

FURLOUGHED WORKERS CORONAVIRUS EMPLOYER FAQs

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 30 June, 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.

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 you.

How do we claim the 80%?

HMRC has set up an automated portal which went live on 20 April 2020.

Who can claim?

Any entity that:

- created and started a PAYE payroll scheme on or before 19 March 2020
- has enrolled for PAYE online
- has a UK bank account.

What do we need to make a claim?

- your employer PAYE reference number
- the number of employees being furloughed
- national insurance numbers for the furloughed employees
- names of the furloughed employees
- payroll/employee number for the furloughed employees (optional)
- your self assessment unique taxpayer reference or corporation tax unique taxpayer reference or company registration number
- the claim period (start and end date)
- amount claimed (per the minimum length of furloughing of three consecutive weeks)
- your bank account number and sort code
- your contact name
- your phone number

You will need to calculate the amount you are claiming. HMRC will retain the right to retrospectively audit all aspects of your claim.

If you have fewer than 100 furloughed staff, you will be asked to enter details of each employee you are claiming for directly into the system. If you have 100 or more furloughed staff, you will be asked to upload a file with the information rather than input it directly into the system. The following file types will be accepted: .xls .xlsx .csv .ods.

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%.

Do we have to top it up?

No.

Is the 80% based on their current salary?

For full and part-time (salaried) employees, the reference salary is the amount of salary paid to the employee in the latest salary period ending on or before 19 March 2020. This does not include anything that is not salary such as non-guaranteed overtime or commission.

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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 to be paid by us?

You can claim for any payments you are obliged to pay your employees up to the cap of £2,500. This includes any past overtime or compulsory commission payments. These payments will need to be topped up to 100%. However, you should exclude discretionary bonus (including tips) and commission payments.

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.

When can we make a claim via the scheme?

The guidance states you should make a claim shortly before or at the point of processing payroll. We recommend this is done once payroll figures have been signed off and the furlough amounts to be claimed are clear.

Effectively, you may end up making claims weekly or monthly in accordance with the pay period for each furloughed employee. If an employee's period of furlough falls over two pay periods, you claim for only the portion falling in the current pay period and the other portion in the next claim.

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.

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 to obtain agreement, 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 new starters be furloughed?

Employees can be furloughed if they were employed by you on or before the 19 March 2020 and included on RTI submissions for payroll by this date.

If they started after this date and 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 employees who transferred under the TUPE regulations after 28 February 2020 be furloughed?

A new employer is eligible to claim under the scheme for the employees of a previous business transferred after 28 February 2020 if the TUPE rules apply to the change in ownership or change in service provision.

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.

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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. If the employee normally earns the minimum wage, and the 80% that is claimed is therefore less than the minimum wage, you will have to pay the difference.

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. It has now been confirmed that holiday can be taken during periods of furlough. However, you will have to pay for time taken as holiday at the employee's usual rate of pay.

The government has been clear that it is keeping the policy on holiday pay during furlough under review, so this may well change in the future.

There is a lack of clarity about the grant for holidays. The current wording states "Employers will be obliged to pay additional amounts over the grant". However it is not clear whether the additional amount will be 20% or 100% of the holiday pay.

What happens with bank holidays?

The guidance has confirmed that if an employee usually works bank holidays, you can agree that this is included in the grant payment. If the employee usually takes the bank holiday as leave, you will either have to top up their usual holiday pay, or give the employee a day of holiday in lieu.

There is a lack of clarity as the wording HMRC has released states that employers will be required to "top up the grant", so either:

- You will be able to claim for the bank holidays (the 80%) and top up the additional 20%; or
- You won't be able to claim for that day and you will need to top up by 100% for the day.

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 has become 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 March to 30 June 2020.

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

Be aware that there are sponsorship rules that apply 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 30 June, can we renew their contract and furlough them until the 30 June?

You can renew or extend a fixed-term contract that is due to end before 30 June. As long as the employee has continuous service and was on the payroll on 19 March 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 30 June 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?

Yes, the government guidance has recently been updated stating that you are entitled to place employees who are on long-term sick leave on furlough.

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Can furloughed employees call in sick?

You can decide whether to move these employees onto statutory sick pay or keep them on furlough, at their furloughed rate. However, the employee must receive an amount equivalent to the SSP rate as a minimum, which is in line with their statutory rights.

Can those self-isolating be furloughed?

Employees who need to self-isolate should be placed on sick leave for the period they are required to self-isolate and paid in accordance with your sick pay policy. However, if you need to furlough employees for business reasons, you can furlough self-isolating employees, as with other employees. In these cases, the employee should no longer receive sick pay and would be classified as a furloughed worker.

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?

You can furlough employees who are unable to work because they need to stay home with someone who is shielding. We advise getting evidence from the government of the shielding status of the person they live with.

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 may 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?

Yes, those on unpaid leave after 28 February can be furloughed and access the scheme. However, you may not make claims for pre-agreed sabbaticals or periods of unpaid leave under the job retention scheme.

What if an employee left my employment but their new employer has withdrawn the offer due to Coronavirus?

For any employees that were employed on 28 February and included on RTI submissions on or before 28 February but have since been made redundant or stopped working for you before 19 March, they can be reinstated and furloughed.

This is your choice, you are under no obligation to reinstate them. It could be helpful for those employers that hadn't yet managed to replace the person and where the person was a real asset to the 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 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.

CONTACT US

If you have any queries or need any advice, please do not hesitate to contact us on:

Liverpool
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