



Coronavirus Job Retention Scheme

This advice note considers the provision of the Coronavirus Job Retention Scheme ("CJRS") announced by the government on 20 March 2020.

It is important to note that the situation is very fluid and government guidance is changing daily. We can therefore only provide a general guide that should be used with care. Furthermore, as we are not medical professionals. We cannot provide any medical advice on the virus, its treatment or transmission. The information in this note is based on information released by the Government as at 23 March.

What is the CJRS?

The CJRS is a scheme designed to assist all UK employers to access support to continue paying part of their employees' salary for those employees that would otherwise be laid off during the coronavirus outbreak. Currently, only an outline of the scheme is available at the government website (COVID-19 guidance: support for businesses) below:-

<https://www.gov.uk/government/publications/guidance-to-employers-and-businesses-about-covid-19/covid-19-support-for-businesses#support-for-businesses-through-the-coronavirus-job-retention-scheme>

The government has stated that HMRC will set out further details of the information required over the coming weeks.

Key elements of the scheme

Key details of the scheme announced so far include:-

- The CJRS will start in April 2020 and be backdated to March 2020, to enable organisations to re-employ individuals who have been laid off and for those workers to recoup lost income.
- The business will need to:-
 - designate affected employee as 'furloughed workers'
 - notify the employees of this change
 - submit information to HMRC about the employees that have been furloughed and their earnings through a new online portal (HMRC will set out further details on the information required).
- HMRC will reimburse 80% of furloughed workers' wage costs, up to a cap of £2,500 per month per employee.

- HMRC are working urgently to set up a system for reimbursement (the government webpage notes that existing systems are not set up to facilitate payments to employers).
- The government has stated that it intends for the CJRS to run for at least 3 months from 1 March 2020, but has stated that it will extend it if necessary.
- The government funding under the scheme overall is unlimited.

Which employers are eligible?

The government announcement indicated that all UK businesses are eligible.

What is a 'furloughed employee'?

'Furlough' is a term that is more encountered in the USA. There, it is a temporary suspension of employment for a specified period of time, during which an employee does not receive wages. A furlough can occur as a planned period of time off work e.g. an annual factory shutdown.

An employer may also implement a furlough as a cost-saving process, instead of making employees redundant. In that respect, it is similar to the concept of a 'lay-off' in the UK.

Dictionary definitions refer to 'allowing or forcing someone to be temporarily absent from work'.

We await further details of how 'furlough' will be defined under the CJRS. The government COVID-19 guidance for employees (<https://www.gov.uk/government/publications/guidance-to-employers-and-businesses-about-covid-19/covid-19-support-for-businesses#support-for-businesses-through-the-coronavirus-job-retention-scheme>) states:-

- If your employer intends to access the CJRS, they will discuss with you becoming classified as a furloughed worker.
- This would mean that you are kept on your employer's payroll

Details still to be confirmed

Aspects of the scheme which are currently not clear include:-

- Whether the scheme will apply only to those with the status of employee or whether it will also extend to workers.
- How agency workers will be affected.
- What costs will be reimbursed: the details available so far refer to the employer claiming '*a grant of up to 80% of your wage for all employment costs, up to a cap of £2,500 per month*' per employee.

- Use of the term 'grant' in some of the published details of the CJRS could indicate that employers may ultimately be required to repay sums reimbursed under the scheme.
- What changes will need to be made in order for an individual to be designated as a 'furloughed employee' e.g.:
 - The government has not simply used the term 'laid-off employee' so it is presumably different to the statutory definition of 'lay-off' under s147 Employment Rights Act 1996.
 - Whether the employee can do any work for the employer. The COVID-19 guidance for employees website (see above) states *'to qualify for this scheme you should not undertake work for [your employer] while you are furloughed'* which indicates that undertaking any work for the employer would disqualify a worker from the scheme.
 - Whether the employer would be required to follow a specified process: the COVID-19 guidance: support for businesses website (see above) states that *'changing the status of employees remains subject to existing employment law and depending on the employment contract, may be subject to negotiation'*. Therefore, unless an employer has the contractual right to lay-off, an employer is advised to seek the consent of employees to agree to be classified as a 'furloughed employee'. Most employees are likely to agree to this. However, for those who do not agree and there is no contractual right to lay-off, the employer will need to consider alternatives e.g. redundancy (subject to the usual process around consultation and selection).
- How the reimbursement scheme will work: use of the term 'reimbursement' indicates that the employer must make the payments first: employers may still therefore encounter cashflow difficulties whilst they await reimbursement.
- Whether employers will be required to fund the 20% shortfall between the payment under the CJRS and the employee's normal salary. The COVID-19 guidance for employees website (see above) states *'Your employer could choose to fund the difference between this payment and your salary, but does not have to'*.

Don't forget, this advice is general in nature and will need to be tailored to any one particular situation. Should you find yourself in the situation above, contact us at any stage for advice and assistance as appropriate.

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