

Overview of the UK Coronavirus Job Retention Scheme

April 24, 2020

The UK Government has published further guidance and The Coronavirus Act 2020 Functions of Her Majesty's Revenue and Customs (Coronavirus Job Retention Scheme) Direction (the "**Direction**") in relation to the Coronavirus Job Retention Scheme ("**CJRS**"). The Direction is available [here](#) and the guidance is available [here](#), [here](#) and [here](#). This blog post covers similar ground to, and updates, the prior blog post on this topic.

What is the CJRS?

By way of reminder, the CJRS is a government scheme set up to support UK employers who have been affected by the coronavirus. Under the CJRS, UK employers are able to obtain a grant equal to the lower of 80% of the wages or £2,500 per month per furloughed employee plus the associated employer National Insurance contributions and minimum automatic enrolment employer pension contributions (if payable) on the subsidised wage.

The CJRS was backdated so that it commenced on 1 March 2020 and was initially expected to run until the end of May. However, it has now been extended until the end of June and could be extended again, if necessary.

Which employers are covered?

The CJRS is open to all UK employers who have a PAYE payroll scheme and have a UK bank account.

Which employees are covered?

Eligible employees can be employed on any type of contract, including full-time and part-time contracts, agency worker contracts and flexible or zero-hour contracts.

Employees must have been on their employer's PAYE payroll on or before 19 March 2020 and notified to HMRC on an RTI submission on or before 19 March 2020. The date stated under previous iterations of the guidance was 28 February 2020.

To be eligible, when on furlough, an employee can not undertake any work for their employer, so employees who simply reduce their hours will not be covered. However employees can engage in certain training and volunteer work for the employer. In addition, if their contract allows, employees can work for a different employer.

In addition, office holders (e.g. company directors), salaried members of LLPs, and certain workers could also be entitled to a grant.

How should I place an employee on furlough?

Normal employment rules and protections apply in terms of placing an employee on furlough. For instance, employers will need to discuss the changes with employees and seek their agreement to change the employment contract. Employers must confirm in writing that an employee has been furloughed. The Direction states that the employee and employer must agree in writing. The guidance states that an employee need not provide a written response, but there does need to be a written record of the communication/s that should be kept for 5 years.

The guidance for employees notes that if an employee refuses to be furloughed then the employee could be at risk of redundancy or termination of employment, subject to the normal rules and protections.

If the employer is selecting employees to be furloughed, then normal rules in relation to equality and discrimination apply and employers will need to consider any selection criteria accordingly. Employers should also consider if collective consultation obligations are triggered.

Note that, employees must be placed on furlough for a minimum of 3 weeks, but need not be furloughed for the entire period.

What happens to employees on sick leave, who are shielding in line with public health guidance or are dealing with caring responsibilities?

If an employee is:

- **on sick leave or self-isolating**: the employee should get statutory sick pay whilst on sick leave or self-isolating. The Direction indicates that an employee can be furloughed after their entitlement to statutory sick pay has ended. However, the guidance states that if employees are off sick and an employer wants to furlough

them for business reasons, the employer can;

- ***shielding in line with public health guidance***: the employee can be placed on furlough but they should speak to their employer about this;
- ***dealing with caring responsibilities***: the employee can be placed on furlough, e.g. if an employee has childcare responsibilities.

What happens if a furloughed employee becomes sick?

Furloughed employees must be paid at least statutory sick pay but the employer can choose to keep them on furlough at their furloughed rate or move them onto statutory sick pay. In practice, that will mean employers are likely to keep employees as furloughed.

What happens to employees who have already been made redundant?

If an employee was made redundant or stopped working after 28 February 2020 but prior to 19 March 2020 (subject to the employee being on payroll and notified to HMRC on an RTI submission on or before 28 February 2020), then an employer can rehire them and then designate them as a “furlough worker” instead.

Does being placed on furlough, impact an employee’s right?

Termination/Dismissal - Employers can still make employees redundant while on furlough or afterwards but an employee’s rights, including their right not to be unfairly dismissed (if applicable) and their redundancy rights (including to redundancy pay), are unaffected.

Family Leaves - The normal rules on statutory maternity pay, paternity pay and shared parental pay apply. Any enhanced contractual pay an employee is entitled to could be claimed through CJRS.

Holiday - Employers will want to carefully consider how holiday is managed. Furloughed employees will continue to accrue leave as per their contract. Holiday can be taken whilst on furlough and employers can also require that employees take certain holiday days whilst employees are on furlough. If holiday is taken (including if bank holidays are usually taken as leave), an employee will be entitled to be paid at their normal rate. The guidance notes that this policy on holiday pay is being kept under review.

How is an employee’s salary calculated?

HM Revenue and Customs (“**HMRC**”) have created a specific page to assist employers in working out how to calculate the grant, including a calculator (see [link](#)).

Broadly, in order to calculate 80% of wages:

- for employees whose **pay does not vary**, the employee’s actual gross salary from their last pay period before 19 March 2020 should be used.
- for employees employed for a full year but whose **pay varies**, then the amount will be the highest of: (i) 80% of the gross salary the employee earned in the equivalent month last year; or (ii) 80% of the average of the employee’s gross monthly wages for the 2019 to 2020 tax year.

If the 80% amount exceeds £2500 per month (equating to £30,000 per year or £576.92 per week), then the capped figure should be used instead.

The guidance sets out that an employee’s wages for the purposes of the calculation should include: regular wages, non-discretionary overtime, non-discretionary fees and non-discretionary commission payments. Conversely, any discretionary payments should not be included, nor should non-cash payments and non-monetary benefits in kind and salary sacrifice schemes that reduce an employees’ taxable pay. Employers should however be mindful that the direction also states that payments to be included in the calculation of wages should not vary because of relevant matters (e.g. contributions made by the employees to the performance of the business or any duties of employment) and also should “not [be] conditional on any matter”.

Employers can top up salaries if they wish.

An employer can also claim for national insurance contributions (for the wage claimed from HMRC) and mandatory pension contributions.

How does the employer access the money for furloughed employees?

Employers calculate their claim and should submit it through the online portal. This portal was opened on 20 April 2020 and in the first day alone over 180,000 claims were made by businesses with 1.3 million employees reported as being furloughed. It has been reported that it takes 6 days from submission for employers to receive the grant.

If the employer is eligible for a grant, the grant will be paid to the employer’s UK bank account.

What happens when the CJRS ends?

CJRS is currently open for at least 4 months through to at least 30 June 2020. The Government will keep the scheme under review and may extend it further.

At the end of CJRS, the employer will need to make a decision on whether the employee returns to work or is made redundant. Employers may also want to consider implementing and agreeing a transitional period in getting employees back into work.

Will the Direction and/or guidance be updated again?

It is likely that the Direction and/or guidance will be updated again given the inconsistencies that exist currently, so watch this space.

Proskauer's cross-disciplinary, cross-jurisdictional Coronavirus Response Team is focused on supporting and addressing client concerns. [Visit our Coronavirus Resource Center](#) for guidance on risk management measures, practical steps businesses can take and resources to help manage ongoing operations.

[Related Professionals](#)

- **Kelly M. McMullon**

Special International Labor, Employment & Data Protection Counsel