
Written 15 May 2020

Gov.Uk Updates Guidance On Which Employees You Can Put On Furlough To Use The Corona Job Retention Scheme

Find out which employees you can put on furlough and claim for through the Coronavirus Job Retention Scheme: <https://www.gov.uk/guidance/check-which-employees-you-can-put-on-furlough-to-use-the-coronavirus-job-retention-scheme>

This is a summary of information on the Government website.

Employees you can claim for

You can only claim for furloughed employees that were employed on 19 March 2020 and who were on your PAYE payroll on or before 19 March 2020. This means a Real Time Information (RTI) submission notifying payment in respect of that employee to HMRC must have been made on or before 19 March 2020. If you had employees that were employed on 28 February 2020 but not on 19 March 2020, please see the section below on employees who were made redundant or stopped working for you after 28 February 2020.

Was the employee employed with you as of this date?	Date RTI submission notifying payment was made to HMRC	Eligible for CJRS?
28 February 2020	On or before 28 February 2020	Yes
28 February 2020	On or before 19 March 2020	Yes
28 February 2020	On or after 20 March 2020	No
19 March 2020	On or before 19 March 2020	Yes
19 March 2020	On or after 20 March 2020	No
On or after 20 March 2020	On or after 20 March 2020	No

If you made employees redundant or they stopped working for you after 28 February

If you made employees redundant, or they stopped working for you on or after 28 February 2020, you can re-employ them, put them on furlough and claim for their wages from the date on which you furloughed them, even if you do not re-employ them until after 19 March 2020.

This applies as long as the employee was on your PAYE payroll as at 28 February 2020, which means an RTI submission notifying payment in respect of that employee to HMRC must have been made on or before 28 February 2020. If your employee stopped working for you and was

on a fixed term contract, you should also refer to the section 'If your employee is on a fixed term contract' below.

If you made employees redundant or they stopped working for you after 19 March 2020

If you made employees redundant, or they stopped working for you on or after 19 March 2020, you can re-employ them, put them on furlough and claim for their wages through the scheme from the date on which you furloughed them.

This applies as long as the employee was employed on 19 March 2020 and was on your PAYE payroll on or before 19 March 2020. This means an RTI submission notifying payment in respect of that employee to HMRC must have been made on or before 19 March 2020. If your employee stopped working for you and was on a fixed term contract, you should also refer to the section 'If your employee is on a fixed term contract' below.

If your employee is on a fixed term contract

An employee on a fixed term contract can be re-employed, furloughed, and claimed for if either:

- their contract expired after 28 February 2020 and an RTI payment submission for the employee was notified to HMRC on or before 28 February 2020
- their contract expired after 19 March 2020 and an RTI payment submission for the employee was notified to HMRC on or before 19 March 2020

If the employee's fixed term contract has not already expired, it can be extended, or renewed. You can claim for them if an RTI payment submission for the employee was notified to HMRC on or before 19 March 2020.

Employees that started and ended the same contract between 28 February 2020 and 19 March 2020 will not qualify for this scheme. This is not specific to employees on fixed-term contracts, the same would apply to employees on all other contracts.

If your employee had multiple employers over the last year

If an employee has had multiple employers over the past year, has only worked for one of them at any one time, and is being furloughed by their current employer, their former employer/s should not re-employ them, put them on furlough and claim for their wages through the scheme.

If your employees are working reduced hours

If an employee is working, but on reduced hours, or for reduced pay, they will not be eligible for this scheme.

If your employee has more than one job

If your employee has more than one employer they can be furloughed for each job. Each job is separate, and the cap applies to each employer individually.

Employees can be furloughed in one job and receive a furloughed payment but continue working for another employer and receive their normal wages.

If you employ apprentices

Apprentices can be furloughed in the same way as other employees and they can continue to train whilst furloughed.

However, you must pay your Apprentices at least the Apprenticeship Minimum Wage/National Living Wage/National Minimum Wage (AMW/NLW/NMW) as appropriate for all the time they spend training. This means you must cover any shortfall between the amount you can claim for their wages through this scheme and their appropriate minimum wage.

Guidance is available for changes in apprenticeship learning arrangements because of coronavirus (COVID-19) in:

- England: <https://www.gov.uk/government/publications/coronavirus-covid-19-apprenticeship-programme-response/coronavirus-covid-19-guidance-for-apprentices-employers-training-providers-end-point-assessment-organisations-and-external-quality-assurance-pro>
- Scotland: <https://www.skillsdevelopmentscotland.co.uk/coronavirus-covid-19/>
- Wales: <https://gov.wales/work-based-learning-and-apprenticeships-coronavirus>
- Northern Ireland: <https://www.nidirect.gov.uk/articles/coronavirus-covid-19-guidance-apprentices>

If your employee does volunteer work

A furloughed employee can take part in volunteer work, if it does not provide services to or generate revenue for, or on behalf of your organisation or a linked or associated organisation.

You cannot furlough your employee and then ask them to volunteer for you in the same or a different role.

If your employee does training

Furloughed employees can engage in training, as long as in undertaking the training the employee does not provide services to, or generate revenue for, or on behalf of their organisation or a linked or associated organisation. Furloughed employees should be encouraged to undertake training.

Where training is undertaken by furloughed employees, at the request of their employer, they are entitled to be paid at least their appropriate national minimum wage for this time. In most cases, the furlough payment of 80% of an employee's regular wage, up to the value of £2,500,

will provide sufficient monies to cover these training hours. However, where the time spent training attracts a minimum wage entitlement in excess of the furlough payment, employers will need to pay the additional wages (see National Minimum Wage Section for more details).

Furloughed employees working as union or non-union representatives

Whilst on furlough, employees who are union or non-union representatives may undertake duties and activities for the purpose of individual or collective representation of employees or other workers. However, in doing this, they must not provide services to or generate revenue for, or on behalf of your organisation or a linked or associated organisation.

If your employee's health has been affected by coronavirus (COVID-19)

If your employee is shielding

Employees who are unable to work because they are shielding in line with public health guidance (or need to stay home with someone who is shielding) can be furloughed.

If your employee has caring responsibilities

Employees who are unable to work because they have caring responsibilities resulting from coronavirus (COVID-19) can be furloughed. For example, employees that need to look after children can be furloughed.

If your employee becomes sick while furloughed

Furloughed employees retain their statutory rights, including their right to Statutory Sick Pay. This means that furloughed employees who become ill must be paid at least Statutory Sick Pay. It is up to employers to decide whether to move these employees onto Statutory Sick Pay or to keep them on furlough, at their furloughed rate.

If a furloughed employee who becomes sick is moved onto SSP, employers can no longer claim for the furloughed salary. Employers are required to pay SSP themselves, although may qualify for a rebate for up to 2 weeks of SSP. If employers keep the sick furloughed employee on the furloughed rate, they remain eligible to claim for these costs through the furloughed scheme.

If your employee is on leave

If your employee is on unpaid leave

If an employee started unpaid leave after 28 February 2020, you can put them on furlough instead. If you put them on furlough then you should pay them at least 80% of their regular wages, up to the monthly cap of £2500.

If an employee went on unpaid leave on or before 28 February, you cannot furlough them until the date on which it was agreed they would return from unpaid leave.

If your employee is self-isolating or on sick leave

If your employee is on sick leave or self-isolating as a result of Coronavirus, they will be able to get Statutory Sick Pay, subject to other eligibility conditions applying. The Coronavirus Job Retention Scheme is not intended for short-term absences from work due to sickness, and there is a 3-week minimum furlough period.

Short term illness/self-isolation should not be a consideration in deciding whether to furlough an employee. If, however, employers want to furlough employees for business reasons and they are currently off sick, they are eligible to do so, as with other employees. In these cases, the employee should no longer receive sick pay and would be classified as a furloughed employee.

Employers are also entitled to furlough employees who are being shielded or off on long-term sick leave. It is up to employers to decide whether to furlough these employees. You can claim back from both the Coronavirus Job Retention Scheme and the SSP rebate scheme for the same employee but not for the same period of time. When an employee is on furlough, you can only reclaim expenditure through the Coronavirus Job Retention Scheme, and not the SSP rebate scheme. If a non-furloughed employee becomes ill, needs to self-isolate or be shielded, then you might qualify for the SSP rebate scheme, enabling you to claim up to two weeks of SSP per employee.

If your employee is on maternity leave, adoption leave, paternity leave, shared parental leave or parental bereavement leave

The normal rules for maternity and other forms of parental leave and pay apply.

Although, you may need to calculate your employee's average weekly earnings differently, if your employee was furloughed and then started leave on or after 25 April 2020 for:

- maternity pay
- adoption pay
- paternity pay
- shared parental pay
- parental bereavement pay

You can claim through the scheme for enhanced (earnings related) contractual pay for employees who qualify for either:

- maternity pay
- adoption pay
- paternity pay
- shared parental pay
- parental bereavement pay

If your employee gets Maternity Allowance

If your employee is getting Maternity Allowance while they are on maternity leave, they should not get furlough pay at the same time.

If your employee has agreed to be put on furlough, tell them to contact Jobcentre Plus to stop their Maternity Allowance payments.

If your employee agrees to be put on furlough and end their maternity leave early, they will need to give you at least 8 weeks' notice and they will not be eligible for furlough pay until the end of the 8 weeks.

Individuals you can claim for who are not employees

As well as employees, the grant can be claimed for any of the following groups, if they are paid via PAYE: office holders (including company directors), salaried members of Limited Liability Partnerships (LLPs), agency workers (including those employed by umbrella companies), and limb (b) workers.

The guidance below sets out specific considerations for those individuals who are paid via PAYE, but who are not necessarily employees in employment law. Unless explicitly set out below, all other guidance is applicable to these cases, and should be followed.

Office holders

Office holders can be furloughed and receive support through this scheme. The furlough, and any ongoing payment during furlough, will need to be agreed between the office holder and the party who operates PAYE on the income they receive for holding their office. Where the office holder is a company director or member of a Limited Liability Partnership (LLP), the furlough arrangements should be adopted formally as a decision of the company or LLP.

Company directors

As office holders, salaried company directors are eligible to be furloughed and receive support through this scheme. Company directors owe duties to their company which are set out in the Companies Act 2006. Where a company (acting through its board of directors) considers that it is in compliance with the statutory duties of one or more of its individual salaried directors, the board can decide that such directors should be furloughed. Where one or more individual directors' furlough is so decided by the board, this should be formally adopted as a decision of the company, noted in the company records, and communicated in writing to the director(s) concerned.

Where furloughed directors need to carry out particular duties to fulfil the statutory obligations they owe to their company, they may do so provided they do no more than would reasonably be judged necessary for that purpose, i.e. they should not do work of a kind they would carry out in normal circumstances to generate commercial revenue or provides services to or on behalf of their company.

This also applies to salaried individuals who are directors of their own personal service company (PSC).

Company directors with an annual pay period

Those paid annually are eligible to claim, as long as they meet the relevant conditions. This includes being notified to HMRC on an RTI submission on or before 19 March 2020, which relates to a payment of earnings in the 19/20 tax year. The requirement for there to be payment of earnings in the 19/20 tax year applies for any employee being claimed for under the scheme, irrespective of how frequently they are paid (e.g. weekly, fortnightly, or monthly). This will be relevant for those on an annual pay period if the last payment notified to RTI was before 5 April 2019 and no further payments were notified until after 19 March 2020.

An employer can make their claim in anticipation of an imminent payroll run, at the point they run their payroll or after they have run their payroll.

Salaried members of Limited Liability Partnerships (LLPs)

Members of LLPs who are designated as employees for tax purposes ('salaried members') under the Income Tax (Trading and Other Income) Act (ITTOIA) 2005 are eligible to be furloughed and receive support through this scheme.

The rights and duties of a member of an LLP are set out in an LLP agreement and in the absence of an agreement, default provisions in the LLP Act 2000, based upon company and partnership law. Such an agreement may include separate agreement between the LLP and an individual member setting out the terms applicable to that member's relationship with the LLP. To furlough a member, the terms of the LLP agreement (or any such agreement between the LLP and the member) may need to be varied by a formal decision of the LLP, for example to reflect the fact that the member will perform no work in the LLP for the period of furlough, and the effect of this on their remuneration from the LLP. For an LLP member who is treated as being employed by the LLP (in accordance with s863A of ITTOIA 2005), the reference salary for this scheme is the LLP member's profit allocation, excluding any amounts which are determined by the LLP member's performance, or the overall performance of the LLP.

Agency Workers (including those employed by umbrella companies)

Where agency workers are paid through PAYE, they are eligible to be furloughed and receive support through this scheme, including where they are employed by umbrella companies. Furlough should be agreed between the agency, as the deemed employer, and the worker, though it would be advised to discuss the need to furlough with any end clients involved. As with employees, agency workers should perform no work for, through or on behalf of the agency that has furloughed them while they are furloughed, including performing such work through or on behalf of the agency for the agency's clients.

Where an agency supplies clients with workers who are employed by an umbrella company that operates the PAYE, it will be for the umbrella company and the worker to agree whether to furlough the worker or not.

Limb (b) Workers

Where Limb (b) Workers are paid through PAYE, they can be furloughed and receive support through this scheme.

Those who pay tax on their trading profits through Income Tax Self-Assessment, may instead be eligible for the Self-Employed Income Support Scheme (SEISS), announced by the Chancellor on 26 March 2020.

Contingent workers in the public sector

The Cabinet Office has issued guidance on how payments to suppliers of contingent workers impacted by COVID-19 should be dealt with where the party receiving the contingent worker's services is a Central Government Department, an Executive Agency of a Central Government Department or a Non-Departmental Public Body.

Read more information on contingent workers impacted by COVID-19. This guidance applies to agency workers paid through PAYE, as well as those paid through umbrella companies on PAYE and off-payroll workers supplying their services through a Personal Service Company (PSC).

Contractors with public sector engagements in scope of IR35 off-payroll working rules (IR35)

Public sector bodies will follow the Crown Commercial Services guidance in the vast majority of cases. In a small number of cases, for example where organisations are not primarily funded by the government and whose staff cannot be redeployed to assist with the coronavirus response, it may be appropriate to claim under the CJRS. Contractors who are deemed employees according to the off payroll working rules might be eligible for this scheme.

In this scenario, if the public sector organisation wished to furlough a contractor, they would have to confirm this with both the contractor's Personal Service Company (PSC) and the fee-payer (as set out in the off-payroll working rules, usually the agency paying the contractor's PSC). It should be formally agreed between these parties that the contractor is to do no work for the public sector organisation during their period of furlough. The fee-payer would be able to apply for the furlough payment of 80% of the monthly contract value, up to a maximum of £2,500, as well as the employer NICs on that subsidised wage. The fee-payer would then pay at least the amount of wage-grant received to the PSC and report the payment via PAYE using the contractor's details, making the usual tax and National Insurance contributions (NICs) deductions for contracts in scope of the off-payroll rules. The PSC would then be required to report the amount it pays to the contractor as deemed employment income via PAYE using box 58A on the PAYE Real Time Information return.

Where a contractor is continuing to receive payments from a public sector client (including through the CJRS or other any other scheme), income from this client should be excluded from

any calculation of the reference pay for the purposes of the CJRS if the contractor also decides to furlough themselves as an employee or director of their own company.

If you've consolidated your payroll and have new employees on it

Where a group of companies have multiple PAYE schemes and there is a transfer of all employees from these schemes into a new consolidated PAYE scheme after 28 February 2020, the new scheme will be eligible to furlough those employees and claim the grants available under the CJRS.

Employee transfers under TUPE and on a change in ownership

A new employer is eligible to claim under the CJRS in respect of the employees of a previous business transferred after 28 February 2020 if either the TUPE or PAYE business succession rules apply to the change in ownership.

After you have checked which employees you can claim for

Once you know whether you can put your employees on furlough and claim through the scheme for their wages, you should agree this with them before you start your claim.