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Job Retention Scheme – updated government guidance

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27 March 2020

Issue	Advice
 <b>Is the scheme open to all UK employers?</b>	<p>Yes, provided that they had created and started a PAYE payroll scheme on or before 28 February 2020, and have a UK bank account.</p>
 <b>Which employees qualify for access to the scheme?</b>	<p>Employees must have been on PAYE payroll on or prior to 28 February 2020. The scheme covers full-time and part-time employees; employees on agency contracts and employees on flexible or zero-hour contracts. The scheme also covers employees who have been made redundant since 28 February 2020, if they are rehired by their employer.</p> <p>The scheme also covers employees on agency contracts provided they are not working.</p>
 <b>Is there a requirement for employers to furlough employees immediately?</b>	<p>No. Employers can use this scheme anytime during the period that the scheme is in force. Employers cannot make a claim backdated to the 1 March 2020 start date of the scheme in respect of employees who were working during that time. Employers can, however, make a backdated claim in respect of employees who were not working during that time.</p>
 <b>Is there a minimum length of time that an employee can be furloughed under the scheme?</b>	<p>Yes. The minimum length is 3 weeks.</p>
 <b>What employment costs does the scheme cover?</b>	<p>Employers can use the new portal to claim for 80% of furloughed employees' usual monthly wage costs (excluding fees, commission and bonuses), up to £2,500 a month, <u>plus</u> the associated Employer NICs and minimum automatic enrolment employer pension contributions on that wage. The government will issue more guidance on how employers should calculate their claims for Employer NICs and minimum automatic enrolment employer pension contributions.</p> <p>Employers cannot claim for employer NICs and automatic enrolment contribution on any additional top-up salary over the 80%. Employers also cannot claim for any voluntary automatic enrolment employer contributions above the minimum mandatory employer contribution of 3% of income above the lower limit of qualifying earnings (which is £512 per month until 5th April and will be £520 per month from 6th April 2020 onwards).</p> <p>While on furlough, the employee's wage will be subject to the usual income tax and other deductions.</p>
 <b>Are there any other eligibility requirements?</b>	<p>To be eligible under the scheme, employees who are on furlough cannot undertake work for or on behalf of the organisation. This includes providing services or generating revenue.</p>
 <b>Is the scheme open to employees on reduced hours or reduced pay?</b>	<p>No. If an employee is working, even on reduced hours or for reduced pay, they will not be eligible to benefit from the scheme and the employer will have to continue paying the employee through payroll and pay their salary, subject to their existing terms and conditions of employment.</p>

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 <b>Is the scheme open to public sector organisations?</b>	<p>The government does not expect the scheme will be used by many public sector organisations, as the majority of public sector employees are continuing to provide essential public services. Where employers receive public funding for staff costs, that money should be used to continue paying staff in the usual way, without furlough being triggered.</p>
 <b>Do employers have to consider existing legislation when selecting employees for furlough under the scheme?</b>	<p>Yes. When deciding who to furlough, employers will remain subject to existing employment legislation, including equality and discrimination legislation. In addition, employers should be mindful of other potential claims, such as, unlawful deduction from wages and constructive dismissal claims.</p>
 <b>Can employers furlough employees who are on unpaid leave?</b>	<p>Employees on unpaid leave cannot be furloughed under the scheme, unless they were placed on unpaid leave after 28 February 2020.</p>
 <b>Does the scheme apply to employees on sick leave?</b>	<p>No. Employees on sick leave or self-isolating should get Statutory Sick Pay. However, once they are no longer on sick leave or self-isolating, they can be placed on furlough under the scheme.</p> <p>Employees who are sick may also have an entitlement to contractual sick pay if this is provided by their employer.</p>
 <b>Does the scheme apply to employees who are part of the shielded population?</b>	<p>Yes. Employees who are shielding in line with public health guidance can be placed on furlough under the scheme.</p>
 <b>Does the scheme apply to employees who have more than one job?</b>	<p>Yes. If your employee works for more than one employer they can be furloughed for each job. Each job is separate, and the cap applies to each employer individually.</p>
 <b>Is the National Living Wage (NLW)/National Minimum Wage (NMW) applicable to furloughed employees?</b>	<p>No. Individuals are only entitled to the NLW/NMW for the hours they are working. Therefore, furloughed workers, who are not working, must be paid the lower of 80% of their salary, or £2,500 even if, based on their usual working hours, this would be below NLW/NMW.</p>
 <b>Can an employee who is furloughed under the scheme take part in volunteer work or training?</b>	<p>Yes. A furloughed employee can take part in volunteer work or training, provided that he or she does not provide services to or generate revenue for, or on behalf of, the employer. However, if workers are required, for example, to complete online training courses whilst they are furloughed, they must be paid at least the NLW/NMW for the time spent training, even if this is more than the 80% of their wage that will be subsidised under the scheme.</p>
 <b>How does the scheme apply to employees on family leave?</b>	<p>The normal rules apply in relation to employees eligible for Statutory Maternity Pay (SMP) or Maternity Allowance - they are entitled to claim up to 39 weeks of statutory pay or allowance based on the existing SMP regime. If employers offer enhanced (earnings related) contractual pay to women on Maternity Leave, this is included as wage costs that can be claimed through the scheme. The same principles apply where employees qualify for contractual adoption, paternity or shared parental pay.</p>

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 <p><b>How do employers treat employees who have variable pay?</b></p>	<p>If an employee has been employed (or engaged by an employment business) for a full twelve months prior to the claim, an employer can claim for the higher of either (1) the same month's earnings from the previous year or (2) average monthly earnings from the 2019-20 tax year.</p> <p>If the employee has been employed for less than a year, the employer can claim for an average of their monthly earnings since they started work.</p> <p>If the employee only started in February 2020, employers should use a pro-rata calculation for their earnings to date.</p> <p>Once an employer has calculated how much of an employee's salary can be claimed under the scheme, it must then calculate the amount of Employer NICs and minimum automatic enrolment employer pension contributions it is entitled to claim.</p>
 <p><b>What information do employers need to provide to HMRC in order to make a claim for a grant under the scheme?</b></p>	<p>To claim under the scheme, employers will need to provide the following information: (1) ePAYE reference number; (2) the number of employees being furloughed; (3) the claim period (start and end date); (4) the amount claimed (note, the minimum length of furloughing is 3 weeks) ; (5) the employer's bank account number and sort code and (6) a contact name and phone number for the employer.</p> <p>Employers will need to calculate the amount they are claiming. HMRC retains the right to retrospectively audit all aspects of an employer's claim.</p>
 <p><b>How frequently can employers submit a claim?</b></p>	<p>Employers can submit one claim at least every three weeks. Claims can be backdated to 1 March if applicable.</p>
 <p><b>How will employers be paid a grant under the scheme?</b></p>	<p>Once HMRC have received a claim and an employer is eligible for the grant, HMRC will pay it via BACS payment to the employer's UK bank account.</p>
 <p><b>What is the tax treatment of the grants paid to employers under the scheme?</b></p>	<p>Payments received by a business under the scheme are made to offset these deductible revenue costs. They must therefore be included as income in the business's calculation of its taxable profits for Income Tax and Corporation Tax purposes, in accordance with normal principles. Businesses can deduct employment costs as normal when calculating taxable profits for Income Tax and Corporation Tax purposes.</p>

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This document provides a general summary only and is not intended to be comprehensive nor to provide bespoke legal advice. Given the fast moving nature of the coronavirus outbreak and that fact that most countries are introducing new legislation and measures (particularly, social isolation measures) on a daily basis to address it, employers will need to adopt a dynamic approach. Specific legal advice should always be sought in relation to the particular facts of a given situation.

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