The Scheme is essentially a safety net for those employees who would have otherwise been laid off, made redundant or otherwise dismissed in response to the current pandemic.

The Scheme offers employers a grant to cover up to 80% of the furloughed employee's usual monthly wages (capped at £2,500). In addition the employer will be able to claim the associated Employer National Insurance contributions and minimum automatic enrolment employer pension contributions.

Who qualifies for the Scheme?

The Scheme will apply to all employees who are on the payroll who have been furloughed, where they would otherwise have been laid off or made redundant due to the current pandemic.

The employee must have been on PAYE payroll on 28th February 2020 and can be on any type of contract, for example:-

- full-time employees
- part-time employees
- employees on agency contracts
- employees on flexible or zero-hour contracts

To be eligible, the employee cannot carry out work for the employer that furloughs them. This includes providing services or generating revenue.

Reduced hours/ pay

The Scheme will not apply to those employees who have already had their hours or pay reduced, but who are still working for their employer.

If hours have already been reduced and then the employee is furloughed, it is likely that the employee would be entitled to 80% of his/her reduced hours only, unless the employer rescinds the reduction.

Employees who have recently been made redundant since 28 February 2020

The Scheme covers employees who were made redundant since 28 February 2020, if they are rehired by their employer. The employer can rescind redundancy and agree to place these individuals on furlough to enable the employee to qualify.

Employees on unpaid leave

These employees cannot be furloughed unless they were placed on unpaid leave after 28 February 2020.

Employees who are self-isolating/on SSP

Employees who are shielding in line with public health guidance can be placed on furlough. Employees on sick leave or currently self-isolating should get SSP but can then be furloughed.

Employees on Maternity Leave

Employees who are currently on or planning to take Maternity Leave and who qualify for statutory maternity pay will still be eligible for 90% of their average weekly earnings in the first 6 weeks, followed by 33 weeks of pay paid at 90% of their average weekly earnings or the statutory flat rate (whichever is lower). If an employer offer enhanced maternity pay, this is included as wage costs that an employee can claim through the scheme.

Company Directors

An update on 4 April 2020 confirmed that salaried company directors can be furloughed under the Scheme. Once furloughed, they are entitled to continue carrying out their statutory duties they owe to the company but should not carry out any work that would generate commercial revenue or provide services to or on behalf of the company.

Frequently asked questions

What is the definition of a furloughed worker?

This is not a term that we would usually use in UK employment law and therefore there is no legal definition. From our research, it is a term that appears to derive from US labour law and means mandatory suspension from work without pay.

In the UK this will be akin to a lay-off and will be a temporary suspension for a specific period of time whereby the furloughed worker will not be able to carry out any work but will remain an employee.

Is this different to laying-off staff?

Yes, employers have a limited ability to lay-off staff and this is subject to an existing contractual provision. A lay-off clause can enable employers to reduce hours and cut wages, as necessary for business needs. Furloughed employees will not be able to carry out any work during the furloughed period but still receive 80% pay.

Do employers need to provide written confirmation of the change to furlough status?

Yes. Employers must confirm in writing to their employees that they have been furloughed. Records of the communication must be kept for five years.

Can employers claim for commission payments?

Yes. The employer can claim for any regular payments that they are obliged to pay their employees. This includes wages, past overtime and compulsory commission payments (i.e. contractual payments). This excludes discretionary bonus, commission payments and non-cash payments.

Can benefits be included in the reference salary?

No. The reference salary should not include the cost of non-monetary benefits provided to an employee (i.e. health insurance, company car etc.).

How are student loan payments and apprenticeship levy affected?

Both student loans and apprenticeship levy should be paid as usual. The grant does not cover these payments.

Can employees be furloughed more than once?

Yes. It is possible for employees to be furloughed multiple times (i.e. furloughed, brought back into the workplace and then furloughed again). Each instance must be for a minimum period of 3 consecutive weeks.

What are the proposed timescales for the Scheme?

The Scheme will last 3 months from 1st March 2020 i.e. until 31st May 2020. This may however be extended. We are aware that the payments can be backdated to 1st March 2020.

What happens after the initial period? Will the furloughed workers be made redundant?

The idea is that the furloughed period is temporary and fixed term and that employees will return to the same job after the expiration of this period. However, employers may still need to terminate employees after the expiry of this period depending on business needs. If this is the case, the normal redundancy process should be followed. Alternatively, employers may need to agree carried terms with the employee on return.

If there is likely to be 20 or more redundancies within 90 days, employers will need to consider collective consultation rules.

What does it mean to be a furloughed worker?

What are furloughed employees rights?

Furloughed employees remain employees during this period and are therefore still entitled to pay, benefits and their pension. Employees are entitled to refuse to be furloughed however, the only cause of action that is available to them should they be dismissed due to their refusal is an action for breach of contract/ constructive dismissal. Constructive dismissal is only usually open to those with over 2 year's service. However, due to the significant backlog at the Tribunal and the current climate this is likely not to be an attractive option.

Can employees undertake voluntary work for their employer once they are labelled a furlough worker?

The employee will not be able to carry out any work for the employer that furloughs them – the employee will not be able to provide services or generate revenue.

Employers must be careful not to insist on work as this is likely to fall foul of the Scheme.

However, employees may be required to complete training courses whilst they are furloughed.

If this is the case, then they must be paid at least the national minimum wage for the time spent training, even if this is more than the 80% of their wage that will be subsided.

What happens to an employee's pension and the auto enrolment pension contribution?

This will remain unchanged. However, the employer may change their pension contribution if their wages fall below a certain amount with the employee's agreement. The employer will be able to claim back the minimum auto enrolment pension contribution in respect of the 80% of wages.

Are employees entitled to look elsewhere for work?

Employees are entitled to work for another employer whilst on furlough leave as long as this is permitted by the employee's contract of employment.

Can employees take paid holiday during furlough?

The guidance is not clear on this. However, the answer is likely to be, yes. The employer would be likely to need to top up any holiday pay to full. Employers may well compel employees to take holiday during furlough and are likely to be able to do so.

Contact Us

Our Partner and Head of Employment, Kate Brooks, is available anytime to provide advice on The Job Retention Scheme and is offering a free initial conversation. If you would like to discuss your options with Kate please call our Employment Hotline on 01202 057754 or simply request a call back via email kate.brooks@ellisjones.co.uk.