

Furlough and the Job Retention Scheme

The Government has announced its plans for financial assistance to help employers retain employees for an extended period of time, although offering no work, and avoid lay-offs. It is called the Job Retention Scheme and, while little information has been published as to how it will work, we have set out below what we do know, which will be updated as more details are released.

What is the Job Retention Scheme?

It involves employers placing their employees on “furlough”. This is a term which is typically used in the US and essentially means putting employees on temporary leave of absence where they do not work and do not receive pay, but are retained on your books to be brought back in when you need them. Employers who do this will be able to obtain a grant from the Government to cover 80% of “furloughed employees” wages, to a maximum of £2500 per employee per month.

Which employers can access the scheme?

All employers can access it; there is no restriction on size or type.

How do I get the Government grant?

Guidance states that you will need to designate which of your workforce will be furloughed employees and then submit that information to HMRC, along with each employee’s earnings. You will then receive a grant to cover the 80% wages. More information is awaited from the Government on the online portal to be used to submit the information and what other information may be needed. The Chancellor has stated he hopes the first grants will be paid by the end of April 2020, and they will be backdated to 1 March 2020. The scheme is initially intended to run for three months but may be extended.

Which employees can be furloughed?

Theoretically any employee can be furloughed. They need to be on PAYE in order for you to be able to claim the grant for their wages. Guidance states that your ability to furlough an employee depends on their contract. It is not likely that employee contracts will include a specific right to use furlough. However, contracts which contain a right to lay off employees on no pay already give you the right to send employees home and not pay them for a temporary period and so can likely be used to furlough employees. The difference is that employees on lay off will receive, subject to service criteria, statutory guarantee pay (SGP) whereas furloughed employees will receive 80% of their wages. SGP is £29 per day for a maximum of five days in a rolling 13-week period, so furlough offers the employee a much more favourable option in terms of pay. Despite a lay off clause, you may wish to seek specific agreement to the period of furlough with employees at the time to avoid challenges in the future that the employee was not in full agreement to being placed on leave with reduced pay. If contracts do not contain a right to

unpaid lay off, you can ask the employee to agree to furlough. Although 80% of wages may not be an initially attractive option next to full pay, it is likely to be more attractive than redundancy which may be the end result if alternative options cannot be found. It may also be useful for employees who are struggling to find childcare.

If you have already taken the step to utilise lay off, you can get in touch with those employees and agree to change their current status from lay off to furlough. This would simply involve changing their pay arrangements from nothing (if not entitled to SGP), or SGP to 80% wages, as they are already not working.

You need to designate employees as furloughed, which means it is your choice. However, if you are not placing everyone on furlough, you should consider carefully who it should be. Think about whose skills will continue to be in demand through this difficult period. While you may assume that the best thing to do is furlough those employees labelled as high risk by the Government, forcing them on to furlough without their input, and therefore forcing them on to 80% wages, may result in discrimination claims from those who allege they were made to do it because of their age, disability or pregnancy. Where you need to select employees for furlough, it may be best to ask for volunteers across the workforce and if any high risk employees, who had previously been risk assessed as fine to still be in work, put themselves forward, it may well be appropriate to choose them first. There does not appear to be a maximum or minimum number of employees who can be furloughed.

Can I furlough employees now?

In the absence of full guidance from the Government on how the Job Retention Scheme will work, it may be prudent to wait before taking action to place employees on furlough now. However, it should be acknowledged that employees are in a difficult position with regard to the security of their jobs and may welcome some communication about what is happening. For this reason, we have created a template letter to explain an organisation's plans to use furlough when more details are available.

Can I furlough employees who are on short-time working?

Furlough requires the employee to not carry out any work, so short-time working could not continue during furlough. However, consider whether you could re-organise reduced work patterns to allow for some of those on short-time working to go back to full hours and the others to be furloughed. You should discuss this with employees first.

If I put employees on furlough and I get a grant to cover 80% of their wages, do I have to make up the other 20%?

No, there is no requirement to do this, but you can if you wish.

What about zero hours employees who have no standard wages? How will the 80% be calculated?

There is no clarity on this yet but the Chancellor said the intention was to try to

cover as broad a group of people as possible.

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