

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 12 May 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. How do I furlough an employee?

You furlough an employee by agreeing with the employee, in writing, that they will be furloughed and will cease to undertake any work on behalf of the business. This variation of the contract of employment is subject to the usual employment law.

4. Will I be paid if I am furloughed?

Yes, you will be paid during furlough. However, this may mean you may be 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 **employer’s** 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.

The amount that HMRC will reimburse your employer is expected to reduce from 1 August, but your employer will be expected to top up the payment to ensure that you continue to receive at least 80% of your basic wage or £2,500, whichever is lower.

5. Can I work if I am furloughed?

No you cannot work for the employer if you have been designated as a ‘furloughed worker’. You can volunteer or undertake training for your employer, provided it does not mean making money for them. You can also undertake work for another employer if your contract of employment allows it.

Please note, it is anticipated that this position may change from 1 August 2020 and furloughed workers may be able to return to work on a part time basis whilst still remaining eligible for the scheme.

6. 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 any performance-related bonuses or discretionary payments (such as tips), any conditional payments (e.g. where a threshold or target must be met) or any non-financial benefits. Again, it is up to your employer whether they wish to make these additional payments.



7. 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.

Performance-related bonuses, discretionary payments (such as tips), conditional payments (e.g. where a threshold or target must be met) and any non-financial benefits will not be included in the calculation of your basic wage. However, it appears that where your regular pay includes compulsory commission this may be included in the calculation.

8. 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 for those hours spent on training.

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 occurred on 1 April 2020) whilst those employees are on furlough and being paid 80% of their salary. This may depend on the wording of the

employment contract. However, if you are undertaking training for the employer then the amount you receive for the time spent training should equate to the level of National Minimum Wage payable at that time.

9. 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.

10. 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. *The decision to furlough a director must be made by the board and documented with board minutes.*

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. Where you need to carry out any duty or other obligation arising from an Act of Parliament (such as the Companies Act 2006) relating to the filing of company accounts or the provision of other information relating to the administration of the company, you may do so provided you do no more than would reasonably be judged necessary for that purpose. This is a narrow interpretation of director duties and you should note that any work other than this is likely to preclude you from being eligible under the scheme. For



example, you should not do work intended to generate commercial revenue or which provides services to or on behalf of the company. You would also be the first to come back from furlough to enable you to give other employees notice to return to work.

11. 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 1 March 2020, you will not be deemed to have been furloughed for the period before then for the purposes of this scheme.

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

Currently 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.

The amount that the grant covers is expected to be reduced on 1 August 2020, but your employer will be expected to make up the difference so that you continue to receive the lower of 80% of your basic wage or £2,500 per month, less deductions.

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

Following the Direction from the government to HMRC, it appears that employees who were hired on or before 19 March 2020 (as opposed to 28 February 2020, as originally announced) will be eligible under the scheme, *provided that you have submitted real time information payroll data through*

the PAYE system for the affected employees by that date.

14. Can I furlough an employee that transferred to me under TUPE, even if the employee transferred after 28 February?

Yes, you can furlough and claim under the scheme for employees that have transferred to you under TUPE after 28 February, as long as they met the criteria prior to the transfer.

15. Can I give an employee notice that they are being furloughed, or do I have to get the employee's agreement?

In order to be eligible and claim under the scheme you must have entered into a written furlough agreement with the affected employees. There is an element of uncertainty, but it is generally accepted that to have given notice where the employees' contracts of employment contain existing lay off provisions will be sufficient 'written agreement'. However, given the element of uncertainty it would be prudent to get written agreement from employees in all cases.

In the case of contracts of employment not containing laying off provisions, a notice which has been served but did not require the employee to confirm their agreement in writing is unlikely to be sufficient for a claim under the scheme.

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

The current position is that those employees placed on furlough cannot undertake any work for their employer. You cannot currently claim under this scheme for employees who are on short-time hours.

However, this is likely to change from 1 August 2020 when it is expected that employees can undertake part time work for their employer and remain eligible for the scheme.



17. 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.

18. Who needs to apply for the scheme?

The employer should apply as the grant will be paid to them. Applications are made via an online portal which went live on 20 April and can be found at the following link: <https://www.gov.uk/guidance/claim-for-wages-through-the-coronavirus-job-retention-scheme>

19. Will my holiday entitlement continue to accrue while I am furloughed?

Yes, whilst furloughed you will continue to accrue holiday at the same rate as if you were not furloughed.

20. Can I take holiday while I am furloughed?

Yes you can take holiday whilst furloughed. If you take holiday your employer must pay you 100% of your basic wage for that period of holiday, but will only be able to claim back the lower of either 80% of your basic wage or £2,500 for the period of holiday.

21. 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 being furloughed.

22. 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 depends on the number of employees affected.

You should consider that consultation on change of terms can be a 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).

23. When does the scheme end?

On 12 May 2020 it was announced that the scheme will now run until 31 October 2020. The scheme will remain unchanged and in its current form until 31 July 2020, but it is anticipated that the scheme will change from 1 August 2020, with furloughed workers being allowed to undertake work on a part-time basis for employers and remain eligible for the scheme. It is also anticipated that the amount that the government will reimburse under the scheme from 1 August 2020 will reduce from the current levels, with employers being expected to top up the difference from that point onwards. The extension of the scheme and the amendments to it during the latter stages are intended to facilitate a staged return of furloughed workers and avoid a situation whereby employers are expected to take the full salaries of all its employees back on overnight and before the business has had chance to fully recover from the effects of the enforced lockdown.

Further information on the detail of the changes to the scheme from 1 August 2020 is expected by the end of May.



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or through our online contact form at:

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

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