

CORONAVIRUS NEWS UPDATE- 4

Dear Clients

Firstly, we hope you, your family and your staff are well.

PLEASE do take this virus seriously and do everything within your power to protect yourself and your staff. If they do not need to be at work, enable them to work from home. If they can't work from home, consider furloughing them.

Wherever possible employees should be working from home and NOT travelling to work.

Where there is work to be done which CANNOT be done from home AND employees can get to work safely AND maintain all the social distancing rules in a safe and clean working environment, they are currently permitted to go to work.

We're tracking government updates as they happen, and will do our best to keep you updated as soon as new information is released, **but we'd encourage you to check the [government website](#) for updates as they happen.**

Keep an eye on our website and our social media channels for the latest updates.

Date: 20 April 2020

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Source- HMRC and Other Related Articles

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Coronavirus Job Retention Scheme: updated guidance and HMRC guide on how to make a claim

The Coronavirus Job Retention Scheme officially launches on Monday 20 April.

Duration of the scheme

This has been changed to **four months** (1 March to the end of June 2020) in line with the one-month extension to the scheme announced earlier on Friday

How to make a claim

HMRC have issued letters to employers explaining that the online portal will be open from Monday 20 April (from 8 am). The information necessary now includes a Government Gateway ID and password. If employers don't already have a Government Gateway account, they can apply for one online or by going to gov.uk and searching for 'HMRC services: sign in or register'.

The HMRC letter says claims will be paid within six working days of submitting a claim.

The employer's guide adds some new information about employer fraud. In particular, the guidance warns that HMRC will check claims made through the scheme and payments may be withheld or need to be repaid in full to HMRC if the claim is based on dishonest or inaccurate information or found to be fraudulent. HMRC has put in place an online portal for employees and the public to report suspected fraud in relation to the scheme.

The government also published a step by step guide for employers on how to submit a claim which can be found from HMRC at www.gov.uk/government/publications/coronavirus-job-retention-scheme-step-by-step-guide-for-employers

Points worth noting are:

- The guide states *“You cannot make more than one claim during a claim period – you should make your claim shortly before or during running payroll. You must claim for all employees in each period at one time as you cannot make changes to your claim.”*
- It is very important to get all the information together before sitting down to lodge the claim as the application needs to be done in one session. There is currently no save and return option and sessions will time out after 30 minutes of inactivity.
- Once a claim is submitted, you will see a confirmation screen where a claim reference number will be provided. It is important to either print the confirmation screen or note down the claim reference number provided as you will not receive a confirmation email.
- You should retain calculations that form the basis of the claim in case further information is required by HMRC (and if you have used an authorised agent to submit on your behalf, ensure that they share this with you).

- The guide suggests telling employees that you have made a claim on their behalf but asking them not to contact HMRC directly as they can't deal with employee enquiries.

Fixed Term Contracts

The provisions relating to fixed-term contracts have been expanded to make it clear that while employees on fixed-term contracts can be furloughed, their contracts can only be renewed or extended during the furlough period

There is no minimum period which must be left to run on a fixed-term contract to enable it to be renewed or extended, but it must not have ended. 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.

Agreeing to furlough

Although this is not a change to the guidance, the requirements outlined in it seem to be less exacting than the requirements set out in the Treasury Direction made under the Coronavirus Act earlier this week.

The guidance states:

“To be eligible for the grant employers must confirm in writing to their employee confirming that they have been furloughed. If this is done in a way that is consistent with employment law, that consent is valid for the purposes of claiming the CJRS. There needs to be a written record, but the employee does not have to provide a written response. A record of this communication must be kept for five years”

In contrast, the Direction states:

*“An employee has been instructed by the employer to cease all work in relation to their employment only if the employer and employee **have agreed in writing** (which may be in an electronic form such as an email) that the employee will cease all work in relation to their employment.”*

Given that the Direction has statutory force, the better approach is to ensure that you have evidence of the employee's agreement to furlough in writing.

Retention of records

The original guidance simply stated that the employer should retain all records and calculations in respect of their claims. The updated guidance specifically adds *“including records of the amount claimed for each furloughed employee and the period for which each employee is furloughed and a claim made under the scheme.”*

Holiday pay

The employee's guide to the scheme has also been updated. **Surprisingly, it is in this guide that we have the first (and only) formal statement on the treatment of holidays and furlough.**

The guidance states:

“Whilst furloughed you will continue to accrue leave as per your employment contract. You can agree with your employer to vary holiday pay entitlement as part of the furlough agreement, however, almost all workers are entitled to 5.6 weeks of statutory paid annual leave each year which they cannot go below.

You can take holiday whilst on furlough. Working Time Regulations (WTR) require holiday pay to be paid at your normal rate of pay or, where your rate of pay varies, calculated on the basis of the average pay you received in the previous 52 working weeks. Therefore, if you take holiday while on furlough, your employer should pay you your usual holiday pay in accordance with the WTR. Employers will be obliged to pay the additional amounts over the grant, though will have the flexibility to restrict when leave can be taken if there is a business need. This applies for both the furlough period and the recovery period.

If you usually work bank holidays, then your employer can agree that this is included in the grant payment. If you usually take the bank holiday as leave, then your employer would either have to top up your pay to your usual holiday pay or give you a day of holiday in lieu.

During this unprecedented time, we are keeping the policy on holiday pay during furlough under review.”

This confirms:

- Holidays continue to accrue during furlough.
- You can agree variations to holiday as part of the furlough agreement, but this can't go below the statutory 5.6 weeks.
- Holiday can be taken during furlough, but employers will have to pay the full rate of holiday pay and therefore top up the grant for holiday periods. This implies that holiday periods will not have to be excluded from the claim and this appears to be confirmed by the fact that the list of information required to make a claim makes no reference at all to identifying any periods of holiday falling within the furlough period. When making payment to the employee, the employer will have to top up the payment to the normal rate of holiday pay.

At this stage, we know that for the moment, holiday periods do not have to be deducted from the claim period and this removes any suggestion that they could break furlough continuity. It is unclear whether holiday periods will count towards the three-week minimum furlough period.

The employee's guide also contains an anti-fraud message by drawing employees attention to the fact that if they are concerned that their employer is abusing the scheme, they should report them. It explains that this abuse could include their employer claiming on their behalf

and not paying them what they are entitled to, being asked to work whilst on furlough, or making a backdated claim that includes periods when they were working.

Employees who are unable to work because of caring responsibilities arising from COVID-19

The employee's guide states in relation to both shielding employees and those with COVID-19 caring responsibilities, they should speak to their employer about whether "*they plan to place staff on furlough*". This could be interpreted broadly, in the sense that the employer has to agree to furlough or narrowly, in the sense that the employer has to be planning to put other staff on furlough, presumably because of lack of work.

The definition of a furloughed employee in the Treasury Direction is someone who:

- (a) has been instructed by the employer to cease all work in relation to their employment
- (b) the period for which the employee has ceased (or will have ceased) all work for the employer is 21 calendar days or more, and
- (c) the instruction is given by reason of circumstances arising as a result of coronavirus or coronavirus disease

Point (c) is very broad as it could be any reason connected with coronavirus and not limited to a downturn in work.

Point (a) is open to different interpretations. It's not clear whether this just refers generally to the fact that it is fundamental to the scheme that no work should be undertaken by the employee or whether it is a requirement that the reason for being on furlough is the employer's **instruction** not to work (because no work is available).

The guidance documents do not support this very literal and narrow interpretation (particularly the employer's guidance) but you should be aware that on a strict legal reading of the Direction, this remains an area of some uncertainty.