

# FURLOUGHED WORKERS CORONAVIRUS EMPLOYER FAQs

As at 6 April 2020

## FINANCIAL FAQs

### What does furlough mean?

Employees are effectively laid off for a period of time. They are retained on the payroll system, so do not require a P45.

### How long does the scheme last for?

Currently, the scheme lasts from 1 March to 31 May, although it might be extended beyond that date.

### Is there a minimum period of furlough?

Yes, the minimum amount of time an employee can be furloughed is three weeks. You can make a claim every three weeks rather than monthly, if you wish.

### If an employee has worked since 1 March, can we claim for this period?

No, you can only claim from the first day they did no work for your company.

### How do we claim the 80%?

HMRC will set up an automated portal but its go-live date is yet to be announced.

### What do we need to make a claim?

- your ePAYE reference number
- number of employees being furloughed
- claim period (start and end date)
- amount claimed (per the minimum length of furloughing of three weeks)
- your company bank account number and sort code
- contact name
- contact phone number.

### How is it paid?

Directly into your company bank account via a BACS transfer.

### Is it a loan?

No, it's a grant and does not need to be paid back.

### Is it 80% of £2,500?

No, it's 80% of the employee's salary up to a maximum of £2,500 per month.

### Do employees retain the whole 80% up to £2,500?

Yes. You claim for 80% of your employees' regular wage plus the associated employer NIC and pension contribution (auto-enrolment minimum) to enable them to retain the whole 80%.

Your employees must receive the whole 80%. Guidance is to follow regarding how you claim for employer NIC and pension contributions.

### Do we have to top it up?

No.

### Is the 80% based on their current salary?

For full and part-time employees, their actual salary as at 28 February 2020 is the salary that is used.

For those who do not have a full year's pay, take an average of pay since they joined your company. If they joined in February 2020, use a pro-rata rate for this period.

### What about employees with variable pay, i.e. zero-hour contracts?

You can claim for the higher of either the average monthly pay in the 2019/20 tax year or their pay in same month of the previous year.

### Is overtime or commission included?

No, it's basic wage.

### Do we pay them or does the government pay them?

You continue to pay your employees via the payroll and then claim the money back.

### Do employees still make pension contributions?

There has been no guidance but we assume that the salary sacrifice at the amount agreed is deducted before payment. If this is as a percentage, they sacrifice the percentage of their furloughed amount. If it is a set amount, for example childcare vouchers, they continue to sacrifice the full amount.

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**If an employee is working reduced hours and/or on reduced pay, can we still claim under the scheme?**

No. You can only claim for those employees who are not working at all.

**If an employee has a company car or receives a car allowance, do we still have to provide this?**

Yes, you must continue to provide a company car or pay for a car allowance, unless there is provision to stop this in the employment agreement.

## FURLOUGH FAQs

**An employee has more than one job, can we still furlough them?**

Yes, even if they are not furloughed from their other employer.

**Can we simply tell them they are being furloughed?**

Employees who have 'short-time working' or 'lay-off' in their contracts can simply be given notice to the fact they are being furloughed. Generally, one week is advisable, however, given the circumstances, you can give much less.

If those clauses do not exist, you should consult with your employees, similar to how you would consult on a redundancy. For 20 or more employees, it is a 30-day consultation period and for 100 or more employees, it is 45 days. Collective consultation can be brought to an end sooner if all employees agree to the change. For fewer than 20 employees, consultation is a 'reasonable' period of time. Again, given the circumstances, this could be very short.

**Can employees who joined us after 28 February be furloughed?**

No. If there is no work for a new starter, you will need to exercise short-time working or lay-offs. If you are worried about losing them as an employee, they can be treated the same as the other furloughed employees but their salary cannot be claimed for under the scheme.

**Can furloughed employees work i.e. pick up emails?**

No. They can't do any work at all for your company. They can't provide services for it or generate revenue for it.

**Can furloughed employees volunteer or undertake training?**

Yes. However, if you require them to take part in company-led training, you must ensure they are paid at least the national minimum wage or living wage, even if this is more than the 80% of their wage that is being subsidised.

**How do we pick who should be furloughed if we want to keep some employees?**

Your options are:

- Ask for volunteers

- Use a selection process in exactly the same way as a redundancy selection process would work, or
- If a role is standalone (as in only one person does it and you don't need it), select on that basis.

**Are directors eligible?**

Yes. If the director is on the payroll, they can be furloughed. They are not allowed to carry out any income-generating work or provide services to the company. They can, however, carry out statutory obligations of a director, such as submitting company accounts.

**Can furloughed employees take holiday?**

Holidays accrue at the normal rate during a period of furlough. However, to furlough an employee, you have to change their status of work and every day that they are furloughed is considered a 'workless day'. Furlough is essentially an extension of short-time working or lay-off to help you get through the next few months without having huge numbers of employees receiving no pay. Under these regulations employees cannot take holidays on workless days. As the furlough guidance is not explicit about holidays, work on the basis that you should comply with short-time working and lay-off regulations.

**Do we have to give the bank holidays back in lieu?**

This is unclear and will hopefully be clarified when the portal goes live. It is likely that you will still claim for bank holidays and then your employees get the bank holidays back in lieu once they have returned to work, although this is not definite.

**Can employees carry over holiday they have been unable to take when furloughed?**

Yes, the government has introduced a temporary new law that allows employees who cannot take holiday due to the Coronavirus to carry over up to four weeks' paid holiday over a two-year period.

**Can we bring someone back early if business picks up? What is furlough flip-flopping?**

Yes, provided the minimum three weeks of furlough is adhered to, you can bring employees back to work from furlough and then furlough them again later if necessary. This is known as flip-flopping. However, be aware that if you don't have a contractual right to lay off your employees, there will be consultation requirements to consider and any contractual changes agreed should take flip-flopping into account when being drafted.

**Can we furlough an employee mid-month?**

Yes, you can furlough an employee at any date from 1 March to 31 May 2020.

**Can we furlough an employee we sponsor for a sponsored Tier 2 visa?**

Be aware that there are sponsorship rules that apply

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that could restrict you in reducing their salary. You should seek immigration law advice in this case.

**If an employee is on a fixed-term contract that is due to end before 31 May, can we renew their contract and furlough them until the 31 May?**

You can renew or extend a fixed-term contract that is due to end before 31 May. As long as the employee has continuous service and was on the payroll on 28 February 2020, they can be furloughed. This is a job retention scheme so we would suggest only extending if you are going to keep the employee on beyond 31 May 2020.

## THOSE NOT CURRENTLY AT WORK

**What are the options for our employees who cannot work now because childcare providers or schools have closed?**

New guidance for employees with caring responsibilities has been released. You can now furlough employees who you would otherwise have had work for but who cannot work due to caring responsibilities. This is going to be especially helpful to parents affected by childcare provision and school closures.

However, this is your decision. If you need the employee to work but they cannot, they will still need to take dependents' leave, which is usually unpaid.

**Can those on long-term sick be furloughed?**

No. Deliberately changing someone from long-term sick to furlough so they can access the scheme would be deemed fraudulent.

**Can furloughed employees call in sick?**

No. On periods of lay-off, employees cannot call in sick as they are not required to work. However, employees still retain their statutory rights, including the right to sick leave.

**Can those self-isolating be furloughed?**

These employees should be placed on sick leave for the period they are required to self-isolate (and paid in accordance with your sick pay policy) and then furloughed after this.

**Are employees who are shielding placed on sick pay or furlough?**

Furlough.

**What about those that are self-isolating because they live with someone who is shielding?**

They can also be furloughed.

**Can those on maternity leave be furloughed?**

Only when they are ready to return to work. Employees are required to give a minimum of eight weeks' notice to end their maternity leave and come back to work earlier than intended. Bear in mind that if an employee on

maternity leave gives notice to return and you suspect this is so they can be furloughed with everyone else, you may agree to this. However, explain to them that the furlough period is a temporary measure and they will not be able to return to maternity leave once the furloughed period ends. Again, any abuse of the scheme will be deemed fraudulent.

**What if we have an enhanced maternity pay policy?**

While you cannot furlough employees as such (as their status of work will not change), you can claim for 80% of the enhanced maternity pay.

**What about those about to go on maternity leave, can they be furloughed?**

Yes, then their status changes when their maternity leave commences.

**Can employees on unpaid leave be furloughed?**

Only those on unpaid leave after 28 February can be furloughed and access the scheme.

**What if an employee resigned and left after 28 February but their new employer has withdrawn the offer due to Coronavirus?**

You could re-employ them (if they were still on the payroll at 28 February). This is your choice, as you are under no obligation to reinstate them. It could be helpful if, for example, you hadn't managed to replace them and they were a real asset to your company.

## REDUNDANCY

**We're in redundancy consultation now, can we furlough those employees?**

Yes, this is an alternative to redundancy. However, if the redundancy is not connected to Coronavirus, you are not under any obligation to furlough your employees. It might even be deemed fraudulent.

**What if the redundancy consultations are connected to Coronavirus?**

During consultation, you should consider all alternatives to redundancy. If you do not consider the option to furlough, you could be at risk of unfair dismissal claims.

**If an employee was made redundant but they were employed on 28 February 2020, should we reinstate them and put them on furlough?**

Employees made redundant after 28 February 2020 could be rehired and placed on furlough, and your company can still access the scheme.

**Can you start redundancy consultation during a furlough period?**

It appears you can, subject to any further guidance on this subject. If redundancy is confirmed, it is likely you would have to remove your employees from furlough status and pay the contractual notice period. Using

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the furlough grant as part payment will most likely be deemed an abuse of the system.

If an employee is made redundant after we have taken advantage of the job retention scheme, is the grant repayable?

No.

## STAYING IN TOUCH WITH YOUR EMPLOYEES

Can we contact employees who are furloughed?

There is nothing to suggest that you cannot, however, you must not ask them to undertake any work.

Naturally, you will want to check in on their wellbeing, especially for those currently on their own, so do call or email them to stay in touch.

