

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 4 June 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).

Please note that all dates, unless expressly stated otherwise, refer to dates in 2020.

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.

remain furloughed for the rest of the time not worked.

Placing an employee on furlough is a variation of their contract of employment and will therefore be subject to the usual employment law principles on variation.

Confirmation of the agreement to furlough an employee must be retained until at least 30 June 2025.

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.

You will have been asked to stop working completely for your employer for any furlough period prior to 1 July, but as of 1 July you may be able to return to work on a part-time basis, if agreed with your employer, whilst remaining a furloughed employee for the days/hours you do not work.

4. Will I be paid if I am furloughed?

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

For the period up to 31 July 2020, 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.

3. How do I furlough an employee?

You furlough an employee by agreeing with the employee, and confirming the agreement in writing, that the employee will be furloughed and will cease to undertake all work on behalf of the business. The employee must have been furloughed prior to 1 July if you wish to claim the grant under the Coronavirus Job Retention Scheme.

From 1 August 2020, the amount that HMRC will reimburse your employer will reduce 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, whilst you are not working.

From 1 July, you may agree with a furloughed employee (in writing) that they will return to work on a part-time basis but

From 1 August 2020, HMRC will no longer reimburse your employer for its NI and pension contributions so your employer will have to resume payment of these amounts.



From 1 September 2020, the amount that will be reimbursed under the scheme will be reduced to 70% of your basic wage or £2,187.50, whichever is lower, with the employer required to top up 10% of your basic wage.

From 1 October 2020, up to and including 31 October (when the scheme will end), the amount that will be reimbursed will be reduced to 60% of your basic wage or £1,875.00, whichever is lower, with the employer required to top up 20% of your basic wage.

If you are working part-time whilst furloughed then, under the new flexible furlough provision introduced on 1 July, you should be paid in full for the time you spend working and you will receive the furloughed rate for those hours not worked.

5. Can I work if I am furloughed?

Up to and including 30 June 2020, 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.

As of 1 July, however, you can agree with your employer to return to work on a part time basis whilst still remaining eligible under 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, 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 vary 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 undertaking 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 undertake any training or volunteer work for your employer, or return to work part-time from 1 July 2020, whilst on furlough then you are entitled to receive National Minimum Wage for those hours spent training or, from 1 July, working.

Whether any payment to employees usually entitled to receive National Minimum Wage will need to be increased if National Minimum Wage is increased (as occurred on 1 April) whilst those employees are on furlough and being paid 80% of their salary



will depend on the wording of the employment contract. However, if you are undertaking training or working part time (from 1 July) for the employer then the amount you receive for the time spent training or working 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 prior to 1 August 2020 will cover 80% of your basic salary or £2,500 per month, whichever is the lower, 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.

From 1 August, however, HMRC will no longer reimburse your employer for its NI and pension contributions so your employer will have to resume payment of these amounts.

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 you can furlough yourself and pay yourself 80% of your wages or £2,500 (whichever is lower) and claim the grant for reimbursement. *The decision to furlough a director must be made by the board and documented with board minutes.*

Please note 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. 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. However, you can undertake the minimal work required to pay employees and claim reimbursement under the scheme. You would also need to 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. If you were sent home before 1 March, you will not be deemed to have been furloughed for the period before that date.

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 (whichever is the lower) 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 to be gradually reduced between 1 August 2020 and 31 October 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?

Yes. Following the Direction from the government to HMRC, it appears that employees who were hired on or before 19 March (as opposed to 28 February, 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 scheme 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?

You must get the employee's agreement to being furloughed but this agreement does not necessarily have to be in writing. If the employees' contracts of employment contain existing lay off provisions then it may be that this will be sufficient 'agreement'. In any event, confirmation of the agreement to be furloughed must be made in writing, even if the agreement itself was made verbally and so you should follow up any verbal agreement with an email or letter to confirm that agreement.

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, from 1 July 2020, employees can undertake part time work for their employer and remain eligible for the scheme. The

scheme will 'top up' a proportion of furloughed employees' wages for the time that they are not working.

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. You should note, however, that any employees who have not been furloughed *on or before 10 June 2020* will not be eligible under the scheme if furloughed after that date.

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 (or other applicable amount from 1 July onwards).

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 furlough status.



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 representatives. 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 try and 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 30 June. As of 1 July, the scheme will change with furloughed

workers being allowed to undertake work on a part-time basis for employers whilst remaining eligible for the scheme. 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 (see Q4 above for further details). The extension of the scheme and the amendments to it during the latter stages are intended to facilitate a staged return of furloughed workers. The staged return is designed to avoid a situation whereby employers are expected to take responsibility overnight for payment of the full salaries of all its employees before the business has had chance to fully recover from the effects of the enforced lockdown.

24. Can I continue to furlough employees for the remainder of the scheme?

Employees can remain furloughed up until the scheme ends on 31 October 2020. However, the revised scheme which applies from 1 July 2020 onwards and which introduces 'flexible furloughing' will only be open to employees that have already been furloughed under the existing scheme for at least three weeks prior to 1 July 2020. The last date that you could furlough an employee that has not yet been furloughed was **10 June 2020**.

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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