

Insights

CORONAVIRUS (UK): DETAILED GUIDANCE PUBLISHED ON THE EXTENDED FURLOUGH SCHEME – KEY POINTS FOR EMPLOYERS

Nov 11, 2020

In our [blog on 5 November 2020](#), we flagged that further government guidance on the extended Coronavirus Job Retention Scheme (“CJRS”) would be provided on 10 November 2020. [HMRC has now published that guidance](#).

KEY DETAILS OF THE GOVERNMENT GUIDANCE

The updated guidance includes the following key details:

- During the period 1 November 2020 to 31 January 2021, the government furlough grant will pay 80% of wages for hours not worked up, capped at £2,500 per month. Employers will be liable for employer National Insurance contributions and employer pension contributions only. The government will review the terms of the scheme in January 2021 and may then require that employers make a contributions towards wages (as it did under the original scheme). This is likely to be dependent on the state of the economy and the general prevalence of the virus.
- The extended CJRS applies to employees who were employed as at 30 October 2020, as well as employees who were made redundant or stopped working on or after 23 September 2020, if they are then re-employed by their employer.
- Employers can make a claim under the extended furlough scheme in relation to employees who have not previously been furloughed and claimed for, and there is no cap on the number of employees that an employer can claim for under the extended scheme.
- The scheme is fully flexible - employers can furlough employees for any amount of time and any work pattern.
- Any claims under the initial CJRS in relation to furloughs up to 31 October 2020 can be claimed up to 30 November 2020.

- There appears to be an incorrect date reference in relation to claims in respect of employees who have TUPE transferred. The guidance provides that claims can be made in relation to employees who have TUPE transferred in circumstances where they have been employed by their prior employer on or before 30 October 2020 and transferred from them to their new employer on or before 1 September 2020. It seems that the reference to “on or before 1 September 2020” must be wrong and that the reference should be “on or after 1 September 2020”. We understand that this will be remedied by further government guidance. However, on the basis of the current drafting of the guidance, transferees should proceed with caution.
- The guidance indicates that it’s possible for employers to retrospectively furlough their employees with effect from 1 November 2020, provided such arrangements are put in place in accordance with the appropriate requirements on or before 13 November 2020. Employers wishing to take advantage of this therefore need to act very quickly. This suggests that employers who only put in place the appropriate arrangements after 13 November 2020 will only be able to claim in relation to the period from that date.
- For claim periods starting on or after 1 December 2020, an employer cannot claim for any days on or after 1 December 2020 during which the employee is serving a contractual or statutory notice period for the employer (this includes people serving notice of retirement or resignation). In relation to pre-1 December 2020, claims may be made if the employee is serving statutory notice only. There is no reference to contractual notice.

BCLP has assembled a COVID-19 Employment & Labor taskforce to assist clients with employment law issues across various jurisdictions. You can contact the taskforce at: COVID-19HRLabour&EmploymentIssues@bclplaw.com

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