

***More about…***

**COVID-19 - FAQS FOR EMPLOYERS**

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 but for more detailed accounts and payroll advice you will need to speak to your accountants or book keepers. This is information but not detailed legal advice and should not be taken as such.

The coronavirus crisis as brought about unprecedented challenges for employers and employees. This set of FAQs is directed to questions employers may have. We have a separate set of FAQs directed to employees.

**Government and ACAS guidance**

The primary documents that we are working to when advising on Covid-19 and related matters are the various pieces of government guidance which are updated fairly regularly. Normal principles of employment law will also apply.

The various links are here:

Employer and employee guidance on coronavirus issues generally can be found here:

**<https://www.gov.uk/government/publications/guidance-to-employers-and-businesses-about-covid-19>**

Guidance on the Coronavirus Job Retention Scheme (“CJRS”) also known as the furlough scheme can be found here:

**<https://www.gov.uk/guidance/claim-for-wage-costs-through-the-coronavirus-job-retention-scheme>**

ACAS has also given guidance on various coronavirus issues:

[**https://www.acas.org.uk/coronavirus**](https://www.acas.org.uk/coronavirus)

**FAQS**

**Can I ask staff to work during lockdown?**

The starting point for “lockdown” is that if employees and workers can work from home, then they should. If their work cannot be done from home, then you are entitled to ask them to attend work. However, you are required to provide a safe workplace and so social distancing, protective equipment and any other necessary safety measures should be implemented where necessary.

**Has the government’s new statement of 10 May on returning to work changed things?**

Not very much. It was already the case that in workplaces which were not closed down, staff who couldn’t work from home could be asked to work. The change is more one of tone, with staff now being more encouraged to return to work.

**What do I have to do for staff to return to work safely?**

You should conduct a risk assessment and make any adjustments as necessary. The Health & Safety Executive has useful and clear advice here: [**https://www.hse.gov.uk/news/social-distancing-coronavirus.htm**](https://www.hse.gov.uk/news/social-distancing-coronavirus.htm)

If you cannot provide a safe workplace you should not ask staff to return to work at this stage and will need to consider other options.

**Which staff might not be working during this period?**

Workers who have symptoms, or who live with people who have symptoms, should not attend work but should self-isolate. SSP is available for those who are self-isolating but not actually sick. Government “stay at home” guidance is here: [**https://www.gov.uk/government/publications/covid-19-stay-at-home-guidance/stay-at-home-guidance-for-households-with-possible-coronavirus-covid-19-infection**](https://www.gov.uk/government/publications/covid-19-stay-at-home-guidance/stay-at-home-guidance-for-households-with-possible-coronavirus-covid-19-infection)

Workers who have been warned to “shield” because they are particularly vulnerable should not attend work and can receive SSP. Those living with a person who is shielding can still go to work.

Staff may need to be absent to look after others, such as children due to closure of nurseries or schools. This would be likely to fall within the statutory right to time off for domestic emergencies which is a right to unpaid leave. However, you may also be able to furlough staff in this situation (see below).

**What is the furlough scheme?**

This is a reference to the Coronavirus Job Retention Scheme. It is a government initiative to reimburse up to 80% of wages for staff who can (by agreement) be laid off work or “furloughed” while the lockdown continues.

**When should I use furlough?**

Government guidance says that you can access the scheme “if you cannot maintain your current workforce because your operations have been severely affected by coronavirus.”

Earlier wording referred to employees who would otherwise have been made redundant, but the current guidance seems wider than this.

**How do I place staff on furlough?**

You should not furlough staff without their consent. They will need to agree to the arrangement and the agreement to furlough should be in writing and with a copy kept by both parties. As an employer you should keep your furlough agreements so that they can be shown to HMRC in the case of an audit.

**How long must a furlough be?**

The furlough must last for at least three weeks. Employees may be furloughed, brought back to work and re-furloughed, so long as the three week eligibility requirement is met on each occasion.

**What do I need to pay on furlough?**

HMRC will refund employers up to 80% of workers’ (paid via PAYE) pay, up to a maximum of £2,500 gross per month. You either need to pay the excess amount on top of this to your staff (through the payroll) so that they receive normal pay, or agree with staff a temporary reduction to pay for the furlough period. Again, any such agreement should be recorded in writing with evidence of the workers’ agreement to any reduction in pay.

The government guidance sets out how pay should be calculated for various groups.

**What happens to holiday on furlough?**

Workers can take holiday while on furlough subject to any permission or request procedures. An employer can refuse holiday or ask staff to take holiday at a particular time by providing twice as much notice as the holiday to be taken.

Holiday pay for staff on furlough may vary. ACAS says that employees must get “usual pay in full” for holidays which implies 100% of usual salary or the usual 52 week averaging for those on variable hours. It is not completely clear what the position is if an employee has agreed a temporary reduction to salary for the furlough period - the position has not been tested in the employment tribunal as yet.

**When do I have to allow staff to carry over holiday?**

The government has announced a temporary amendment to the Working Time Regulations to allow workers to carry over up to four weeks’ annual leave into the next two leave years, where it is not practicable for them to take some, or all, of the holiday they are entitled to due to coronavirus.

**What happens to maternity, paternity or other family pay on furlough?**

The normal rules may apply. [**https://www.gov.uk/maternity-pay-leave**](https://www.gov.uk/maternity-pay-leave)

You can claim through the furlough scheme (with the same cap on reimbursement) for enhanced (earnings related) contractual pay for employees who qualify for either:

* maternity pay
* adoption pay
* paternity pay
* shared parental pay

**Can you furlough staff on long term sick leave, or who are shielding or who are caring for dependents?**

In principle you can furlough all of these categories of staff if the other eligibility conditions are met. There is no right for particular categories of worker to be furloughed however.

**What if staff are on unpaid leave?**

Staff who were on unpaid leave as of [DATE] but were due to return during the period that this scheme runs, may be furloughed from the date that they were due to return.

**What happens for those on fixed term contracts?**

Employees on fixed term contracts can be furloughed. Their contracts can be renewed or extended before their natural conclusion during the furlough period without breaking the terms of the scheme. Fixed term contracts which ended, without extension or renewal, on or before 19 March 2020 will not qualify for the grant once they have ended.

**What about TUPE transfers?**

A new employer is eligible to claim under the CJRS in respect of the employees of a previous business transferred after 19 March 2020 if either the TUPE or PAYE business succession rules apply to the change in ownership.

**Can my employees get another job if they are furloughed from our organisation?**

Yes, this is permissible (subject to their contract and your agreement if required). However, your employee should ensure that they are on a sufficiently short notice period in the new work that they can return to work for you when required.

**Do I have to place people on furlough?**

It is an employer’s decision about whether to place staff on furlough. In that sense a worker cannot “demand” to be furloughed. However, if a person is dismissed instead of being placed on furlough, a tribunal may well consider whether furlough might have been a reasonable alternative to dismissal. It may not always be, but employers should certainly consider furlough where the alternative is redundancy.