

Chattertons Solicitors & Wealth Management

Coronavirus Job Retention Scheme: Employment Law Guidance

BY YOUR SIDE. FOR YOU. FOR YOUR BUSINESS.

1. INTRODUCTION

COVID-19 is a new viral infection that can affect your lungs and airways. The situation surrounding the coronavirus pandemic is quickly developing. The government guidance and ACAS advice for employers is continuously being updated as the situation develops.

As of 26th March 2020, 11,658 cases of coronavirus had been confirmed in the UK and 578 deaths. Most individuals who have passed away as a result of this illness have been over 70 or those with underlying health conditions, with most others only displaying minor symptoms.

On 19th March 2020, Chancellor Rishi Sunak announced an unprecedented financial package intended to support employers and those unable to work as a result of the coronavirus outbreak, also known as the Coronavirus Job Retention Scheme ("the Scheme"). On 26th March 2020, the government released further guidance on how this will work in practice and this guide is aimed at answering some of your key questions.

2. WHAT IS THE CORONAVIRUS JOB RETENTION SCHEME?

The Scheme is a temporary arrangement funded by the government to support those employers who have been financially affected by Covid-19. The Scheme will run from 1st March 2020 for a period of three months, although the Chancellor has pledged that this will be extended if necessary. There is no limit on the funds available.

A scheme like this has never been available before and the Chancellor has stated that the Scheme is one of the most comprehensive in the world, providing "unprecedented measures for unprecedented times."

3. HOW MUCH CAN BE CLAIMED THROUGH THE SCHEME?

Eligible employers can claim the lower of 80% of employees' wages or £2,500 per month. No fees can be charged by the employer and all of the grant must be paid to the employee for their gross pay.

Employers must still ensure the relevant contributions are paid. They can therefore claim the associated National Insurance Contributions and minimum automatic enrolment pension contributions. More guidance will be issued on how employers are to calculate this in due course.

However, additional earnings such as fees, commission and bonuses cannot be claimed through the Scheme.

HMRC have reserved the right to carry out an audit in respect of an employer's claim.

4. WHO IS ELIGIBLE FOR THE SCHEME?

All UK employers that had a PAYE payroll system in place on or by 28th February 2020 can apply where an employee has been furloughed after 28th February 2020. Employees who were employed after 28th February 2020 are not eligible for the Scheme and cannot be furloughed. The employer must have a UK bank account into which a bank transfer from HMRC can be made.

This Scheme applies to all employers with employees, including charities, non-profit organisations, public sector organisations and agencies where the workers are paid through PAYE.

Furloughed employees on all types of contract are included, such as part time, full time and agency and zero-hour contracts.

To be eligible, employees must not undertake any work for their employer while they are furloughed, including providing services or generating revenue for their employer. It only applies to those who are not working.

It is advisable for employers to write to their employees being furloughed to confirm the details so that accurate records are kept.

5. WHAT DOES BEING FURLOUGHED MEAN?

This is where an employee is unable to work, but remains an employee as it is anticipated to only be temporary and a result of the coronavirus outbreak. Although there is no work for the employee, they are not made redundant.

In order to be eligible for the scheme, furlough leave must be taken in minimum blocks of three weeks. Employers can only make a claim every three weeks and cannot be reimbursed weekly.

6. CAN AN EMPLOYER CHOOSE WHO IS FURLOUGHED?

Not all employees have to be furloughed if there is still work available. If this is the case and the employer has to choose who is to be furloughed, they must not discriminate against their employees and must take a reasonable and justifiable approach. Equality laws are still applicable during this process and the rules on discrimination remain in force.

Any changes made to an employee's contract, such as furloughing, should be discussed and agreed with them first. An employer should not force furloughing on their employees when this has not been agreed and doing so could lead to legal action.

7. CAN I UNDERTAKE WORK FOR MY EMPLOYER WHILE FURLOUGHED?

You must not be working at all while you are furloughed. If you do, you will not be eligible for the Scheme. If you are still working but your hours or pay have been reduced, you will not be eligible.

You are however able to complete training or undertake volunteer work while furloughed as long as there is no service being provided by you on behalf of your employer and you are not bringing in any revenue for them.

8. DOES AN EMPLOYER HAVE TO TOP UP WAGES?

It is not obligatory under the Scheme for an employer to top up their employee's wages to 100%, although they can do this if they choose to.

If however employees have to complete online training courses while they are furloughed, then the time they spend training must be paid at least at National Minimum Wage, even if this is more than the 80% of their pay recovered through the Scheme.

9. HOW MUCH COULD I RECEIVE FROM THE SCHEME IF MY PAY VARIES?

If you have been employed for over a year, you can claim for either the same level of earnings from the same month last year, or use an average of your monthly earnings from the 2019/2020 tax year, whichever is higher.

If you have been employed for less than a year, then you can calculate your average monthly earnings since starting work.

10. I WAS MADE REDUNDANT OR PLACED ON UNPAID LEAVE AFTER 28TH FEBRUARY 2020, WHAT AM I ENTITLED TO?

If you have been made redundant after 28th February 2020 and your employer re-hires you and places you on furlough leave, you will be eligible for the Scheme.

If you were placed on unpaid leave after 28th February 2020, you are able to be furloughed.

Once the Scheme ends, an employer must decide whether in the circumstances they continue to employ the employee, or whether they have to consider making them redundant if there is still not enough work for them.

11. CAN AN EMPLOYER ROTATE FURLOUGHED EMPLOYEES?

The government's guidance is silent on this issue and does not currently prohibit an employer from rotating the employees placed on furlough leave. However, if an employer does decide to rotate employees, they must ensure that the furlough leave lasts for blocks of at least three weeks before alternating.

12. CAN I BE FURLOUGHED IF I AM SELF-ISOLATING OR ON SICK PAY?

If an employee is self-isolating or is on sick pay, they should be entitled to Statutory Sick Pay and cannot be furloughed until they return. However if an employee is 'shielding', i.e. taking extra steps to protect themselves if they are classed as high risk and vulnerable, they can be placed on furlough.

13. I WORK TWO JOBS AND AM BEING FURLOUGHED ON BOTH, AM I ELIGIBLE FOR THE SCHEME?

If you have more than one employer, each role is classed as being separate and you can be furloughed for each. The Scheme would apply to each employer individually and the cap would be applied to each role.

For example, if you have one job working for McDonalds and another working for Primark, and you are furloughed for both roles, you would be eligible for the lower of 80% of your wages from McDonalds or £2,500, *and* the lower of 80% of your wages from Primark or £2,500, as opposed to your earnings from both being combined.

14. I AM ON MATERNITY LEAVE, HOW WILL I BE AFFECTED?

Employees currently on maternity leave can continue to receive Statutory Maternity Pay and the normal rules apply, such as being able to claim up to 39 weeks of statutory pay/allowance, with the first six weeks being paid at 90% of their average weekly earnings or the statutory rate, whichever is lower. All women must still take off at least two weeks following the birth of their baby (4 weeks for factory workers).

There is nothing within the government's guidance prohibiting an employee on maternity leave from returning and then being furloughed immediately.

The normal rules also apply to paternity leave, adoption leave and shared parental leave.

15. WHEN IS THE PACKAGE LIKELY TO BE AVAILABLE?

The hope is that the Scheme will be up and running by the end of April, with payments being backdated to 1st March 2020.

16. DISCLAIMER

Further guidance will be issued by the government in due course relating to the procedure of claiming a payment from the Scheme.

The law and advice set out in this booklet is correct as at 27th March 2020. We strongly recommend that all employers ensure they are keeping up to date with the government advice as the situation progress. Despite the advice about the coronavirus pandemic constantly changing, employment legislation will remain in force and must be adhered to in order to minimise the risk of a claim being brought against an employer. Therefore, if you are in doubt about anything, we recommend that you seek advice. Should you require any clarification on this matter, please do not hesitate to contact a member of our Employment Team on 01522 814 638 or 01205 351 114.