

## Furlough Explained: Answering SMEs Burning Questions

Over recent months the government has announced a number of changes to the Coronavirus Job Retention Scheme – more commonly referred to as 'furlough'.

For many SMEs the scheme itself and the changes that are taking place each month are creating some confusion. That's why we've created this guide to answer some of the common questions that SMEs are asking us.

From what is changing each month to questions (and answers) about managing furloughed staff, what to do if you need to make redundancies, how to calculate holiday pay and entitlement and many more.

This guide answers the questions SMEs are asking right now and has been produced to provide valuable assistance to SMEs.

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Please do get in touch if you would like to receive some guidance or advice that is specific to your business and your circumstances.

For further information contact us by email to [office@grahampaul.com](mailto:office@grahampaul.com) or by calling 01656 679800 we would love to speak to you.

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Furlough Key Dates Infographic



## What are the key changes taking place to the furlough scheme each month?

From 1<sup>st</sup> July the so called 'flexible furlough' scheme started which introduced more flexibility for employers to bring back employees, including being able to bring back employees on a part time basis and still claim some furlough support from the government.

From 1 July, employers have been able to bring furloughed employees back to work for any amount of time e.g. part time and any shift pattern, while still being able to claim CJRS grant (furlough support) for the hours not worked. Employees are entitled to be paid in full for any days worked.

From 1 August 2020, the level of grant will be reduced each month and employers will need to make an increasing financial contribution. To be eligible for the grant employers must pay furloughed employees 80% of their wages, up to a cap of £2,500 per month for the time they are being furloughed.

The timetable for changes to the scheme is set out below. Wage caps are proportional to the hours an employee is furloughed. For example, an employee is entitled to 60% of the £2,500 cap if they are placed on furlough for 60% of their usual hours

The Coronavirus Job Retention Scheme will close on 31 October 2020.

The key changes are summarised in the table below.

What	July	August	September	October	November onwards
Government contribution: wages	80% up to £2,500	80% up to £2,500	70% up to £2,187.50	60% up to £1,875	None
Employer contributions to wages	None (unless choose to top up furlough pay)	None (unless choose to top up furlough pay)	10% up to £312.50	20% up to £625	100%
Government contribution: employer NICs and pension contributions	Yes	No – Employer pays	No – employer pays	No – employer pays	No
Employee receives	80% up to £2,500	80% up to £2,500	80% up to £2,500	80% up to £2,500	Full salary

Maximum caps are proportional to non-working hours. HMRC's guidance on the key [changes can be found here](#).

## Who is eligible for the furlough scheme?

From 1 July 2020 employers can only claim from the Scheme in respect of employees who were furloughed on or before 10 June 2020, with the exception of those who are returning to work following a long period of statutory family leave, e.g. maternity or shared parental leave.

Prior to that, any employer within the UK was eligible to claim, but they could only furlough staff that were on their PAYE payroll on or before 19 March 2020. This included staff on 'zero-hours', fixed-term or temporary contracts.

Anyone who "stopped working" on or after 28 February 2020 but before 19 March can be furloughed if they were re-engaged by their former employer. However, there was no obligation on their employer to do so.

People hired after 19 March 2020 have never been eligible to be furloughed.

The scheme does not apply to the self-employed – they may qualify for support under the [Self-employment Income Support Scheme](#).

## Holiday and holiday pay when on furlough – what is the situation?

There are two aspects here. Firstly, whether employees can take annual leave and whether employers can ask employees to take annual leave. Secondly, what is the pay situation.

A furloughed worker has the same holiday entitlement and will continue to accrue statutory holiday entitlements, and any additional holiday provided for under their employment contract.

Holiday pay will continue to accrue. The Government announced changes to permit holiday accrual to span over two years rather than the existing legislation of just one.

In terms of taking annual leave whilst on furlough, the usual process should be followed, typically this will be outlined in the contract of employment e.g. giving sufficient notice that annual leave is being requested and then an approval process.

Placing staff on compulsory leave should be avoided if possible as this can get complicated. You should seek legal advice if you wish to take this action.

In terms of pay you should pay staff their usual pay for any holiday taken whilst on furlough leave. What this means in practice is that employers should make up any shortfall in pay e.g. 20% in August, 30% in September and 40% in October.

## Should everyone have their employment contract changed to zero hours until the end of the furlough scheme period?

Given the flexible approach being offered to help businesses to bring staff back on a phased basis, would you recommend that everyone has their employment contract changed to zero hours until the end of the furlough scheme period?

Contracts of employment remain in place during furlough, however in line with usual employment rights should there be changes to contractual arrangements you would need to consult and agree with your employees, and ideally seek employment law advice from a specialist.

The scheme is designed so that you can claim for the hours furloughed and still bring back staff for some of the time.

## How can I keep track of hours worked for my furlough claim purposes?

Keeping good records is crucial. If you bring some staff back on a part-time basis you will need to record their working hours and their non-working hours so you can claim for the non-working hours only. For example, if you bring back a member of staff for 3 days a week and they are furloughed for 2 days a week, you can claim for the 2 days a week they are furloughed. You should record this on your payroll software, or some other system.

The employee data you need is:

- A copy of the furlough agreement with each employee;
- The usual number of hours the employee would be expected to work in the claim period;
- How many hours they actually worked; and
- How many hours they have therefore been furloughed for.

You are required to keep a record of this information for up to six years. Your accountant should be able to help you with this.

## What should I do if my employee is scared to come back to work?

Current government advice provides that in the first instance, employers should discuss and agree working arrangements with their employees. Current guidance states that where viable, those who can work from home should continue to do so. If it is decided that an employee should return to their place of work, this must be reflected in the risk assessment and steps must be taken to minimise infection risks.

From 1<sup>st</sup> August 2020, employers have discretion as to how staff can continue working safely. Working from home is one solution, but workplaces can also be made safe by following COVID-19 Secure guidelines. You should consult with your employees in relation to how you can work safely and must ensure workplaces are safe if you request employees

return. It is vital that you do your utmost to take all practical steps to comply with social distancing guidelines.

Under s44 of the Employment Rights Act, an employee has the right not to be subjected to a detriment, or be dismissed if they leave work or refuse to return to work, because they reasonably believe there is a serious and imminent danger to them or others. So, in essence, it appears that in order to avoid an employee refusing to return it is down to you as the employer to do your very best to put measures in place to make your employee feel as safe as possible.

### How should we keep in touch with our employees who are on furlough?

A good starting point may be to consider which methods of communication you would normally use when an employee is not working. Most employers have agreed with their employees how they prefer to be contacted during furlough and in turn, who the employee's point of contact at work will be. You should also check that employee contact information is up-to-date, ideally while obtaining the employee's consent to furlough.

While you should not seek to communicate excessively with a furloughed employee, keeping an employee informed of developments is unlikely to be problematic and will probably be appreciated by your employees in these uncertain times.

ACAS guidance offers the suggestion that employers should have regular calls with staff to not only check on their health and wellbeing, but also to update them in relation to any updates relevant to that employee and discuss plans to return to work as early as possible. ACAS has also provided new guidance on Coronavirus and mental health at work, offering advice for managers on how to support their staff during the pandemic, and how to spot possible signs that an employee's mental health is suffering. This can be found at:

[www.acas.org.uk/coronavirus-mental-health](http://www.acas.org.uk/coronavirus-mental-health)

"Keeping in touch" arrangements may be particularly helpful for any employees who you are aware of that are particularly vulnerable, for example, because of a disability. In this instance, you may wish to agree with that employee that their point of contact will call or email them on a weekly basis to discuss issues such as updates or to answer any questions the employee may have.

When arranging how to keep in touch with furloughed employees, it will always be best practice to consider the facilities available at home to an employee, for example, do they have a computer, do they have a reliable internet connection etc.

### Can I make employees on furlough redundant?

The Employees' Coronavirus Job Retention Scheme states that you are able to make employees redundant while on furlough (or afterwards), and that your employees' redundancy rights will not be affected by being furloughed.

The full guidance can be found at: [www.gov.uk/guidance/check-if-you-could-be-covered-by-the-coronavirus-job-retention-scheme#contents](http://www.gov.uk/guidance/check-if-you-could-be-covered-by-the-coronavirus-job-retention-scheme#contents)

You should seek legal advice from an employment expert if you think you may need to make staff redundant.

## Can I just choose those still left on furlough for redundancy?

No, you need to follow a fair redundancy process as the law on redundancy is still in place and is unaffected by furlough. You need to pool employees, consult and select fairly using fair and reasonable selection criteria. If you are making between 20 and 99 redundant then you will need to collectively consult for 30 days as well.

## Can I put, or leave, staff who are being made redundant on furlough?

Yes, if they have been furloughed before for a minimum of 3 weeks by 30 June 2020 and have been given notice of redundancy but are to be or remain on furlough for some or all of their notice period, depending on how long their notice period lasts. You cannot use money paid to the employer under the Coronavirus Job Retention Scheme to pay statutory redundancy pay.

## If I have to make redundancies, is redundancy pay based on 100% of an employee's usual salary, or is it based on the 80% furlough pay?

The Department for Business, Energy & Industrial Strategy announced that furloughed employees are to receive statutory redundancy pay based on 100% of their normal pay, rather than a reduced furlough rate. The new law was brought into force on 31<sup>st</sup> July 2020 under *The Employment Rights Act 1996 (Coronavirus, Calculation of a Week's Pay) Regulations 2020*.

## What steps should I take in respect of the mental health of my furloughed staff?

The impact of Coronavirus has had a huge impact on all of our lives and will continue to do so for a long time to come. The physical health and economic concerns have been well documented, but the hidden mental effect of self-isolation and social distancing, cannot be underestimated.

It is imperative for employers to protect the mental health of staff through a variety of means. The Government's Coronavirus Job Retention Scheme (CJRS), while clearly beneficial in keeping people afloat financially, prohibits employees from working for large periods during a time when it is easy to feel isolated and fearful of job security.

Employers retain a legal duty of care to all employees, no matter whether that employee is based at home or in the office, in full-time employment or furloughed. Mental health is an issue which has been recognised by the Government – with guidance published in the early part of the UK lockdown at [www.gov.uk](http://www.gov.uk).