

Job Retention Scheme

Frequently asked questions

This document is intended to provide general employment law advice for both employers and employees on the Job Retention Scheme announced by the government in light of the current coronavirus pandemic and is based on government guidance available as at 31 March 2020.

We will update this document from time to time, as government guidance is updated. Please check the latest version on our website (www.tinsdills.co.uk) to be sure the information you receive is entirely up-to-date (see disclaimer below).

1. What is the Coronavirus Job Retention Scheme?

It is a temporary scheme devised by the government to support employers to retain and pay a proportion of the wages of their employees who would otherwise have been laid off or made redundant. The affected employees will be put on “furloughed” status

2. What does ‘furlough’ mean?

Furlough means you will remain on the payroll of your employer but you will have been asked to stop working.

3. Will I be paid if I am furloughed?

Yes, you will be paid during furlough. However, this may mean you are paid a lower monthly sum than you would ordinarily receive.

HMRC will reimburse your employer for 80% of your gross wages up to a maximum of £2,500, plus your **employers’** National Insurance (NI) and pension contributions. It is then up to the employer whether they pay the remaining 20% (or more if 80% of your salary exceeds £2,500) but they are not obliged to do so.

4. Can I work if I am furloughed?

No you cannot work if you have been designated as a ‘furloughed worker’. You can volunteer or undertake training provided it does not mean making money for your employer.

5. Will I get 80% of my full salary/wages?

You should receive 80% of your *basic* wage or £2,500 (whichever is lower) per month less any **employee** income tax, NI and pension contributions that you would usually make. Payments under the grant do not

include bonuses or commission. Again, it is up to your employer whether they wish to make these additional payments.

6. What is my ‘basic’ wage for the purpose of the scheme?

If you receive a regular wage, your basic wage should be whatever you usually receive (this may be different to the amount stated in your written contract of employment).

If the hours you work each week / month varies and the amount you are paid varies accordingly (e.g. zero hours contract), your basic wage is calculated as the higher of:

- the pay you received that month in the previous year; or
- the average of your pay in the tax year 2018/19.

Bonuses and commission will not be included in the calculation of your basic wage (however there *may* be an exception where your pay is predominantly made up of variable commission).

7. My basic wage is the National Minimum Wage, will I continue to receive National Minimum Wage if I am put on furlough (and will the amount change with any increase in National Minimum Wage)?

If you are placed on furlough and so are doing no work for your employer, they can pay you 80% of the National Minimum Wage (which is, of course, less than National Minimum Wage). However, if you do any training or volunteer work for the employer whilst on furlough then you are entitled to receive National Minimum Wage rather than 80% of that basic wage.



It is not yet clear whether any payment to employees usually entitled to receive National Minimum Wage will need to be increased if National Minimum Wage is increased (such as on 6 April 2020) whilst those employees are on furlough and being paid 80% of their salary. However, if you are on training or volunteer work for the employer then the amount you receive should equate to the level of National Minimum Wage payable at that time.

8. How will this be taxed or is tax already deducted?

The payment made under the Scheme will cover 80% of your basic salary or £2,500 per month, whichever is the lowest, plus the **employer's** pension contributions, and NI contributions. However, deductions will be made for normal **employee** contributions to income tax, NI and pension schemes.

9. I am a director/shareholder – can I furlough myself?

If you are a director/shareholder and you are employed by the company and receive a salary, if you can genuinely cease any work for the company (that you would normally have done as an employee) then, as things currently stand, there does not appear to be anything to prevent you from furloughing yourself and paying yourself 80% of your wages or £2,500 (whichever is lower) and claiming the grant for reimbursement. Payments of dividends are not covered by the scheme.

You should consider very carefully whether putting yourself on furlough is practically feasible, as you would not be able to do any work for the business for the furlough period (including company social media), for a minimum of three weeks. It is not yet clear whether, if you were to furlough your 'employment' and stop your 'day to day' work within the business, you could still undertake tasks required of you as a director and comply with your director duties such as company filings, applications for business loans and grants etc. to keep the business running during that period. You would also be the first to come back from furlough, to enable you to give other employees notice to return to work.

10. I was sent home before the government announced the Job Retention Scheme – am I deemed to be on furlough leave and will this be backdated to the date I was sent home?

Payments under the grant scheme can be backdated but only to 1 March 2020. If you were sent home before 28 February, you will not be deemed to have been furloughed for the period before 28 February for the purposes of this scheme.

11. What does the grant cover and what does that mean take home for me?

The grant covers 80% of your basic gross wage (not including any bonuses or overtime) or £2,500 per month plus your **employer's** NI and pension contributions.

Your take home pay will be 80% of your basic pay or £2,500 per month whichever is the lower, less the normal **employee** contributions to income tax, NI and pension schemes.

12. Can I furlough employees who were hired after 28 February 2020?

No, you can only furlough employees who were on your payroll on or before 28 February 2020.

13. Can I use the scheme to 'top-up' employees who are on short time working?

No, those employees placed on furlough cannot undertake any work for you. You cannot claim under this scheme for employees who are on short-time hours.

14. Can I rotate employees under the Job Retention Scheme?

It is understood that you can rotate employees under the scheme but you should remember that any one employee should be subject to furlough for a continuous period of at least 3 weeks to be eligible under the Scheme.

15. Who needs to apply for the scheme?

The employer should apply as the grant will be paid to them.



16. Can I refuse to be furloughed?

You can refuse to be furloughed but you must remember that you may be at risk of being laid off or made redundant by your employer if you do not accept furlough.

17. Does my employer have a duty to consult me before putting me on furlough, and should they appoint employee representatives?

As furlough is meant to be a temporary measure, it is not a redundancy situation and therefore there is no requirement to consult employees or to appoint employee representations. However, strictly speaking, where there are no 'laying off' provisions in your contract of employment, any

agreement to furlough would be a change to your terms and conditions of employment, for which consultation is required. The length of time employers are required to consult for depends on the number of employees affected.

You should consider that consultation on change of terms can be lengthy process and so (given the exceptional circumstances) employers may ask you to agree to being furloughed without a full consultation and you will need to weigh up the right to be consulted with the potential risk of redundancy if you do not agree to be furloughed (given that furlough is being used as a means to prevent redundancy and lay offs).

If you would like further advice on dealing with coronavirus in the workplace, please contact a member of **our Employment team** on:

01782 652300

or through our online contact form at:

<https://tinsdills.co.uk/about-us/contact-us/>

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