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THE END OF THE JOB RETENTION SCHEME

MANAGING THE END OF FURLOUGH



Almost six months into the coronavirus pandemic, there is only one truth – that 2020 will be a year to forget.

By Adam Bernstein

Even so, there are a number of practicalities for businesses to deal with, one of which is the ending of the Coronavirus Job Retention Scheme (CJRS). Commonly known as furloughing, CJRS allows employers to keep staff on the books, but at home, on 80 percent of their pay to a cap of £2500 a month, the cost being covered by the government.

An end to the scheme

A huge burden on the public purse, the government is now winding down the scheme.

As to the changes, from July the minimum three-week furlough period was removed, and employers now have the option of bringing back staff 'as and when' – part time - but on the basis that worked time is paid for by the employer and not the state.

Employers also have the opportunity to bring employees back progressively by ending furlough for an increasing number of employees each month, leaving others on full furlough. Alternatively, employees could be rotated between full-time furlough and work. It should be remembered that no new employees can be added to the furlough scheme.

From August, employers were required to pay employer national insurance and pension contributions. Beginning September, employers now have to pay 10 percent of a furloughed workers pay which will be capped at £2187.50. And from October, the last month of the scheme, employers will have to pay 20 percent of the furlough pay which will be capped at £1875. Because of the change in furloughing period, as employees can come back part time, it's more complicated to work out pay. Helpfully, though, there is a calculator tool on the gov.uk website.

It's still the case that workers who are sick can move between furlough and statutory sick pay, but they cannot be paid both at the same time.

Employer decisions

Employers who cannot – or do not want to – pay the extra contributions will have to remove the employee from CJRS and consider their options, whether this means a pay cut or redundancy. It should be remembered that a worker's pay can only be cut with their prior written agreement (but that may be forthcoming considering the current jobs market). Alternatively, redundancy may be the only option, but the rules are complicated and good advice is

necessary from either the government's arbitration service ACAS, or from a lawyer. It's worth pointing out that at the end of July the rules were changed so that redundancy pay is based on an employee's normal pay, not the 80 percent that was due under furlough.

Sight also shouldn't be lost of the fact that CJRS was designed to keep workers on the payroll. If employees are made redundant in short order after the end of CJRS there is a reasonable prospect that HMRC could investigate an employer's CJRS claim on the basis that it was used to pay for the consultation period relating to redundancy, not genuine employment because the redundancies had always been planned.

Other matters

There are other elements of CJRS for employers to digest. One is how the regime interacts with holiday entitlements. In short, employees still accrue holiday entitlement while on furlough although any enhanced contractual pay beyond the statutory minimum 5.6 weeks (28 days) can be reduced if agreed by the employee. Further, employees can be made to take holiday while on furlough, but only if paid 100 percent of their normal pay. Also, it's possible for a pregnant employee to be furloughed and on maternity leave at the same time – statutory maternity pay (SMP) is not reclaimed through CJRS, but instead via the usual SMP scheme.

There's also the matter of how HMRC is tackling fraud. Legislation brought in at the end of July in the Finance Act gives employers who have claimed CJRS 90 days to 'confess' and return claimed monies where either there was no real need to claim, or alternatively, employees were working in breach of the furlough rules.

If an employer chooses not to own up, a penalty of between 30 and 100 percent of the tax charge that needs to be repaid will be levied where the error has not been notified to HMRC within the specified period – but only if the disclosure is made voluntarily. If HMRC action leads to a disclosure, the penalty will be much higher - between 50 and 100 percent of the tax charge.

Employers should be mindful that



CJRS allows an employee to undertake training or learning that relates to their job while furloughed; they aren't allowed to do anything that generates income – not even a simple administrative task. The same applies to directors apart from their statutory duties.

Post CJRS help

Having come under pressure in recent weeks to help keep workers in jobs, the Chancellor, Rishi Sunak, announced on 24 September a raft of programmes to help businesses avoid redundancies. Chief of these was a replacement for CJRS which expires as the end of October. Called the Jobs Support Scheme, it will run for six months, starting in November. Under this programme, employees will need to work a minimum of a third of their normal hours and be paid for that as normal. The government and the employer will then share the payment to cover two thirds of the remaining hours. Effectively, employees working 33% of their hours will receive at least 77% of their pay, and anyone who was employed as of 23 September is eligible.

SMEs are automatically eligible for the new scheme, but larger businesses will need to prove their business has been impacted by the pandemic.

Over the next few weeks the details of the new scheme will emerge.

In summary

The CJRS isn't perfect, but it has been a success. However, it's coming to an end and employers need to plan ahead for the changes that are coming.

Looking to the future, and with a nod to employers keeping staff on beyond the end of CJRS, the chancellor, Rishi Sunak, announced in June the Job Retention Bonus of £1000 per employee that remains employed to the end of January 2021.

While it's been much derided in the media as an ineffectual means of keeping staff on the books, it's arguably better than nothing. Let's see.

More information:

gov.uk and search for 'Coronavirus Job Retention Scheme' and 'redundancy'.

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