

# SME DIGEST

ADVICE FOR SMALL & MEDIUM SIZED ENTERPRISES



Edited by Adam Bernstein

## STAY UPDATED

For the most up to date guidance surrounding the government's furloughing scheme, check the official website here <https://www.gov.uk/guidance/claim-for-wage-costs-through-the-coronavirus-job-retention-scheme#contents> and seek professional advice where required.

## CORONAVIRUS JOB RETENTION SCHEME

# CJRS - MAXIMISING THE PROSPECTS OF A SUCCESSFUL CLAIM

Coronavirus is with us and the government swiftly offered support to businesses and employers to help alleviate some of the effects of its actions. One form of help – the Coronavirus Job Retention Scheme (CJRS) - offers upto 80 percent of an employee's salary to a cap of £2500 per month; it isn't perfect and has holes. While detail is emerging, employers are asking what they need to do to make a successful claim. Clearly the process is subject to change, but with new guidance outlined at the start of April we can now detail the process.

*By Andrew Rayment\**

### How will a claim be made?

First off, to take part in the scheme employers will be required to submit information to HMRC about those employees that have been furloughed and their earnings through a new online portal which is expected to be operational on Monday 20th April 2020.

Employers will need to designate affected individuals as "furloughed workers" and notify them of the change. And to keep firms alive, the guidance confirms that employers are free to consider allocating any business-critical tasks to those that have not been furloughed.

Furloughing means placing staff on a leave of absence where they do not undertake any work for or on behalf of their employer or any associated or linked employer (including providing services or generating revenue) but

are instead, kept on payroll.

While only one claim can be submitted every three weeks, claims can be backdated to 1 March 2020 if applicable. By extension, individual employees must be furloughed for a minimum period of three consecutive weeks.

### Including staff in a claim

Claims can be made by any UK employer that has created and started a PAYE payroll scheme on or before 19 March 2020, has enrolled for PAYE online, and has a UK bank account. Claims can only be made for individuals who were on the PAYE payroll on 19 March 2020, including full-time and part-time employees and employees on flexible or zero-hour contracts.

### ***Those included:***

Not all employees can be claimed for and the government has detailed who can be claimed for.

The list covers employees who have been made redundant since 19 March 2020 if they are re-hired by the employer and furloughed. It is not clear whether any statutory (and contractually enhanced if applicable) redundancy payments will need to be repaid as a condition of the employee being re-hired and placed on furlough.

- Employees on sick leave or self-isolating after the period of incapacity.
- Employees who are shielding (or are required to stay at home because a person in their household is shielding) in line with public health guidance if they are unable to work from home and would otherwise have to be made redundant.
- Employees who are unable to work because they have caring responsibilities resulting from coronavirus. It is not entirely clear if a business case for redundancy is required for this category, but it is recommended.
- Those on maternity, paternity, adoption or shared parental leave will receive the normal statutory payments if eligible and will not ordinarily be eligible for furlough. However, if they also have an enhanced contractual entitlement, they can be furloughed, and the employer can claim the enhancement back under the scheme.
- Those such as office holders (including company directors and salaried individuals who are directors of their own personal service company); salaried members of limited liability partnerships; agency workers; and "limb (b) workers" provided they are paid via PAYE.
- And apprentices who can continue to train whilst furloughed, subject to meeting appropriate minimum wage requirements.

### ***Those excluded***

But not everyone is included in the scheme - employees hired after 19 March 2020; employees who are working on reduced hours or for reduced pay. However, an employer that has already introduced short time working may wish to bring that arrangement to an end and furlough a proportion of the workforce instead, thereby bringing them within the ambit of the scheme; and employees on unpaid leave, unless they were placed on unpaid leave after 19 March.

As to what the CJRS pays, employers can claim the lower of 80 percent of a furloughed employee's gross regular wage, or £2,500 a month, plus the associated Employer National Insurance contributions and minimum automatic enrolment employer pension contributions (i.e. 3 percent) on that subsidised wage.

For firms furloughing full-time and part-time salaried employees, the employee's actual salary before tax, as of 19 March, should be used to calculate the 80 percent. This means that any subsequent pay rises, including the increases to National Minimum Wage from 1 April 2020, are not to be included in the calculation.

But for employees whose pay varies, if they have been employed for a full twelve months prior to the claim, the employer can claim for the higher of either the same month's earning from the previous year; or average monthly earnings from the 2019-20 tax year.

If the employee has been employed for less than a year, the employer can claim for an average of their monthly earnings since they started work. If the employee only started in March 2020, a pro-rata for their earnings so far can be used to claim.

The guidance published on 4th April clarifies that any "regular payments" that an employer is obliged to pay employees can also be claimed, including wages, past overtime, fees and compulsory commission payments. This appears to apply to both salaried workers and those who have variable pay.

### **Unrecoverable costs**

It won't surprise many that some costs are not recoverable under the scheme. These are listed by the government as discretionary bonuses (including tips), discretionary commission payments, non-cash payments, benefits in kind, and benefits provided through salary sacrifice schemes (including pension contributions). Where the employer provides such benefits to furloughed employees, these should be in addition to the wages that must be paid under the terms of the scheme.

The latest guidance clarifies that employees are only entitled to the national minimum wage, national living wage or apprentices minimum wage for the hours they are working, therefore furloughed workers who are not working can be paid the lower of 80 percent of their salary or £2,500 even if, based on their usual working hours, this would be below their appropriate minimum



wage. However, any time that is spent undertaking training should be paid at the appropriate minimum rate (taking into account the increase in minimum wage rates from 1 April 2020). Clearly caution should be exercised so that training doesn't become seen as work.

Claims should be made using the amounts in the payroll either "shortly before or during running payroll". If appropriate, workers' wages should be reduced to 80 percent of their salary within the payroll before they are paid, as the adjustment will not be made by HMRC.

Once the employer has worked out how much of an employee's salary they can claim for, they must then work out the amount of Employer National Insurance Contributions and minimum automatic enrolment employer pension contributions they are entitled to claim. Further guidance will be issued by the government on how employers should calculate these before the scheme becomes live.

Employees will still pay their normal taxes out of their wages (including employee automatic pension contributions).

## Producing evidence

As with any governmental scheme, proof of compliance will be required. The guidance states that in order to claim, employers will need to supply their ePAYE reference number;

the number of employees being furloughed; the claim period (start and end date); amount claimed (per the minimum length of furloughing of three consecutive weeks); their bank account number and sort code; their contact name; and their phone number.

Employers will naturally also need to calculate the amount they are claiming and to be eligible for the grant under the scheme, employers must confirm in writing to their employees that they have been furloughed, and the latest update to the guidance states that a record of this communication must be kept for five years.

HMRC will check the claim and pay the grant via BACS payment into a UK bank account if the employer is eligible. The employer must pay the employee all the grant it receives for their gross pay, with no fees being charged from the money that is granted. And payments received by a business under the scheme must be included as income in the business's calculation of its taxable profits for Income Tax and Corporation Tax purposes, in accordance with normal principles.

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## Increasing the odds of a claim being paid

As with any government programme, it'll be policed to avoid fraud and error. However, it seems unlikely that HMRC will be able to undertake a forensic analysis of the circumstances of each employee placed on furlough. Therefore, it may be that no evidence of the employer's business need to make redundancies or its ability to continue paying its staff is required in any particular case.

In fact, it's more than likely that at the time of making the claim all that is required may be for the employer to self-declare that they and the relevant employees meet the scheme's requirements.

That said, the government has said that it retains the right to retrospectively audit all aspects of the scheme with scope to claw back fraudulent or erroneous claims. This suggests that the government does intend to undertake some form of checks made by at least some employers, which could result in repayment on the basis of fraud or error.

In other words, to verify that claims have not been made fraudulently or erroneously, the government may request evidence that a particular business has been adversely affected by the coronavirus outbreak, that it has faced a reduction in demand and therefore work, and/or that its ability to continue meeting salary costs has been compromised.

Employers are therefore urged to keep written records of the following in the event that their claim is selected for further scrutiny and start collating such evidence now. This should include detail on their financial situation for the period preceding and during any period of furlough leave; the business case for furloughing, laying off, making redundancies; the criteria applied to the selection of particular individuals for furlough; and the criteria applied in determining the length of any period of furlough.

***Lastly, it should be noted that if the contract allows, furloughed employees may undertake employment elsewhere without affecting the grant that employers can claim under the scheme.***

## In summary

**The scheme isn't perfect, and some workers are excluded from it. But it is what it is and employers that want to claim must abide by the terms. Employers in doubt should take appropriate advice.**