



BY YOUR SIDE. FOR YOU. FOR YOUR BUSINESS.

FURLOUGH LEAVE: EMPLOYEE'S FAQs

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 10 May 2020, 219,183 cases of coronavirus have been confirmed in the UK and over 31,000 deaths.

Following the Prime Minister's announcement to the UK on 10 May 2020, the Government will be releasing new guidance to employers on how to tackle COVID-19 in the workplace and implement safe working practices.

2. WHAT IS FURLOUGH?

Furlough Leave is a relatively new concept in the UK. If a business is unable to operate or has a reduced need for their staff during the coronavirus pandemic, they can place their employees on furlough leave. This means that employees continue to be employed on a temporary leave of absence as an alternative to being made redundant or laid off.

3. AM I ELIGIBLE FOR FURLOUGH?

To be eligible for furlough, you must have been on your employee's PAYE payroll on or before the 19 March 2020. However, employees who were TUPE'd into a business after 19 March 2020 can also be placed on furlough if either the TUPE or PAYE business succession rules apply to the change of ownership.

Full-time employees, part-time employees, employees on agency contracts, employees of fixed-term contracts and employees on flexible or zero-hour contracts can be furloughed.

4. DO I HAVE TO ACCEPT FURLOUGH?

No, you cannot be forced to go on furlough without your consent unless there is a lay-off clause within your contract of employment. However, if you do refuse then your employer may be forced to consider alternative options such as redundancies.

5. CAN I VOLUNTEER TO GO ON FURLOUGH?

Employees can volunteer to be placed on furlough, but a business is not obliged to do so. Your employer will need to consider all volunteers and ensure the business needs can still be met.

6. MY COLLEAGUE HAS BEEN FURLOUGHED AND I HAVE BEEN FORCED TO WORK, IS THIS LEGAL?

Yes, your employer does not have to furlough all staff in order to take advantage of the Job Retention Scheme. However, it would be advisable for your employer to draft a selection matrix when selecting employees for furlough to avoid discrimination.

7. I AM CURRENTLY IN MY NOTICE PERIOD, CAN I BE PLACED ON FURLOUGH

Your employer can place you on furlough whilst you are in your notice period as you remain an employee during this time.

8. I AM CURRENTLY ON SICK LEAVE, CAN I BE FURLOUGHED INSTEAD?

It was announced on Thursday, 09 April 2020 that employer **are** free to switch employees from sick pay to furlough and vice versa. However, please note that in order for your employer to be reimbursed 80% of your salary from HMRC, you must be placed on furlough for a minimum of 3 weeks. Therefore, if you are self-isolating for 14 days in line with health guidance, it is unlikely that you will be placed on furlough leave. You will however, be entitled to Statutory Sick Pay whilst you are self-isolating.

9. I AM CURRENTLY SOCIALLY SHIELDING IN LINE WITH HEALTH GUIDANCE, CAN I BE FURLOUGHED?

Yes, employees who are currently socially shielding in line with medical advice can be placed on furlough leave.

10. WHAT ABOUT IF I AM ON MATERNITY/PATERNITY LEAVE?

Women on maternity leave must take the minimum maternity leave period of work following the birth of their child. After this period, you can return to work you can do so in line with the usual notice period.

Employees who are currently on a period of maternity or paternity leave can opt to be placed on furlough instead. However, a woman on maternity cannot opt to go back onto maternity leave once her period of furlough has ended. Therefore this option may be not be viable for someone who has just started their period of maternity leave.

11. HOW MUCH WILL I GET PAID?

Your employer will be able to claim a grant from HMRC to cover 80% of your monthly earnings, up to a maximum of £2,500 per month. Your employer may decide to 'top up' your furlough salary to 100% or anything above the £2,500, but they are not obliged to do so.

If your monthly earnings vary and you have been employed for 12 months, your employer can claim for the higher of either:

- The amount you earned in the same month last year; or
- An average of your monthly earnings from the last year.

Bonuses, commissions and fees are **not** included as part of your monthly earnings for this purpose.

If you have been employed for less than a year, your employer can claim for an average of your monthly earnings since you started work.

12. DO I HAVE TO PAY TAX ON MY FURLOUGH PAYMENTS?

Yes, any pay that you receive whilst on furlough will still be liable for tax and National Insurance deductions. Your employer will continue to pay their employer's National Insurance contributions and pension contributions at the auto-enrolment minimum which can also be reclaimed under the Job Retention Scheme.

13. WHAT HAPPENS IF 80% OF MY WAGE MEANS THAT I DO NOT EARN NATIONAL MINIMUM WAGE?

If you aren't working, your hourly pay whilst you are on furlough may fall below National Minimum Wage and this is okay. However, if you are required to complete training courses whilst furloughed, then you **must** be paid at least National Minimum Wage or National Living Wage for your time spent training.

Any apprentices that are placed on furlough must be paid at least the Apprenticeship Minimum Wage, National Minimum Wage or National Living Wage (as applicable). Therefore, your employer must make up any shortfall.

14. DO I HAVE TO WORK IF I AM FURLOUGHED?

Whilst you are on furlough leave you cannot do any work for your company which will generate income or provide a service.

15. CAN I DO ANY TRAINING WHILST I AM ON FURLOUGH?

An employee can still undertake training with the Company as long as it does not generate revenue for the business. If you are required to complete training whilst you are on furlough, you must be paid the National Living Wage or National Minimum wage for the time that you spend training.

16. WILL I STILL ACCRUE HOLIDAY WHILST ON FURLOUGH?

Whilst you are on a period of furlough leave, you will remain an employee of the business and therefore will continue to accrue holiday.

17. HOW MUCH WILL I BE PAID IF I TAKE ANNUAL LEAVE WHILST ON FURLOUGH?

This point has caused a lot of confusion during the recent weeks, but it appears that if you do decide to take holiday during your period of furlough, your employer must top this up to 100% pay.

18. HOW LONG DO I HAVE TO BE FURLOUGHED FOR?

In order for your employer to claim a reimbursement for 80% of your wages up to £2,500, an employee must be on furlough for a minimum period of three weeks.

19. CAN MY EMPLOYER MAKE ME REDUNDANT AT THE END OF MY FURLOUGH?

Unfortunately, either during or at the end of your furlough leave, your employer can still make you redundant. However, your employer should ensure that they follow the normal redundancy rules and procedures if this occurs.

20. DISCLAIMER

The law and advice set out in this booklet is correct as at 10 May 2020. We strongly recommend that all employees ensure they are keeping up to date with the government advice as the situation progresses. 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, do not hesitate to contact a member of our Employment Team on 01522 814638.

Meet the Employment Team



Danielle Lister
Head of Employment Law
01522 551181
danielle.lister@chattertons.com



Grant Shackleston
Partner
01205 351114
grant.shackleston@chattertons.com



Natasha Halliday
Associate Solicitor
01476 512602
natasha.halliday@chattertons.com



Kayleigh Howarth
Paralegal
01522 541181
kayleigh.howarth@chattertons.com



Leanne Day
Paralegal
01205 315308
leanne.day@chattertons.com