

Flexible Furlough

What does this mean for your business?

Thursday 18 June 2020 - 10.00 a.m.

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Introduction

This webinar will cover:

- what flexibility employers will have to bring employees back to work;
- which employees will continue to be covered under the scheme;
- what contributions employers will be required to make; and
- how claims under the Coronavirus Job Retention Scheme (CJRS) will work in the future.



Updated Guidance on CJRS

- **Early May:** the Chancellor announced the extension of the CJRS to 31 October 2020, with significant changes from August onwards (now brought forward to July).
- **14 May:** Further updates on the Guidance issued.
- **22 May:** A new Treasury Direction was published. It addressed some of the discrepancies between the first Treasury Direction and HMRC's Guidance – and provided clarity on “switching” an employee from sick leave to furlough leave.
- **29 May:** the Chancellor announced further changes to the CJRS – including a “cut-off” date for first use of 10 June 2020 – and other reforms which will take effect from 1 July.

The CJRS has so far helped 1 million businesses and 9 million employees

The Flexible Furlough Scheme

Prior to 1 July: Employees **cannot** work for their employer whilst on furlough leave

Post 1 July: Employees **can** work for their employer part-time – and be furloughed part-time

- **From 1 July**, employers will have the flexibility to bring back furloughed employees for part-time work (for any amount of time and on any shift pattern) and still claim furlough grants for any of the employee's normal hours which are not worked.
- Furlough pay will be calculated according to an employee's usual working hours in a claim period – less the hours actually worked.
- The final date by which an employer can furlough an employee to benefit from the CJRS was **10 June**, as the scheme closes to new entrants from 30 June (working backwards from the 3 week minimum furlough period).

The Flexible Furlough Scheme

EXCEPTION:

- On 9 June, HM Treasury announced that individuals on statutory parental leave (such as maternity and paternity leave) before 10 June 2020 and returning after this date, will still be eligible for furlough leave even though they won't have met the 10 June 2020 "cut-off" date, provided:
- the employee was on the payroll at 19 March 2020; and
- the employer has submitted a claim for at least one other employee who did meet the 10 June deadline.

How much will it cost?

| Month | Government Contribution | Employer Cost |
|-----------|---|---|
| July | 80% wages (£2,500 cap) + NICS and pension contributions for hours employee doesn't work | <ul style="list-style-type: none"> • Pay employees for the hours worked |
| August | 80% wages (£2,500 cap) for hours not worked | <ul style="list-style-type: none"> • Pay employees for hours worked • ER NICs and pension contributions for hours <u>not</u> worked |
| September | 70% wages (£2,187.50 cap) for hours not worked | <ul style="list-style-type: none"> • Pay employees for hours worked • 10% top up + ER NICs and pension contributions for hours <u>not</u> worked (£2,500 cap) |
| October | 60% wages (£1,875 cap) for hours not worked | <ul style="list-style-type: none"> • Pay employees for hours worked • 20% top up + ER NICS and pension contribution for hours <u>not</u> worked (£2,500 cap) |

Flexible Furlough Scheme – Key Issues



- **From 1 July**, workers will be able to work as much or as little as the business requires; however claims under the CJRS will be restricted to those businesses currently using the scheme.



- For periods starting **on or after 1 July**, the maximum number of employees an employer can claim for in any period cannot be higher than the maximum number they have claimed for in a previous period.

EXAMPLE:

- If highest single claim for any period **up to 30 June** was for 100 employees, you cannot claim for more than this number in later periods. (Parental leave returners and incoming TUPE-transfers after 10 June not counted for limit).

Flexible Furlough Scheme – Key Steps (1)

- **Part-time work** - Agree new hours and shift patterns with affected employees and confirm the new arrangement in writing. The new agreement can last for any period of time (no 3 week minimum period). You must keep a copy of the new agreement for 5 years.
- **CJRS claims** - must be made for a minimum of one week (unless at the start or end of the month and a claim has already been made for period immediately before this). Claims must relate only to a period within a single calendar month (due to the scheme now changing each month), so no claims for July can be made before 1 July.
- **Data** - Employers required to submit data on the usual hours an employee would be expected to work in a claim period and the number of hours actually worked.

Flexible Furlough Scheme – Key Steps (2)

- **Leave started in June?** – must be for a minimum period of 3 weeks, even if the leave period ends after 1 July. Employees who commenced furlough leave prior to 1 July must remain “fully furloughed” until at least 3 weeks from commencement.
- **One claim per period** – must include all furloughed workers in single claim, even if they were furloughed at different times within the claim period.
- **Clarity on hours to be worked** – will need to disclose to HMRC and repay monies if employee actually works more hours than predicted during the claim period.

Flexible Furlough Scheme – Key Steps (3)

- **Records of amounts claimed** – must keep for 6 years.
- **TUPE transfer after 10 June?** – can furlough as long as previous employer met 10 June “cut-off” date and furloughed for at least 3 weeks. Employee in this position not counted for purpose of maximum employee numbers in previous exercises with new employer (provided old employer did comply with own obligation).

Flexible Furlough Scheme – Key Steps (4)

- **Deadline** - employers will have until 31 July to make any claims in respect of the period to 30 June.
- The Scheme will close in its entirety on **31 October 2020**.

Flexible Furlough Scheme – Key Steps (5)

- **Claims for salaried employees** – refer to last pay period ending on or before 19 March 2020; include regular wages, overtime and non-discretionary bonuses/commission.
- **Claims for hourly paid employees** – refer to higher of: (i) average number of hours in the tax year 2019/2020 OR (ii) the corresponding calendar period in the tax year 2019/2020; include working hours and any non-discretionary overtime.

Flexible Furlough – Redundancies

- Continuation of CJRS with tapered employer contributions makes it harder to justify redundancies before 31 October – but not impossible!
- Consider whether the support offered through the scheme provides an alternative to redundancies and, if not, carefully document why not, before taking action.
- Is it the case that the job has already essentially disappeared and the CJRS is masking the true picture?

Flexible Furlough - Annual Leave

- Do employees on furlough continue to accrue annual leave?
 - Yes - the COVID-19 holiday guidance published on 13 May 2020 confirms that employees continue to accrue annual leave whilst they are on a period of furlough leave.
- Can holiday entitlement be carried over if not used in a holiday year?
 - Yes*, if not “reasonably practicable”. Factors to consider include:
 - Increase in demand due to Covid-19;
 - Extent to which the workforce has been disrupted by Covid-19;
 - Health of employees;
 - Length of time remaining in employer’s leave year;
 - Extent to which employee taking leave would impact on the wider society’s response to and recovery from Covid-19;
 - Ability of the remainder of workforce to cover employee.

*Statutory Minimum under WTD only

Flexible Furlough - Annual Leave

- Can annual leave be taken during furlough?
 - Yes, annual leave can be taken during a period of furlough
 - Employees will be entitled to receive their usual holiday pay; employers will be obliged to pay the additional amounts due to the employee over the 80%/£2,500 cap
- Can an employer require a worker to take holiday during furlough?
 - Yes - employers can recoup an employee's holiday pay via the CJRS up to the 80%/£2,500 limit. It may be cost effective to direct workers to take annual leave.
 - Minimum notice periods apply under the WTR 1998 or the contract of employment (at least twice the amount of booked leave).

Flexible Furlough -Sick Leave

- What happens if a furloughed employee becomes sick?

- An employer can keep an employee who becomes sick during furlough on furlough, and does not have to move them on to SSP;
- The employee's wages can be claimed through the CJRS, even if that individual is sick.

BUT if a furloughed employee who becomes sick is moved onto SSP, the employer can no longer claim for wages as furlough pay, and must instead pay SSP.

- Contractual Sick Pay

- If an employee is entitled to contractual sick pay which equates to 100% of normal earnings, they may remain entitled to pay at that level if they become sick during furlough.

Flexible Furlough - Resources

- [Flexible Furlough Factsheet](#)
- [Guidance for Employers](#)
- [Step by Step Guide](#)
- [How to work out 80% Wages](#)
- [Holiday entitlement and pay during Covid-19](#)
- [Claiming back SSP](#)
- [Treasury Direction \(15 April\)](#)

Flexible Furlough – Top Tips

Preparation is key!

- Plan ahead – who will be required to work, and who can remain on furlough?
- What are the likely costs going to be if employees are working part time?
- Keep a paper trail
- Maintain communications with affected employees
- And finally... keep an eye on Government updates!