

Insights

CORONAVIRUS: UK JOB RETENTION SCHEME ONLINE PORTAL NOW OPEN / EMPLOYEE CONSENT

Apr 20, 2020

Today, the [UK Coronavirus Job Retention Scheme \('CJRS'\)](#) online portal has opened for employers to make applications for furlough grants. You can [find the portal here](#).

Claims can only be made in respect of furloughed employees who were on an employer's PAYE payroll on or before 19 March 2020 and who were notified to HMRC on an RTI submission on or before 19 March 2020. Employees who were employed as at 28 February 2020 and on payroll (that is, notified to HMRC on an RTI submission on or before 28 February 2020) and who were made redundant or stopped working for the employer after that date, but prior to 19 March 2020, will also qualify for the CJRS if the employer re-employs them and puts them on furlough.

In relation to claims made under the CJRS, employers should retain all records and calculations in respect of its claims, including records of the amount claimed for each furloughed employee and the period for which each employee is furloughed.

If an employer is furloughing less than 100 employees, in addition to providing certain employer-related details, it is required to enter various employee-specific information. This includes the employee's name, National Insurance number, claim period and claim amount, and payroll/employee number (optional). If an employer is furloughing 100 or more employees, it can upload a file with the above information rather than input it directly into the portal. HMRC will accept .xls .xlsx .csv .ods file types.

For more information on what is required, [HMRC has issued a step-by-step guide on how to make an application](#) as well as [a guide to working out 80% of employee wages](#).

Employee written consent not required?

The [most recent government guidance dated 20 April 2020](#) gives employers some comfort regarding the issue of whether written agreement to be furloughed from the employee is required.

The government published a [Treasury Direction on 15 April](#) setting out the detailed rules of the [CJRS](#), which conflicted with the guidance it had already been published on this issue. The Treasury Direction says that to qualify under the CJRS an employee must expressly agree in writing to cease

working, whereas the guidance only required an employer to confirm in writing that the employee has been furloughed, not that the employee has agreed to cease working. This conflict raised significant concerns for many employers who, for reasons of practicality, have already implemented furlough by relying on implied employee consent, rather than getting prior written agreement from the employee.

It is notable that the 17 April and 20 April iterations of the guidance, published after the Treasury Direction, re-emphasise the position set out in previous guidance versions. The guidance says that employers must confirm in writing to their employee that they have been furloughed. As long as this is done in a way that is consistent with employment law, this will amount to valid employee consent for the purposes of claiming under the CJRS. The guidance goes on to say that there needs to be a written record (which must be kept for five years) but the employee does **not** have to provide a written response.

It therefore appears that the government's intention is that an employer who relies on implied employee consent can qualify for furlough grants. This is reinforced by the fact that applications on the portal currently require the employer to declare that their claim "is in accordance with HMRC's published guidance", not the Treasury Direction. However, as the Treasury Direction rules underpin the guidance, for legal certainty on this point, the Treasury Direction needs to be revised to be consistent with the latest guidance.

BCLP has assembled a COVID-19 Employment & Labor taskforce to assist clients with employment law issues across various jurisdictions. You can [contact the taskforce here](#).

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