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**Covid-19 & Furlough FAQS for Employees**

Last updated 11 May 2020

**Please note**: We expect new government guidance on returning to work to be published shortly, at which point this guidance will be updated.

Disclaimer: This document gives guidance on certain employment law and HR FAQs arising from coronavirus and the CJRS in England and Wales only. This is information but not detailed legal advice and should not be taken as such.

**What is the Coronavirus Job Retention Scheme / Furlough Scheme?**

The Coronavirus Job Retention Scheme (CJRS) is a government scheme designed to protect employees’ jobs during the Covid-19 crisis. If your employer is unable to operate, or doesn’t have enough work for you to do because of Covid-19, your employer can put you on “**furlough**” if you agree.

Once you are on furlough, you must not carry out any work for your employer. However you will stay on the payroll and your employer can apply on your behalf to claim back 80% of your normal pay through the CJRS. Full details of the Scheme can be found here [**https://www.gov.uk/guidance/check-if-you-could-be-covered-by-the-coronavirus-job-retention-scheme**](https://www.gov.uk/guidance/check-if-you-could-be-covered-by-the-coronavirus-job-retention-scheme)

See further guidance here:

<https://www.gov.uk/guidance/coronavirus-covid-19-what-to-do-if-youre-employed-and-cannot-work>

**How do I know whether I am eligible?**

You must have been employed and on your employer’s PAYE payroll on or before 19 March 2020. You can be on any type of contract, including zero hours or fixed-term contracts. The scheme applies to agency workers too. To be eligible to claim, your employer must write to you (email is acceptable) to confirm that you have been furloughed. You should contact your employer if you have been furloughed, but have not had confirmation in writing. This is important because there needs to a written record that furlough is happening and not all employers realise this. Full details on eligibility for various individuals can be found here; [**https://www.gov.uk/guidance/check-if-you-could-be-covered-by-the-coronavirus-job-retention-scheme**](https://www.gov.uk/guidance/check-if-you-could-be-covered-by-the-coronavirus-job-retention-scheme)

**How long can I be on furlough?**

Under the CJRS, you have to be furloughed for a minimum of 3 consecutive weeks. Your employer can put you on furlough more than once, or rotate you on and off furlough with other staff, for as long as the Scheme is still open (which is currently until 30 June 2020 although this may be extended) and provided that each period of furlough lasts for at least 3 consecutive weeks.

**How much will I be paid while on furlough?**

Your employer will receive a grant to cover 80% of your normal wages, up to a maximum of £2,500 gross per month. Your employer must pay this amount to you as a minimum and they cannot keep any of the grant for your salary to cover any fees or other business costs. It is subject to tax and NI and other deductions (such as pension contributions) in the usual way. Your employer may top up the grant so that you receive your normal pay, but they don’t have to. The employer can also claim for a minimum level of employer pension contributions too (although the amount may be less than they would contribute on your behalf if you were working normally).

If you think that your employer is treating you unfairly with regard to pay then you should raise this with them first and seek legal advice if you are still concerned.

**How are “normal wages” calculated?**

If you are a full or part-time employee on a fixed salary, then your furlough entitlement will simply be based on the regular wage your employer pays you. Speak with your employer to check how they are calculating this.

However, if your pay varies from month to month (for instance if you are an agency worker) then the situation is less straightforward, as summarised in the following table:

|  |  |
| --- | --- |
| **Length of employment or engagement**  | **Furlough entitlement will be based on** |
| One year or more | The higher of either :* The amount you earned in the same month last year
* An average of your monthly earnings from the last year
 |
| Less than one year | The average of your regular monthly wages since you started work |
| Less than one month | Pro-rata earnings from that month |

When calculating “regular wages”, your employer must include non-discretionary payments (overtime, fees and commission) and piece-rate payments. However, your employer is not expected to include discretionary payments (including tips, bonuses or commission), non-cash payments or non-monetary benefits like benefits in kind and salary sacrifice schemes (including pension contributions) that reduce your taxable pay.

You can also see the Government’s guidance on how employers should calculate what they can claim here: [**https://www.gov.uk/guidance/work-out-80-of-your-employees-wages-to-claim-through-the-coronavirus-job-retention-scheme**](https://www.gov.uk/guidance/work-out-80-of-your-employees-wages-to-claim-through-the-coronavirus-job-retention-scheme)

**If I agree to be furloughed, is it more likely that I will be made redundant in the future?**

Not necessarily. The purpose of the Furlough Scheme is to protect jobs in the short term, to help employers weather the immediate storm of the Covid-19 virus. Whether an employer eventually makes redundancies and, if so, how many and which employees will vary greatly from employer to employer. Those employer decisions are governed by normal pre Covid-19 employment protection legislation. So your rights as an employee are not affected by being on furlough, including redundancy rights.

If your employer decides to make redundancies whilst you are on furlough or at any time afterwards, the normal redundancy process and protections would apply to you. In essence, this means that if you have over two years’ service, there would have to be a genuine redundancy situation and your employer would have to select you fairly, consult with you meaningfully and consider suitable alternative employment opportunities before dismissing you.

**Can I refuse to be furloughed?**

Yes. Your employer can only put you on furlough with your consent and any changes to your employment contract (including changes to pay) must be agreed. However, bear in mind that if you refuse to accept furlough, the only alternative depending on your employer’s business needs may put you at risk of redundancy or termination of employment. If you are made redundant, your employer would still need to go through the normal redundancy process as outlined above.

If you are presented with a furlough agreement which suggests changes to your terms and conditions (particularly any terms other than a pay reduction, such as a new “unpaid layoff” clause), or if you are made redundant it would be wise to seek specific legal advice immediately, before agreeing to it.

**My employer has chosen to make me redundant instead of furloughing me. I think this is unfair. What can I do?**

It is an employer’s decision whether to place staff on furlough. Whilst you can ask to be furloughed, you cannot “demand” it. However, if you are dismissed instead of being placed on furlough, a tribunal may well consider whether furlough might have been a reasonable alternative to dismissal. This means that your dismissal may be unfair. Also, discrimination laws apply as normal. You should seek legal advice promptly if you think that your employer has treated you unfairly in their decision-making process, either to be furloughed or not to be furloughed.

If you are presented with a Settlement Agreement on redundancy, you will need to seek independent legal advice on the terms and effect.

**If my employer makes me redundant while I am being furloughed what is my notice entitlement?**

The employer can make you redundant while you are furloughed although it may be difficult in some cases for that to be done fairly, given the requirement on the employer to select reasonably and consult employees about the proposed dismissal, consider suitable alternatives to dismissal, etc under normal employment protection principles (which still apply to employees being furloughed).

That said, if you are given notice of redundancy while furloughed, the amount your employer must pay for the notice period depends on the terms of your contract relating to termination of employment, and whether they are paid a fixed salary or their pay varies.

While you are furloughed, your employer will still be able to claim under the CJRS for 80% of the amount due in any week of notice (up to a maximum of £2,500 gross per month); whether they must pay a top up to 100% will depend on the terms of your contract. This is a complex area of law and you should seek legal advice if you feel you are not being treated fairly.

**Can I work for anyone else while I am being furloughed?**

Check your contract of employment first. You can be put on furlough by your employer and take on paid work for another, provided that your contract allows you to do so (or your employer might consent in these unusual circumstances). You can also take on voluntary work whilst on furlough. Remember that you will need to be able to return to work for your original employer if they decide to take you off furlough, so make sure that you make your new employer aware of this.

If you already have more than one job, each employer can put you on furlough for each job separately. The 80%/£2500 monthly cap will apply to each job.

**Am I entitled to holiday pay holiday whilst on furlough?**

Being on furlough will not affect your right to holiday pay. Your annual leave will continue to accrue in the normal way. This means that as normal, employees can take holiday whilst being furloughed, subject to their employer’s holiday policies. The latest government guidance states that payment for annual leave must be at your normal holiday pay rate. This means that on the days that you take holiday, your employer has to top up the difference between your normal pay and furlough pay.

**Can I be furloughed if I am shielding in line with NHS guidance, or have to stay at home because someone in my household is shielding or self-isolating?**

Yes, if your employer agrees. If you cannot work from home, speak to your employer about whether they can place you on furlough, rather than expect you to take unpaid leave or use your holiday.

**I am concerned that my employer is abusing the CJRS, what should I do?**

For instance, you may be concerned that your employer is claiming under CJRS and not paying your entitlements, making you work whilst on furlough, or fraudulently back-dating your claim to beyond the date you were actually furloughed. The government guidance on CJRS states that you should your employer online [**https://www.gov.uk/government/organisations/hm-revenue-customs/contact/customs-excise-and-vat-fraud-reporting**](https://www.gov.uk/government/organisations/hm-revenue-customs/contact/customs-excise-and-vat-fraud-reporting) if you have concerns about abuse of the Scheme. If your employer retaliates against you if they suspect you have blown the whistle to the authorities about their activities, you may have ‘whistle-blower’ employment protection rights. You should seek legal advice immediately if you have reason to believe this applies to you (some of the protections only last 7 days from the date of dismissal).

**My employer wants me to come to work, but I am terrified of catching or spreading the virus to family members or the public**

This may be a real concern for you, particularly if you live with a vulnerable person. Additionally, you may be worried about catching or spreading the virus on your commute, or have real concerns that your employer will not put appropriate steps in place to protect you from exposure to Covid-19 at work.

Your employer has a duty to protect your health and safety at work. If you are an employee, you are protected from being dismissed if you refuse to return to work in circumstances where (in your reasonable opinion) your return would present a real risk of serious and imminent danger which you could not be expected to avert. If on the other hand it is reasonable for you to return to work, your employer might treat this as unauthorised absence and refuse to pay you. They may even invoke the disciplinary procedure, possibly leading to your dismissal. It is therefore not straightforward and advice should be taken on specific situations before you refuse to return to work.

If you are a vulnerable person and are shielding in accordance with NHS guidance, your employer cannot force you to come to work. If you can’t work from home, your employer could furlough you provided that you are not already receiving SSP, but they don’t have to.

It is important to discuss your concerns with your employer and keep a note of the discussion. If discussion does not result in meaningful actions that put your mind at rest, if you are being threatened with disciplinary action or you feel you are being forced to return to work when you should not be, seek legal advice promptly (and especially before taking the extreme step of resigning).