

### How to furlough and get the grant under the Coronavirus Job Retention Scheme

HMRC will pay UK organisations a grant equivalent to 80% of furloughed employees' pay under a government scheme announced by the Chancellor, Rishi Sunak. With many firms already in peril as a result of the devastating impact of Covid-19, the Coronavirus Job Retention Scheme is part of a multi-billion-pound package designed to cut business overheads and reduce lay-offs. The scheme will run for at least three months from 1 March 2020.

Here we consider some of the important FAQs. The position, which is evolving rapidly, is stated as at 4 April 2020.

#### Can any UK business claim?

Pretty much. Any UK organisation with a PAYE payroll scheme (as at 28 February 2020), a PAYE online account, and a UK bank account will be able to claim. However, the applications portal is not yet live, and timescales for reimbursement are unknown. Further announcements are expected.

#### What is "furlough"?

"Furlough" describes a period of temporary leave, typically unpaid. Struggling firms may consider placing employees "on furlough" as an alternative to redundancy. The scheme will allow firms to continue paying employees while on furlough.

#### Would I need an employee's consent before placing them on furlough?

Unless there is a contractual right to furlough, firms should obtain an employee's consent before furloughing them. Furloughing an employee without consent is likely to amount to a breach of their contract. In reality, most employees faced with redundancy will agree to be furloughed. Firms must notify employees of their furlough status in writing and keep a record of that notification for five years.

## Who counts as an “employee” for the purposes of the scheme?

Firms may claim for employees of any nationality and on any type of contract, including: full-time, part-time, fixed-term, agency and zero-hour. Certain other groups (e.g. office holders such as company directors and salaried members of LLPs) are also covered by the scheme. However, in each case, they must have been on the firm’s PAYE payroll (and not already on unpaid leave) on 28 February 2020.

Firms may rehire employees dismissed for any reason on or after 28 February 2020, furlough them and still benefit from the scheme. However, firms are not obliged to re-hire such employees, nor even to retain employees once furlough ends.

Firms will not be able to claim for employees hired after 28 February 2020.

Furloughed employees must not undertake any work, although an exception is made for non-revenue generating “volunteer work or training”.

## What can I claim?

80% of an employee’s regular pay (as at 28 February 2020) or £2,500, whichever is the lower, plus associated Employer National Insurance contributions and minimum automatic enrolment employer pension contributions. Pay for these purposes includes wages, past overtime, “fees” and contractual commission. Discretionary payments (e.g. discretionary bonuses and tips) and benefits in kind are excluded.

Firms may choose to top-up the 80% or £2,500 to 100%, but they will be unable to recover the difference.

## How do I calculate earnings for a zero-hours / variable pay employee?

For zero-hours / variable pay employees with a full 12 months’ service before the claim, firms will be able to claim for the higher of either:

- the same month’s earning from the previous year; or
- average monthly earnings from the 19/20 tax year.

For zero-hours / variable pay employees with less than 12 months' service before the claim, firms will be able to claim for an average of their monthly earnings since they started work.

**Can I part-furlough an employee and still benefit from the scheme? E.g., can I reduce someone's working days from five to three and furlough them for two?**

In short, no. A decision will simply need to be made as to whether to furlough, or not.

**How often can I furlough someone, and how often can I claim?**

Firms will not be able to claim for any employee furloughed for less than three consecutive weeks. Theoretically, though, it would seem that firms may rotate employees on furlough. For example, they might alternate John and Jane, three weeks on, three weeks off.

There does not appear to be any limit on the number of times a firm can claim. That said, firms will not be allowed to submit more than one claim every three weeks (which, as above, is the minimum duration of any one period of furlough).

**Does a furloughed employee have any rights?**

Yes. Employees on furlough retain their employment status and continuity of service. They also remain entitled to Statutory Sick Pay, maternity rights, other paternal rights, rights against unfair dismissal and to redundancy payments. It is assumed that employees on furlough continue to accrue holiday.



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