

Coronavirus Job Retention Scheme & Furloughed Workers

The detail around the Coronavirus Job Retention Scheme is very limited at the moment, as it was only announced on Friday evening. We know that it will be a similar process to the redundancy in terms of consultation and the limit will be set at £2,500 of employer costs (NI, pension etc.) but nothing on the process. They are due to open a portal but the restrictions and process itself has not been defined.

Coronavirus Job Retention Scheme

All UK employers will be able to access support to continue paying part of their employees' salary for those employees that would otherwise have been laid off during this crisis. All UK businesses are eligible.

You will need to:

- ❑ designate affected employees as 'furloughed workers,' and notify your employees of this change - changing the status of employees remains subject to existing employment law and, depending on the employment contract, may be subject to negotiation
- ❑ submit information to HMRC about the employees that have been furloughed and their earnings through a new online portal (HMRC will set out further details on the information required)

HMRC will reimburse 80% of furloughed workers wage costs, up to a cap of £2,500 per month. HMRC are working urgently to set up a system for reimbursement. Existing systems are not set up to facilitate payments to employers.

There will clearly need to be more detail added in the coming days but for the time being this should hopefully stop employers making wholesale redundancies which is something we have seen since Wednesday.

From an employment law perspective I would make the following observations:

- ❑ Most employment contracts will not have a lay off clause and technically therefore, employers will need employees' permission to furlough them. Realistically however, it is inevitable they will agree given that the alternative is redundancy, or go home and get nothing. In the case of those militant ones that don't, they will be made redundant.
- ❑ The guidance for employees on CJRS says it is up to the employer whether they have to top up the extra 20% (strangely the employers' guide is silent on the point).
- ❑ Crucially though, if an employer chooses to withhold the 20% ,they will need employees consent to avoid any later deduction from wages claims. This means that when an employer seeks an employee's permission to give them furloughed status they should get it in writing as a variation to their contract and make it clear in the agreement that they agree to the salary cut on a temporary basis.
- ❑ There is the possibility that employees would rather take the 80% to look after kids rather than go into work for the extra 20% but it is down to the employer to decide who to furlough; an employee cannot insist. Consequently an employer can decide who it wants to attend work and who it doesn't. This may create certain issue where some employees will inevitably be unhappy having to work whilst their colleagues are sat at home.

- ❑ It is also potentially open to abuse. There is the possibility some small businesses may claim they have sent staff home but still have them working. The employee might not even know they have been furloughed but one would expect the government will implement plans to prevent this from happening.

At the moment this is an accurate summary of all we know at present based on what the government has released. Obviously we will be monitoring the situation and we'll update you and clients as more information is added.

Furloughed Workers

If your employer cannot cover staff costs due to COVID-19, they may be able to access support to continue paying part of your wage, to avoid redundancies.

If your employer intends to access the Coronavirus Job Retention Scheme, they will discuss with you becoming classified as a furloughed worker. This would mean that you are kept on your employer's payroll, rather than being laid off.

To qualify for this scheme, you should not undertake work for them while you are furloughed. This will allow your employer to claim a grant of up to 80% of your wage for all employment costs, up to a cap of £2,500 per month.

You will remain employed while furloughed. Your employer could choose to fund the differences between this payment and your salary, but does not have to. If your salary is reduced as a result of these changes, you may be eligible for support through the welfare system, including Universal Credit.

The Government intend for the Coronavirus Job Retention Scheme to run for at least 3 months from 1 March 2020, but will extend if necessary.

[Click here](#) to see what is currently available to us, and we will keep monitoring the situation.

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