**Job Retention Scheme - Furloughed workers update and suggested proforma letters**

Under the Coronavirus Job Retention Scheme, all employers in the UK will be able to access support to continue paying part of employees’ salaries who would otherwise have been laid off during the ongoing crisis.

Furloughed workers are employees whose employers cannot cover staff costs due to coronavirus, and as such they have been asked to stop working but have not been made redundant.

Such employers are now able to access support to continue paying part of their staff’s wages, to avoid redundancies and so they can retain their teams.

To avoid fraud, there are expected to be cross-checks between the applications for grants against PAYE records for each employer.

Employers will be required to make one claim for the entire workforce, record how many workers are covered and will need to keep records.

**How the scheme works**

• The employer should discuss with affected employees and notify them (preferably in writing) that they have become ‘furloughed workers’. ACAS have a suggested information that should be included that we have adapted and is at the bottom of this article with suggested letters.

• The employer can claim a grant of 80% of workers’ wages up to £2,500 a month once they have been furloughed.

• The employees remain on the payroll deducting tax and national insurance under the pay as you earn (PAYE) system.

• If employers want to top up pay levels, they can, but will not be able to claim for more than 80 per cent of £3,125.

• The employer could choose to fund the differences between this payment and employee’s salary, but does not have to.

• The furloughed workers should not undertake work for their employer while they are furloughed.

• The scheme is available to all employees.

• The employer needs to get agreement from the worker to do this, unless it’s covered by a ‘lay off’ clause in the employment contract.

• The employer needs to submit information to HMRC about the employees that have been furloughed and their earnings. The submission will be through a new online portal which is expected before the end of April (HMRC will set out further details on the information required).

• If an employee’s salary is reduced as a result of these changes, the employee may be eligible for support through the welfare system, including Universal Credit.

• For employees on zero-hour contracts, the employer can use the monthly pay in February 2020 as a benchmark for each person’s pay when furloughed. If any employee did not work in that month, they should claim Universal Credit.

• If employees have to stay at home to look after young children, the employer is likely to be allowed to claim compensation if they furlough these workers.

The Coronavirus Job Retention Scheme will run for at least 3 months from 1 March 2020 but will be extended if necessary.

**HMRC are working urgently to set up a system for reimbursement. Existing systems are not set up to facilitate payments to employers.**

It is expected that employers borrow or self-fund in the short term to provide the wage package.

If a business needs short term cash flow support, it may be eligible for a Coronavirus Business Interruption Loan. Please see below for more details.

The furlough agreements should be in writing and it’s a good idea to include:

• the date furlough starts

• when it will be reviewed

• how to keep in contact during furlough,

• A statement that a worker will stay employed while they are furloughed, but they must not work.

**Suggested letters**

Letter 1

Dear xxx

As discussed, and [agreed/under terms of contract] to keep our business running we are placing a number of members of our team into the government backed Coronavirus Job Retention Scheme. This will allow us to keep you on the payroll and as a business we receive a grant of 80% of workers’ wages up to £2,500 a month. We will be paying a salary of £xxxx

The date you will be placed under the scheme is xxx and it will be reviewed with you at xxx. We will keep in contact during the period by [insert method].

During this period you will stay employed but a condition of the scheme is that you must not undertake work for our business.

Letter 2

Employee Name

Employee address

Re: Notice of Furlough

Dear [employee name],

We regret to inform you that because of the current level of work available as a result of COVID-19, we have opted to place you on furlough (temporary layoff) during the next [number] weeks. You are not authorised to work during the furlough without advance written authorisation from your [manager, supervisor, or director].

The furlough will begin on [date]. We are hopeful that we will be able to restore you to your prior position with our company on or around [date]. However, it is important to note that we reserve the right to change this date based on our business needs.

During this period:

1. You will retain your seniority with the company.

2. You may be eligible for unemployment benefits during this time.

3. [Remove if not applicable] If you have available holidays time that you would like to use during this time, you are welcome to use such time, but are not required to do so. If you would like to use some or all of your available holidays during this time, contact [insert name].

4. It is important to us that your transition into furlough and back to work goes as smoothly as possible. Therefore, if you have any questions or concerns regarding these transitions, contact [insert name].

We very much appreciate your contributions to the organisation this year. We wish you all the best during this unprecedented time and are looking forward to your return to work following this furlough period.

Best regards,

HR Department/Director Company name

**Frequently Asked Questions**

**What steps need to be taken by the employer?**

The employer will need to determine which employees are to be subject to Furlough Leave (or, furloughed) and notify them of the decision, taking into account the usual employment law measures that might be needed to change terms of employment. For example, there must be some consultation and ideally agreement. The employer should also look at their existing contractual terms as there may already be a contractual right to withdraw work or reduce hours in certain circumstances, although this is unlikely in many cases.

**What is the impact of furloughing an employee, by placing them on Furlough Leave**

HMRC will reimburse, by way of a grant, up to 80% of the employee’s wage costs. This is subject to a cap of £2,500 per month. It is not yet known what elements of pay are included in the reimbursement calculation.

There is speculation that the wages figure will be based on the payroll for February 2020, but this is not yet clear.

The guidance for employees states that “your employer could choose to fund the differences between this payment and your salary, but does not have to.” If the employer chooses not to pay the full difference between the furlough payment and the employee’s salary, this may be a temporary change to the employment contract so we recommend that legal advice is sought in such cases.

A furloughed employee must not work for their employer whilst on Furlough Leave.

**Does the scheme apply to directors of a small limited company?**

There is nothing to suggest that directors of a company will not be eligible for the scheme. However, if the speculation referred to above is correct that the wages available for the furlough grant will be based on the amounts paid in the February 2020 payroll, this could limit the amounts available that can be reimbursed in cases where a director has been paid a “small” salary with the balance as dividends.

Also note the requirement that employees and directors who are furloughed must not work for the company during this period – this scheme is not available to pay people who then continue to work.

**Will furloughed employees retain continuity of service?**

The guidance states that furloughed employees will remain on the payroll as employees so it would appear that continuity of service should be maintained.

**How will the scheme be implemented for businesses that pay hourly?**

Particularly for businesses in the hospitality sector with serving staff and shift work, hourly rate payment tends to be common. In those cases, payment under the Coronavirus Job Retention Scheme depends strongly on specific contracts between the employer and their employees, and/or what the employees have been paid previously.

If such contracts do not exist or are not detailed enough to decide, employers may be able to use payroll records of the past 3 months to roughly define an approximate weekly salary. You should speak to your HR adviser or an employment lawyer to make sure you stay compliant whatever method you adopt.

**Furlough vs Lay-off – Which route should your business adopt?**

While a lay-off is a temporary separation from payroll, employees on furlough leave remain in the company payroll, with the main aim of not having to cut jobs for certain employees.

Employees that are laid off are entitled to ‘statutory guarantee pay’ from their employer during the layoff period. According to guidance from the Government, the maximum employees can get during lay-offs is £29 a day for 5 days in any 3-month period - so a maximum of £145.

From an employer’s point of view, it is worth noting that a lay-off may entitle employees to claim redundancy pay (more info here). Therefore, unless a business is considering redundancies, layoffs may not be the optimal route for them. Businesses should consult an HR adviser or employment lawyer for more thorough advice based on their individual circumstances.

**How we can help**

Once the employer has identified the employees to be put on furlough leave and where appropriate has taken steps to communicate and agree with the relevant employees this change in employment terms, the next step will be to complete the online portal to provide the details to HMRC. You can start preparation for this by pulling together all the details of your employees e.g. name, NI number, salary/pay costs in recent months etc. BTMR can assist you to compile and report this information to HMRC as soon as the online portal is available. Please don’t hesitate to contact us for further support.

**COVID-19 Measures to support businesses experiencing increases in costs or financial disruptions**

Financial Assistance – Loans

Following last week’s update, further details have emerged on the Coronavirus Business Interruption Loan Scheme (CBILS).

Applications are now open to all SME businesses in all industries (except excluded organisations) and resources have been trebled to process the increased demand expected for these loans. SMEs will qualify if turnover does not exceed £45m and number of employees does not exceed 250. Applications can be made with your bank directly (there are currently 40 accredited lenders and the British Business Bank will be working to accredit new lenders) and SMEs will pay no arrangement fees to access this finance.

Schemes will be available for both term loans of up to 6 years and overdraft or invoice financing for up to 3 years. The government will pay for any lender-levied fees and cover interest payments for the first 12 months, lowering the initial repayments for smaller businesses. In addition, some lenders are likely to offer capital deferment schemes of up to 6 months as well.

Term loans from £10,000 to £5m will be available under this scheme for a maximum repayment period of 6 years. Overdraft and invoice financing to ease working capital requirements will be available for a maximum period of up to 3 years.

Borrowings of up to £250,000 can be accessed without security, at the lender’s discretion, and whilst the lenders will have a government-backed guarantee of 80% of the loan value, the borrowers will be liable to repay 100% of the debt. Importantly the scheme does not require personal guarantees of a Directors PPR, this is though at the discretion of lenders.

Lending decisions will be based on most existing lending criteria and businesses will be expected to have been viable before CV19 and have a positive outlook medium to long term (traditional lending criteria such as customers and profits).

Many lenders are stating that they will only look at businesses they currently support, and we have also had reports that some lenders have amended lending policies and criteria. We have fed back already on instances and will continue to do so.