

CORONAVIRUS JOB RETENTION SCHEME (CJRS)

RESOURCES TO SEND TO CLIENTS

Furlough Agreement and Letters Guidance

Updated 12 November 2020 for CJRS November onwards.

Please note these are examples only and should not be relied upon until you have confirmed contents with your advisors, solicitors and / or HR specialists

FURLOUGH LETTER(S) AND AGREEMENT(S)

Agreeing to Furlough employees – Guidance

If you are Furloughing employees from 1 November then you must agree any changes in their terms of employment with them in advance.

Employers should discuss with their staff and make any changes to the employment contract by agreement. When employers are making decisions in relation to the process, including deciding who to offer furlough to, equality and discrimination laws will apply in the usual way.

To be eligible for the grant, employers must have confirmed to their employee (or reached collective agreement with a trade union) in writing that they have been furloughed. You must:

- make sure that the agreement is consistent with employment, equality and discrimination laws
- keep a written record of the agreement for five years
- keep records of how many hours your employees work and the number of hours they are furloughed (i.e. not working)

The employee does not have to provide a written response and you do not need to place all your employees on furlough.

You can:

- Fully furlough employees - they cannot undertake any work for you while furloughed full time
- Flexibly furlough employees - they can work for any amount of time, and any work pattern but they cannot do any work for you during hours that you record them as being on furlough

If you flexibly furlough employees, you will need to agree this with the employee (or reach collective agreement with a trade union) and keep a new written agreement that confirms the new furlough arrangement. You will need to:

- make sure that the agreement is consistent with employment, equality and discrimination laws
- keep a written record of the agreement for five years
- keep records of how many hours your employees work and the number of hours they are furloughed (i.e. not working).

Employees cannot undertake any work for you during time that you record them as being on furlough.

Where consistent with employment law, any flexible furlough or furlough agreement made retrospectively that has effect from 1 November 2020 will be valid for the purposes of a Coronavirus Job Retention Scheme claim as long as it is made according to the conditions above. Only retrospective agreements put in place up to and including the 13 November 2020 may be relied on for the purposes of a claim.

See: <https://www.gov.uk/guidance/claim-for-wage-costs-through-the-coronavirus-job-retention-scheme#agreeing-to-furlough-employees>

Below there is an example of the notes required for the discussion on the agreement to change of terms of employment with employees in advance and an example follow up email or letter from the employer to the employee.

EXAMPLE NOTE OF MEETING TO DISCUSS CHANGE OF EMPLOYMENT TERMS AND AGREEMENT WITH EMPLOYEE(S)

[Employers should discuss with their staff and make any changes to the employment contract by agreement.]

Date:

XXX [Name] [employee(s)] and YYY [Name] [Employer] from ABC Limited / LLP / Employer discussed Covid-19 and the current economic reality with regard to the current Government [lockdown, downturn in demand, inability of the business to trade].

YYY outlined the CJRS Grant and that the scheme will remain open until 31 March 2021. From 1 November employers can claim 80% of an employee's usual salary for hours not worked, up to a maximum of £2,500 per month.

YYY outlined the reasons for the need for a change in the employees' employment contract and explained, subject to agreement, the employee(s) will be [fully / flexibly] furloughed from [Date]. [Note: If flexible then outline working time and Furlough time here].

YYY explained the employee(s) will still pay the taxes they normally pay out of their wages for the hours worked and the amount of Furlough pay and that the business will deduct and pay to HMRC income tax and employee National Insurance contributions on the full amount that paid the employee, including any scheme grant.

Holiday pay was discussed and YYY outlined Furloughed employees continue to accrue leave as per their employment contract.

YYY outlined that the employee(s) still have the same rights at work, including Statutory Sick Pay (SSP), annual leave, maternity and other parental rights, rights against unfair dismissal and redundancy payments. During the furlough period, employer pension contributions will continue as usual [If applicable].

[Note: see Government website for details on volunteer work, training, variation of holiday pay, employees working for a different employer, employees working as union or non-union representatives or as pension trustees - <https://www.gov.uk/guidance/claim-for-wage-costs-through-the-coronavirus-job-retention-scheme#agreeing-to-furlough-employees>]

It was agreed that the employee(s) accepts the change of employment with effect from 1 November 2020 [or as applicable].

EXAMPLE FOLLOW UP EMAIL OR LETTER TO EMPLOYEE(S)

[Employers should have already discussed the contents with their employee(s)]

Dear ,

NI NUMBER AND / OR PAYROLL NUMBER

AGREEMENT TO THE CHANGE IN YOUR TERMS OF EMPLOYMENT

Following your agreement to change the terms of your employment I am writing to confirm to that your position as [INSERT] on the [XXX DEPARTMENT] is being closed temporarily [or your hours reduced to xxx] due to the downturn in business / Government closure as a result of the COVID-19 Pandemic.

Your last official day of work will be [1 November or INSERT DAY]. Your salary will continue at 80 % the rate agreed per your employment contract [or 100% insert as applicable] during the Furlough period for hours not worked [as applicable] and at the agreed rate per your employment contract for hours worked.

The length of this furlough is [insert future date or unknown currently].
During the furlough period, your pension and other employment rights will continue [as applicable] as discussed during our call / Zoom / Teams meeting on the XXX.

We will provide regular information as the current Pandemic unfolds and when we return to normal working routines.

Please understand this action in no way reflects dissatisfaction with your job performance, it is where we are now and let's hope things improve.

Yours sincerely,

YYY

Date