

CORONAVIRUS JOB RETENTION SCHEME: THE DETAILS OF THE SCHEME

Further guidance was released on the Coronavirus Job Retention Scheme on 26 March 2020 which clears up a number of uncertainties around the operation of the scheme and furloughing of employees.

QUALIFYING CONDITIONS FOR EMPLOYERS

Most employers will qualify. The conditions are:

- The employer must be a UK organisation – this includes businesses, charities, recruitment agencies and public authorities
- The employer must have had a PAYE scheme registered on 28 February
- The employer must have a UK bank account

QUALIFYING CONDITIONS FOR EMPLOYEES

- The scheme is available to full and part-time employees, employees on agency contracts and employees on flexible or zero-hour contracts but not employees currently on sick leave or self-isolating until their period of sickness or isolation ends.
- The employee must have been on the payroll as at 28 February 2020. Employees who commenced their employment after this date do not qualify for this scheme.
- If an employee has been made redundant since 28 February, they can be rehired and then furloughed.

Once an employee has been furloughed they can carry out no work for the employer whatsoever but they can take part in volunteer work or training, as long as they do not provide services to or generate revenue for or on behalf of their employer.

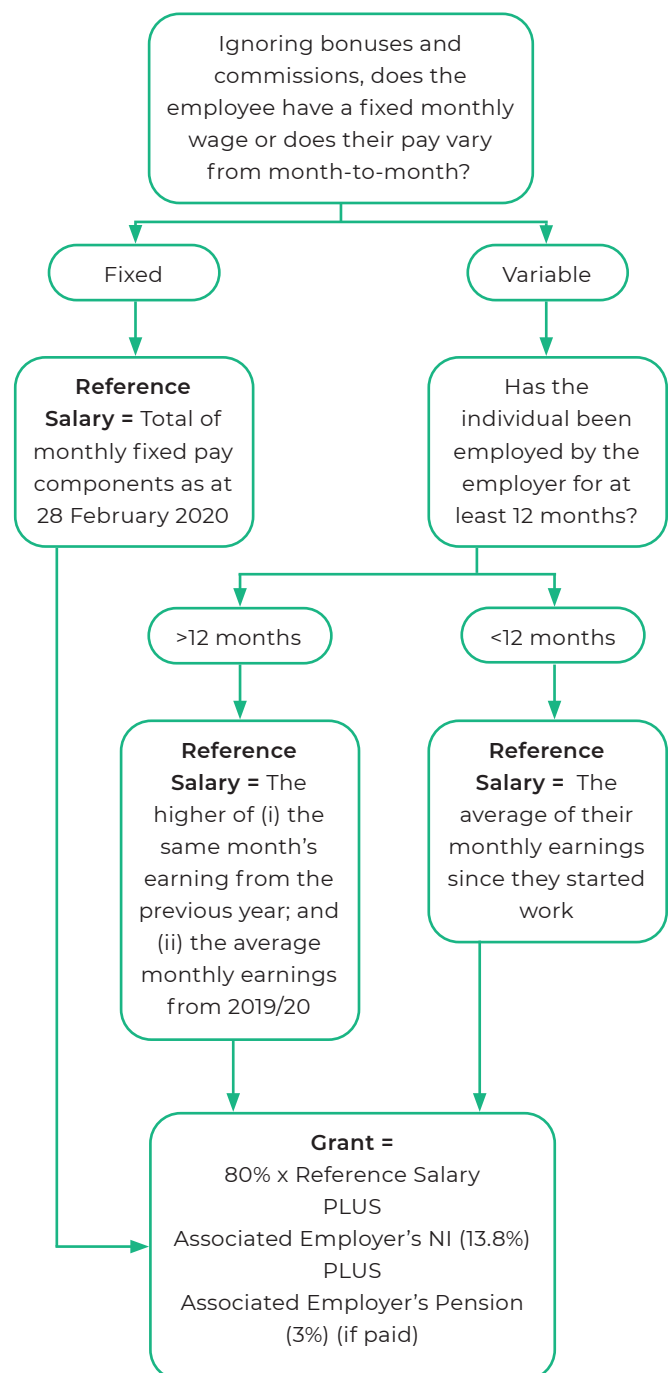
The guidance reconfirms that employees working reduced hours cannot qualify for the scheme so furloughing an employee is an all-or-nothing decision.

The guidance confirms that an employer can “flip-flop” its employees. This means that they can furlough an employee for three weeks (the minimum period) and then the employee can recommence employment duties for a period before being furloughed again. This achieves something similar to reduced hours working but within the rules of the scheme.

In the guidance released to date, there are no exclusions for employees on immigration visas so, for example, employees in Tier 2 Intra-Company Transfer or General visas appear to qualify.

HOW IS THE GRANT CALCULATED?

The steps to calculating the grant are as follows:



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The guidance confirms that the grant from HMRC will include the associated employer's national insurance and employer's pension contribution so, for example, the total monthly grant per employee being paid £2,500 per month would be:

	£
Basic grant	2,500
Employer's NI (13.8%)	244
Employer's Pension (3%)	60
	2,804

GENERAL FEATURES OF THE SCHEME

- All payments to employees continue to be made through the payroll with the normal tax and NI deductions, pension contributions and apprenticeship levy payments due as normal.
 - The employer must pay the employee all the grant they receive for the employee's gross pay (other than the elements calculated to cover employer's NI and pension).
 - The employer can choose to pay the employees only the amount funded by the grant or they can top up the employee's salary, but they do not have to (subject to agreement with the employees).
 - If an employee is furloughed, to qualify for the grant, the minimum furlough period is three weeks. At present, the maximum period is three months but the scheme may be extended beyond 31 May 2020.
 - There are no changes to the protections given to employees under employment law so the employer may need advice on the equality and discrimination laws when selecting employees to be furloughed to minimise the risk of claims later.
 - There is no requirement for the payments made to furloughed employees to equal or exceed the National Minimum Wage or National Living Wage unless the employer requires them to carry out training during their furlough period.
 - Employers are able to furlough some or all of their employees and there is no requirement that the business is financially distressed before they can benefit under this scheme.
- There are no provisions for the government to claw back the grant if the employer later makes a furloughed employee redundant unless the conditions for the original claim were not satisfied (i.e. the employee carried out some work for the employer)
 - The grant is taxable income for the employer but would be offset by the salary cost being paid to the employees that is funded by the grant.

OPERATING THE SCHEME AND CLAIMING THE GRANT

- Employers must write to their employees confirming that they have been furloughed and keep a record of this communication.
- Once the HMRC portal is launched, the details of the furloughed employees must be submitted online via this portal – this is expected to be possible from the end of April but expect delays.
- The claims can be submitted every three weeks and, if the qualifying conditions have been met, they can be backdated to 1 March.
- Once HMRC has received an employer's claim, they will pay it via BACS payment to their UK bank account.
- The government will retain the right to retrospectively audit all aspects of the scheme with scope to claw back fraudulent or erroneous claims.

Further guidance on some of the finer detail of the scheme is promised but the principles described above are unlikely to change so, if you are considering furloughing employees and claiming this grant, do not delay any further.