

COVID 19 (Coronavirus)

Coronavirus Job Retention Scheme for Furloughed Workers

V4: 16 April 2020

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What does this update cover?

This update covers the changes made to the Coronavirus Job Retention Scheme employer guidance on 16 April 2020. **The key change relates to the dates that employees must be on the employer's payroll in order to be eligible:**

The qualifying date, when the employee has to have been on the employer's payroll, has changed from 28 February to 19 March 2020. See sections 1.2. and 1.7 below.

We have also added the information HMRC have released on 15 April 2020 for employers about 'how to make a claim'. See section 1.50 below.

Additionally, the government has now issued formal rules that cover the operation of the Coronavirus Job Retention Scheme in the form of a written Direction Issued under the Coronavirus Act - the emergency legislation introduced to manage the Coronavirus outbreak.

A quick recap - what is the Coronavirus Job Retention Scheme?

The Coronavirus Job Retention Scheme is a temporary scheme open to all UK employers for at least three months starting from 1 March 2020. It is designed to support employers whose operations have been severely affected by coronavirus (COVID-19).

Employers can use a portal to claim for 80% of furloughed employees' (employees on a leave of absence) usual monthly wage costs, up to £2,500 a month, plus the associated Employer National Insurance contributions and minimum automatic enrolment employer pension contributions on that wage. Employers can use this scheme anytime during this period.

The scheme is open to all UK employers that had created and started a PAYE payroll scheme on 19 March 2020. The updated government guidance clarifies that it can be accessed by employment businesses for agency workers' pay.

How to use this document

We have reproduced HMRC's guidance in **section 1** below. The guidance for employers issued by the government has been written in a Q&A format and answers many of the questions that agencies have been asking since the scheme was initially announced.

In **section 2** we have added some further information regarding the recruitment sector. This is REC's analysis of the scheme based on HMRC's guidance and our continued discussions with government.

We have raised a number of questions about how the retention scheme will apply to temporary workers to government. We have summarised these questions at the end of section 2. We will update members as and when any further information becomes available.

Note that there is a [separate scheme for self-employed people](#) - we haven't covered that scheme in this guidance.

More information on coronavirus

We appreciate that it has been very difficult for members to manage their businesses while constantly waiting for more information about this scheme. We are constantly working with government so that we can ensure that the interests of the recruitment sector are represented and to obtain as much detail as possible to keep our members updated. However, this type of scheme is unprecedented.

We have provided as much information in this guidance as we can. As soon as any further information is provided by government, we will update this information on the [REC Coronavirus Hub](#).

We update the hub twice a day, even if only to confirm that there is no further information available - so you can be sure to find the most recent information there.

REC documents have been prepared exclusively for REC Corporate Members. You must not distribute these documents to third parties except where you require them to complete the document.

NOTE: In this section we include the full text of [HMRC's Guidance on the Coronavirus Job Retention Scheme](#) (as updated on 15 April 2020). We have added paragraph numbers so that in section 2 we can refer agencies back to the relevant paragraphs of HMRC's guidance but you will not find these in the online version of the guidance.

1.1 Contents

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The online service you'll use to claim is not available yet. Initially the government advised that it expected the service to be available at the end of April but an update 9 April stated that the service will be available from 20 April.

If you cannot maintain your current workforce because your operations have been severely affected by coronavirus (COVID-19), you can furlough employees and apply for a grant that covers 80% of their usual monthly wage costs, up to £2,500 a month, plus the associated Employer National Insurance contributions and pension contributions (up to the level of the minimum automatic enrolment employer pension contribution) on that subsidised furlough pay.

This is a temporary scheme in place for 3 months starting from 1 March 2020, but it may be extended if necessary and employers can use this scheme anytime during this period. It is designed to help employers whose operations have been severely affected by coronavirus (COVID-19) to retain their employees and protect the UK economy. However, all employers are eligible to claim under the scheme and the government recognises different businesses will face different impacts from coronavirus.

The way to make a claim is online- the service should be simple to use and any support you need available on GOV.UK.

Please use the online support and do not contact HMRC unless it is absolutely necessary - any questions should be directed at your agent, representative or our Web chat service.

1.2 Who can claim

You must have:

- created and started a PAYE payroll scheme on or before 19 March 2020
- enrolled for PAYE online
- a UK bank account

Any entity with a UK payroll can apply, including businesses, charities, recruitment agencies and public authorities.

1.3 Apprentices

Apprentices can be furloughed in the same way as other employees and they can continue to train whilst furloughed.

However, you must pay your Apprentices at least the Apprenticeship Minimum Wage/National Living Wage/National Minimum Wage (AMW/NLW/NMW) as appropriate for all the time they spend training. This means you must cover any shortfall between the amount you can claim for their wages through this scheme and their appropriate minimum wage.

Guidance is available for changes in apprenticeship learning arrangements because of COVID-19.

1.4 Public sector organisations

The government expects that the scheme will not be used by many public sector organisations, as most public sector employees are continuing to provide essential public services or contribute to the response to the coronavirus outbreak.

Where employers receive public funding for staff costs, and that funding is continuing, we expect employers to use that money to continue to pay staff in the usual fashion – and correspondingly not furlough them. This also applies to non-public sector employers who receive public funding for staff costs.

Organisations who are receiving public funding specifically to provide services necessary to respond to COVID-19 are not expected to furlough staff.

In a small number of cases, for example where organisations are not primarily funded by the government and whose staff cannot be redeployed to assist with the coronavirus response, the scheme may be appropriate for some staff.

1.5 Individuals

Individuals can furlough employees such as nannies provided they pay them through PAYE, and sent HMRC an RTI submission notifying a payment in respect of the employee on or before 19 March 2020.

1.6 Administrators

Where a company is being taken under the management of an administrator, the administrator will be able to access the Job Retention Scheme. However, we would expect an administrator would only access the scheme if there is a reasonable likelihood of rehiring the workers. For instance, this could be as a result of an administration and pursuit of a sale of the business.

1.7 Employees you can claim for

You can only claim for furloughed employees that were on your PAYE payroll on or before 19 March 2020 and which were notified to HMRC on an RTI submission on or before 19 March 2020. This means an RTI submission notifying payment in respect of that employee to HMRC must have been made on or before 19 March 2020. Employees that were employed as of 28 February 2020 and on payroll (i.e. notified to HMRC on an RTI submission on or before 28 February) and were made redundant or stopped working for the employer after that and prior to 19 March 2020, can also qualify for the scheme if the employer re-employs them and puts them on furlough.

Employees can be on any type of employment contract, including full-time, part-time, agency, flexible or zero-hour contracts. Foreign nationals are eligible to be furloughed. Grants under the scheme are not counted as 'access to public funds', and you can furlough employees on all categories of visa.

To be eligible for the grant, when on furlough, an employee cannot undertake work for, or on behalf, of the organisation or any linked or associated organisation. This includes providing services or generating revenue. Employers are free to consider allocating any critical business tasks to staff that are not furloughed. While on furlough, the employee's wage will be subject to usual income tax and other deductions.

If you made employees redundant or they stopped working for you after 28 February

If you made employees redundant, or they stopped working for you on or after 28 February 2020, you can re-employ them, put them on furlough and claim for their wages through the scheme. This applies to employees that were made redundant or stopped working for you after 28 February, even if you do not re-employ them until after 19 March. This applies as long as the employee was on your payroll as at 28 February and had been notified to HMRC on an RTI submission on or before 28 February 2020. This means an RTI submission notifying payment in respect of that employee to HMRC must have been made on or before 28 February 2020

If an employee has had multiple employers over the past year, has only worked for one of them at any one time, and is being furloughed by their current employer, their former employer/s should not re-employ them, put them on furlough and claim for their wages through the scheme.

1.8 If your employees are working reduced hours

If an employee is working, but on reduced hours, or for reduced pay, they will not be eligible for this scheme.

1.9 If your employee is on unpaid leave

If an employee started unpaid leave after 28 February 2020, you can put them on furlough instead. If you put them on furlough then you should pay them at least 80% of their regular wages, up to the monthly cap of £2500.

If an employee went on unpaid leave on or before 28 February, you cannot furlough them until the date on which it was agreed they would return from unpaid leave.

1.10 If your employee is self-isolating or on sick leave

If your employee is on sick leave or self-isolating as a result of Coronavirus, they'll be able to get Statutory Sick Pay, subject to other eligibility conditions applying. The Coronavirus Job Retention Scheme is not intended for short-term absences from work due to sickness, and there is a 3 week minimum furlough period.

Short term illness/ self-isolation should not be a consideration in deciding whether to furlough an employee. If, however, employers want to furlough employees for business reasons and they are currently off sick, they are eligible to do so, as with other employees. In these cases, the employee should no longer receive sick pay and would be classified as a furloughed employee.

Employers are also entitled to furlough employees who are being shielded or off on long-term sick leave. It is up to employers to decide whether to furlough these employees. You can claim back from both the Coronavirus Job Retention Scheme and the SSP rebate scheme for the same employee but not for the same period of time. When an employee is on furlough, you can only reclaim expenditure through the Coronavirus Job Retention Scheme, and not the SSP rebate scheme. If a non-furloughed employee becomes ill, needs to self-isolate or be shielded, then you might qualify for the SSP rebate scheme, enabling you to claim up to two weeks of SSP per employee.

1.11 If your employee becomes sick while furloughed

Furloughed employees retain their statutory rights, including their right to Statutory Sick Pay. This means that furloughed employees who become ill must be paid at least Statutory Sick Pay. It is up to employers to decide whether to move these employees onto Statutory Sick Pay or to keep them on furlough, at their furloughed rate.

If a furloughed employee who becomes sick is moved onto SSP, employers can no longer claim for the furloughed salary. Employers are required to pay SSP themselves, although may qualify for a rebate for up to 2 weeks of SSP. If employers keep the sick furloughed employee on the furloughed rate, they remain eligible to claim for these costs through the furloughed scheme.

1.12 Shielding Employees

Employees who are unable to work because they are shielding in line with public health guidance (or need to stay home with someone who is shielding) can be furloughed.

1.13 Employees with caring responsibilities

Employees who are unable to work because they have caring responsibilities resulting from coronavirus (COVID-19) can be furloughed. For example, employees that need to look after children can be furloughed.

1.14 If your employee has more than one job

If your employee has more than one employer they can be furloughed for each job. Each job is separate, and the cap applies to each employer individually.

Employees can be furloughed in one job and receive a furloughed payment but continue working for another employer and receive their normal wages.

1.15 If your employee is on a fixed term contract

Employees on fixed term contracts can be furloughed. Their contracts can be renewed or extended during the furlough period without breaking the terms of the scheme. Where a fixed term employee's contract ends because it is not extended or renewed you will no longer be able claim grant for them.

1.16 Eligible individuals who are not employees

As well as employees, the grant can be claimed for any of the following groups, if they are paid via PAYE: office holders (including company directors), salaried members of Limited Liability **Partnerships (LLPs), agency workers (including those employed by umbrella companies), and limb (b) workers.**

The guidance below sets out specific considerations for those individuals who are paid via PAYE, but who are not necessarily employees in employment law. Unless explicitly set out below, all other guidance is applicable to these cases, and should be followed.

1.17 Office Holders

Office holders can be furloughed and receive support through this scheme. The furlough, and any ongoing payment during furlough, will need to be agreed between the office holder and the party

who operates PAYE on the income they receive for holding their office. Where the office holder is a company director or member of a Limited Liability Partnership (LLP), the furlough arrangements should be adopted formally as a decision of the company or LLP.

1.18 Company Directors

As office holders, salaried company directors are eligible to be furloughed and receive support through this scheme. Company directors owe duties to their company which are set out in the Companies Act 2006. Where a company (acting through its board of directors) considers that it is in compliance with the statutory duties of one or more of its individual salaried directors, the board can decide that such directors should be furloughed. Where one or more individual directors' furlough is so decided by the board, this should be formally adopted as a decision of the company, noted in the company records and communicated in writing to the director(s) concerned.

Where furloughed directors need to carry out particular duties to fulfil the statutory obligations they owe to their company, they may do so provided they do no more than would reasonably be judged necessary for that purpose, i.e. they should not do work of a kind they would carry out in normal circumstances to generate commercial revenue or provides services to or on behalf of their company.

This also applies to salaried individuals who are directors of their own personal service company (PSC).

1.19 Salaried Members of Limited Liability Partnerships (LLPs)

Members of LLPs who are designated as employees for tax purposes ('salaried members') under the Income Tax (Trading and Other Income) Act (ITTOIA) 2005 are eligible to be furloughed and receive support through this scheme.

The rights and duties of a member of an LLP are set out in an LLP agreement and in the absence of an agreement, default provisions in the LLP Act 2000, based upon company and partnership law. Such an agreement may include separate agreement between the LLP and an individual member setting out the terms applicable to that member's relationship with the LLP.

To furlough a member, the terms of the LLP agreement (or any such agreement between the LLP and the member) may need to be varied by a formal decision of the LLP, for example to reflect the fact that the member will perform no work in the LLP for the period of furlough, and the effect of this on their remuneration from the LLP. For an LLP member who is treated as being employed by the LLP (in accordance with s863A of ITTOIA 2005), the reference salary for this scheme is the LLP member's profit allocation, excluding any amounts which are determined by the LLP member's performance, or the overall performance of the LLP.

1.20 Agency Workers (including those employed by umbrella companies)

Where agency workers are paid through PAYE, they are eligible to be furloughed and receive support through this scheme, including where they are employed by umbrella companies.

Furlough should be agreed between the agency, as the deemed employer, and the worker, though it would be advised to discuss the need to furlough with any end clients involved. As with employees, agency workers should perform no work for, through or on behalf of the agency that has furloughed them while they are furloughed, including for the agency's clients.

Where an agency supplies clients with workers who are employed by an umbrella company that operates the PAYE, it will be for the umbrella company and the worker to agree whether to furlough the worker or not.

1.21 Limb (b) Workers

Where Limb (b) Workers are paid through PAYE, they can be furloughed and receive support through this scheme.

Those who pay tax on their trading profits through Income Tax Self-Assessment, may instead be eligible for the Self-Employed Income Support Scheme (SEISS), announced by the Chancellor on 26 March 2020.

[Read more information on the Self-Employed Income Support Scheme](#), including eligibility criteria and how to claim.

1.22 Contingent workers in the public sector

The Cabinet Office has issued guidance on how payments to suppliers of contingent workers impacted by COVID-19 should be dealt with where the party receiving the contingent worker's services is a Central Government Department, an Executive Agency of a Central Government Department or a Non-Departmental Public Body.

[Read more information on contingent workers impacted by COVID-19](#). This guidance applies to agency workers paid through PAYE, as well as those paid through umbrella companies on PAYE and off-payroll workers supplying their services through a Personal Service Company (PSC).

1.23 Contractors with public sector engagements in scope of IR35 off-payroll working rules (IR35)

Public sector bodies will follow the Crown Commercial Services guidance in the vast majority of cases. In a small number of cases, for example where organisations are not primarily funded by the government and whose staff cannot be redeployed to assist with the coronavirus response, it may

be appropriate to claim under the CJRS. Contractors who are deemed employees according to the off-payroll working rules might be eligible for this scheme.

In this scenario, if the public sector organisation wished to furlough a contractor, they would have to confirm this with both the contractor's Personal Service Company (PSC) and the fee-payer (as set out in the off-payroll working rules, usually the agency paying the contractor's PSC). It should be formally agreed between these parties that the contractor is to do no work for the public sector organisation during their period of furlough. The fee-payer would be able to apply for the furlough payment of 80% of the monthly contract value, up to a maximum of £2,500, as well as the employer NICs on that subsidised wage. The fee-payer would then pay at least the amount of wage-grant received to the PSC, and report the payment via PAYE using the contractor's details, making the usual tax and National Insurance contributions (NICs) deductions for contracts in scope of the off-payroll rules. The PSC would then be required to report the amount it pays to the contractor as deemed employment income via PAYE using box 58A on the PAYE Real Time Information return.

Where a contractor is continuing to receive payments from a public sector client (including through the CJRS or other any other scheme), income from this client should be excluded from any calculation of the reference pay for the purposes of the CJRS if the contractor also decides to furlough themselves as an employee or director of their own company.

1.24 Employee transfers under TUPE and on a change in ownership

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.

[Read more guidance on TUPE rules.](#)

[Read more guidance on business succession.](#)

1.25 Payroll Consolidation

Where a group of companies have multiple PAYE schemes and there is a transfer of all employees from these schemes into a new consolidated PAYE scheme after 19 March 2020, the new scheme will be eligible to furlough those employees and claim the grants available under the CJRS.

1.26 If your employee does volunteer work

A furloughed employee can take part in volunteer work, if it does not provide services to or generate revenue for, or on behalf of your organisation or a linked or associated organisation. Your organisation can agree to find furloughed employees new work or volunteering opportunities whilst on furlough if this is in line with public health guidance.

1.27 If your employee undertakes training

Furloughed employees can engage in training, as long as in undertaking the training the employee does not provide services to, or generate revenue for, or on behalf of their organisation or a linked or associated organisation. Furloughed employees should be encouraged to undertake training.

Where training is undertaken by furloughed employees, at the request of their employer, they are entitled to be paid at least their appropriate national minimum wage for this time. In most cases, the furlough payment of 80% of an employee's regular wage, up to the value of £2,500, will provide sufficient monies to cover these training hours. However, where the time spent training attracts a minimum wage entitlement in excess of the furlough payment, employers will need to pay the additional wages (see National Minimum Wage Section for more details).

1.28 If your employee is on maternity leave, adoption leave, paternity leave or shared parental leave

The normal rules for maternity and other forms of parental leave and pay apply.

You can claim through the scheme for enhanced (earnings related) contractual pay for employees who qualify for either:

- maternity pay
- adoption pay
- paternity pay
- shared parental pay

1.29 Agreeing to furlough employees

Employers should discuss with their staff and make any changes to the employment contract by agreement. When employers are making decisions in relation to the process, including deciding who to offer furlough to, equality and discrimination laws will apply in the usual way.

To be eligible for the grant employers must confirm in writing to their employee confirming that they have been furloughed. A record of this communication must be kept for five years.

You do not need to place all your employees on furlough. However, those employees who you do place on furlough cannot undertake work for you.

1.30 How much you can claim

You'll need to claim for:

- 80% of your employees' wages (even for employee's on National Minimum Wage) - up to a maximum of £2,500 per month. Do not claim for the worker's previous salary.
- Employer National Insurance contributions that are paid on the subsidised furlough pay.
- Employer pension contributions that are paid on the subsidised furlough pay, up to the level of the minimum automatic enrolment employer contribution. The maximum level of grant for employer pension contributions on subsidised furlough pay is set in line with the minimum automatic enrolment employer contribution of 3% on qualifying earnings. Grants for pension contributions can be claimed up to this cap provided the employer will pay the whole amount claimed to a pension scheme for the employee as an employer contribution.

You can choose to top up your employee's salary, but you do not have to. Employees must not work or provide any services for the business while furloughed, even if they receive a top-up salary.

Grants will be prorated if your employee is only furloughed for part of a pay period.

Claims should be started from the date that the employee finishes work and starts furlough, not when the decision is made, or when they written to confirming their furloughed status.

The way you work out your employees' wages is different depending on what type of contract they're on, and when they started work.

1.31 Full or part time employees on a salary

Claim for the 80% of the employee's salary, as in their last pay period prior to 19 March 2020.

If, based on previous guidance, you have calculated your claim based on the employee's salary as at 28 February 2020 (and this differs from their salary in their last pay period prior to 19 March 2020) you can choose to still use this calculation for your first claim.

1.32 Employees whose pay varies

If the employee has been employed for 12 months or more, you can claim the highest of either the:

- same month's earning from the previous year
- average monthly earnings for the 2019-2020 tax year

If the employee has been employed for less than 12 months, claim for 80% of their average monthly earnings since they started work until the date they are furloughed.

If they have been employed for less than a month, work out a pro rata for their earnings so far, and claim for 80%.

1.33 Past Overtime, Fees, Commission, Bonuses and non-cash payments

You can claim for any regular payments you are obliged to pay your employees. This includes wages, past overtime, fees and compulsory commission payments. However, discretionary bonus (including tips) and commission payments and non-cash payments should be excluded.

1.34 Benefits in Kind and Salary Sacrifice Schemes

The reference salary should not include the cost of non-monetary benefits provided to employees, including taxable Benefits in Kind. Similarly, benefits provided through salary sacrifice schemes (including pension contributions) that reduce an employee's taxable pay should also not be included in the reference salary.

All the grant received to cover an employee's subsidised furlough pay must be paid to them in the form of money. No part of the grant should be netted off to pay for the provision of benefits or a salary sacrifice scheme.

Where the employer provides benefits to furloughed employees, including through a salary sacrifice scheme, these benefits should be in addition to the wages that must be paid under the terms of the Job Retention Scheme.

Normally, an employee cannot switch freely out of a salary sacrifice scheme unless there is a life event. HMRC agrees that COVID-19 counts as a life event that could warrant changes to salary sacrifice arrangements, if the relevant employment contract is updated accordingly.

1.35 Employer National Insurance and Pension Contributions

You'll still need to pay employer National Insurance and pension contributions on behalf of your furloughed employees, and you can claim for these too.

You cannot claim for:

- additional National Insurance or pension contributions you make because you chose to top up your employee's salary
- any pension contributions you make that are above the mandatory employer contribution

1.36 Apprenticeship Levy and Student Loans

Both the Apprenticeship Levy and Student Loans should continue to be paid as usual. Grants from the Job Retention Scheme do not cover these.

1.37 National Minimum Wage

Individuals are only entitled to the National Living Wage (NLW)/National Minimum Wage (NMW)/Apprentices Minimum Wage (AMW) for the hours they are working or treated as working under

minimum wage rules. This means that furloughed workers who are not working can be paid the lower of 80% of their salary or £2,500 even if, based on their usual working hours, this would be below their appropriate minimum wage. However, time spent training is treated as working time for the purposes of the minimum wage calculations and must be paid at the appropriate minimum wage, taking into account the increase in minimum wage rates from 1 April 2020. As such, employers will need to ensure that the furlough payment provides sufficient monies to cover these training hours. Where the furlough payment is less than the appropriate minimum wage entitlement for the training hours, the employer will need to pay the additional wages to ensure at least the appropriate minimum wage is paid for 100% of the training time.

Where a furloughed worker is paid close to minimum wage levels and asked to complete training courses for a substantial majority of their usual working time, employers are recommended to seek independent advice or contact Acas.

1.38 Returning from statutory leave

Statutory leave includes maternity leave, paternity leave, shared parental leave, adoption leave, sick leave and parental bereavement leave.

In line with other employees, claims for full or part time employees furloughed on return from statutory leave should be calculated against their salary, before tax, not the pay they received whilst on statutory leave.

Claims for those on variable pay, returning from statutory leave should be calculated using either the:

- same month's earning from the previous year
- average monthly earnings for the 2019-2020 tax year.

1.39 What you'll need to make a claim

Employers should discuss with their staff and make any changes to the employment contract by agreement. Employers may need to seek legal advice on the process. If sufficient numbers of staff are involved, it may be necessary to engage collective consultation processes to procure agreement to changes to terms of employment.

1.40 To claim, you will need:

- your employer PAYE reference number
- the number of employees being furloughed
- National Insurance Numbers for the furloughed employees
- Names of the furloughed employees
- Payroll/employee number for the furloughed employees (optional)
- your Self Assessment Unique Taxpayer Reference or Corporation Tax Unique Taxpayer Reference or Company Registration Number

- the claim period (start and end date)
- amount claimed (per the minimum length of furloughing of 3 consecutive weeks)
- your bank account number and sort code
- your contact name
- your phone number

You will need to calculate the amount you are claiming. HMRC will retain the right to retrospectively audit all aspects of your claim.

If you have fewer than 100 furloughed staff you will be asked to enter details of each employee you are claiming for directly into the system - this will include their name, National Insurance number, claim period and claim amount, and payroll/employee number (optional).

If you have 100 or more furloughed staff you will be asked to upload a file with the information rather than input it directly into the system. We will accept the following file types: .xls .xlsx .csv .ods

The file should include the following information for each furloughed employee: name, National Insurance number, claim period and claim amount, payroll/employee number (optional).

You should retain all records and calculations in respect of your claims.

HMRC cannot provide your employees with details of claims you make on their behalf. Please help us by keeping your employees informed, answering any questions that they might have. Please ask them not to contact HMRC.

If you use an agent who is authorised to act for you for PAYE purposes, they will be able to make a claim on your behalf. If you use a file only agent (who files your RTI return but doesn't act for you on any other matters) they won't be authorised to make a claim for you and you will need to make the claim yourself. Your file only agent can assist you in obtaining the information you need to claim (which is listed above). We are making the claim process as straightforward as possible.

If an agent makes a claim on your behalf you will need to tell them which bank account you would like the grant to be paid into.

1.41 Claim

You should make your claim using the amounts in your payroll - either shortly before or during running payroll. Claims can be backdated until the 1 March where employees have already been furloughed.

If appropriate, worker's wages should be reduced to 80% of their salary within your payroll before they are paid. This adjustment will not be made by HMRC.

1.42 Minimum furlough periods

Any employees you place on furlough must be furloughed for a minimum period of 3 consecutive weeks. When they return to work, they must be taken off furlough. Employees can be furloughed multiple times, but each separate instance must be for a minimum period of 3 consecutive weeks.

1.43 After you've claimed

HMRC will check your claim, and if you're eligible, pay it to you by BACS to a UK bank account.

You must pay the employee all the grant you receive for their gross pay in the form of money.

Furloughed staff must receive no less than 80% of their reference pay (up to the monthly cap of £2500).

Employers cannot enter into any transaction with the worker which reduces the wages below this amount. This includes any administration charge, fees or other costs in connection with the employment.

1.44 When the government ends the scheme

When the government ends the scheme, you must make a decision, depending on your circumstances, as to whether employees can return to their duties. If not, it may be necessary to consider termination of employment (redundancy).

HMRC will process all claims made before the scheme ends.

1.45 When your employees are on furlough

You cannot ask your employee to do any work that:

- makes money for your organisation or any organisation linked or associated with your organisation
- provides services for your organisation or any organisation linked or associated with your organisation

They can take part in volunteer work or training.

1.46 Employee taxes

Your employees will still pay the taxes they normally pay out of their wages.

This includes pension contributions (both employer contributions and automatic contributions from the employee), unless the employee has opted out or stopped saving into their pension.

1.47 Employee rights

Employees still have the same rights at work, including:

- Statutory Sick Pay
- maternity and other parental rights
- rights against unfair dismissal
- redundancy payments
-

Grants cannot be used to substitute redundancy payments. HMRC will continue to monitor businesses after the scheme has closed.

1.48 Working for a different employer

If contractually allowed, your employees are permitted to work for another employer whilst you have placed them on furlough.

For any employer that takes on a new employee, the new employer should ensure they complete the starter checklist form correctly. If the employee is furloughed from another employment, they should complete Statement C.

1.49 Tax Treatment of the Coronavirus Job Retention Grant

Payments received by a business under the scheme are made to offset these deductible revenue costs. They must therefore be included as income in the business's calculation of its taxable profits for Income Tax and Corporation Tax purposes, in accordance with normal principles.

Businesses can deduct employment costs as normal when calculating taxable profits for Income Tax and Corporation Tax purposes.

Individuals with employees that are not employed as part of a business (such as nannies or other domestic staff) are not taxable on grants received under the scheme. Domestic staff are subject to Income Tax and National Insurance Contributions on their wages as normal.

[Additional information released by HMRC on 15 April 2020 – How to make a claim.](#)

1.50 How to claim

As you prepare to make a claim, please note:

- the online claim service will be launched on GOV.UK on **20 April 2020** – please do not try to access it before this date as it won't be available

- the only way to make a claim is online – the service should be simple to use and any support you need available on GOV.UK; this will include help with calculating the amount you can claim
- you can make the claim yourself even if you usually use an agent
- claims will be paid within 6 working days; you should not contact us unless it is absolutely necessary – any queries should be directed to your agent, representative or our webchat service
- we cannot answer any queries from employees – they will need to raise these with you, as their employer, directly.

Information you will need before you make a claim

In addition to the information in our previous email, you will need to have the following before 20 April 2020:

- a Government Gateway (GG) ID and password – if you don't already have a GG account, you can [apply for one online](#), or by going to GOV.UK and searching for 'HMRC services: sign in or register'
- be enrolled for PAYE online – if you aren't registered yet, [you can do so now](#), or by going to GOV.UK and searching for 'PAYE Online for employers'
- the following information for each furloughed employee you will be claiming for:
 1. Name.
 2. National Insurance number.
 3. Claim period and claim amount.
 4. PAYE/employee number (optional).
- if you have fewer than 100 furloughed staff – you will need to input information directly into the system for each employee
- if you have 100 or more furloughed staff – you will need to upload a file with information for each employee; we will accept the following file types: .xls .xlsx .csv .ods.

2. Recruitment issues

This section answers recruitment specific questions on the Job Retention Scheme. This is REC's analysis of the scheme based on HMRC's guidance and our continued discussions with government. However, there is no legislation to back up the scheme or HMRC's guidance.

Note: The scheme must interact with worker rights including for example, holiday leave and pay. Whilst it may be easier to understand some of these interactions for salaried employees, it is much more difficult to do so when it comes to temporary workers with atypical working patterns. These are potentially quite difficult to resolve as there is no legislation to back up the scheme or HMRC's guidance. In this section we answer some of the more frequently asked questions so far as we can - there are many outstanding questions which we will answer as and when we get more guidance from government.

Topics covered:

1. When to furlough a worker
2. Timing of the Coronavirus Job Retention Scheme and how it will work
3. What the furlough grant covers
4. How to furlough workers
5. How the furlough scheme applies to those working through umbrella companies
6. Does the scheme apply to individuals working through their own personal service companies?
7. Does the scheme apply to individuals working through CIS intermediaries?
8. Holiday and holiday pay
9. AWR
10. Questions we have asked government

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| 1. | When to furlough a worker |
| 1.1 | <p>Does a worker have a right to be furloughed?</p> <p>No, a worker does not have a right to be furloughed. It is a commercial decision for the employer/ agency.</p> <p>For more detail about who can be furloughed see sections 1.7 above.</p> |
| 1.2 | <p>If an agency worker is receiving furlough payments can they work elsewhere?</p> <p>See sections 1.13 and 1.42 of HMRC's guidance.</p> <p>A furloughed worker cannot work for the employer which has furloughed them. If an agency worker is on the payroll of a number of different agencies, it is possible that they will be furloughed by some of them. It is also possible that a temporary worker who has been furloughed by one agency finds work through another agency for the period during which they have been furloughed. This is not prohibited by the scheme. The Scheme rules do state that:</p> |

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| | <p>If an employee has had multiple employers over the past year, has only worked for one of them at any one time, and is being furloughed by their current employer, their former employer/s should not re-employ them, put them on furlough and claim for their wages through the scheme.</p> |
| 2. | Timing of the Coronavirus Job Retention Scheme and how will it work |
| 2.1 | <p>What does on payroll on 19 March 2020 mean?</p> <p>When the scheme was first announced, it was only available to pay the wages and wage costs of employees who were on the employer's payroll on 28 February. This was changed on 15 April. Employers can now only claim for furloughed employees that were on your PAYE payroll on or before 19 March 2020 and which were notified to HMRC on an RTI submission on or before 19 March 2020. This means an RTI submission notifying payment in respect of that employee to HMRC must have been made on or before 19 March 2020. Employees that were employed as of 28 February 2020 and on payroll (i.e. notified to HMRC on an RTI submission on or before 28 February) and were made redundant or stopped working for the employer after that and prior to 19 March 2020, can also qualify for the scheme if the employer re-employs them and puts them on furlough.</p> |
| 2.2 | <p>Question we received from an agency (from now on, referred to as Agency question) – Do we know how long the employees can claim 80% for?</p> |
| Answer | <ul style="list-style-type: none"> • The employees do not claim the 80%. The employer does. • If an employer chooses to furlough a worker, they must do so for a minimum of 3 weeks. • The information provided confirms that the Scheme will operate for 3 months from 1 March, although it is possible that it could be extended. • |
| 2.3 | <p><u>Agency question:</u></p> <p>(a) If the temporary members role was cancelled or postponed with less than 3 weeks of the role remaining does that mean they are not entitled to 80% of wages?</p> <p>(b) Can the worker still be put on furlough if the client has terminated the assignment?</p> <p>(a) The government guidance states that employers must pay employees all of the money received from the grant so if you furlough a temporary worker you must pay them all of the money, which will be a minimum of three weeks.</p> <p>You are not required to furlough a worker and it may be advisable not to furlough and take money from the scheme which exceeds what you pay. It is not clear whether it will be possible to make adjustments once the scheme is up and running.</p> <p>(b) If a client has terminated a temporary worker's assignment because coronavirus has impacted on their business it would be in keeping with the scheme to furlough the temp and use the grant to pay them the money for the work you were no longer able to provide them.</p> |
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| 3. | What does the furlough grant cover? |
| | <p>See section 1.30 above.</p> <p>In brief the grant will cover:</p> <ul style="list-style-type: none"> • the lower of 80% of an employee’s regular wage or £2,500 per month; • plus the associated Employer National Insurance contributions; • plus the minimum automatic enrolment employer pension contributions on that subsidised wage. <p>The grant does not cover an employer's apprenticeship levy costs.</p> |
| 3.1 | <p>Do agencies have to deduct tax and national insurance from the furlough grant?</p> <p>Yes, the grant is a gross sum from which the agency must deduct PAYE tax, employee’s national insurance and employee’s pension auto-enrolment contribution.</p> <p>The agency will also receive the related employers’ national insurance and pensions auto-enrolment contribution.</p> |
| 3.2 | <p>Does the grant cover our apprenticeship levy costs?</p> <p>See section 1.36 above. This makes it clear that whilst employers must still pay the apprenticeship levy, the furlough grant does not cover the levy.</p> <p>This puts agencies in a difficult position. They want to help temporary workers, but if agencies have to continue to pay apprenticeship levy on the furlough grant, whilst at the same time, cannot recover any of their payroll or other costs (as they are not billing clients), this is a significant disincentive to agencies furloughing temporary workers. We have raised this with government.</p> |
| 3.3 | <p>If I furlough my temps who I have no work for, can I claim 80% of their pay and also the margin I would have got for supplying them as part of my employment costs?</p> <p>Agency question: Can the agency still charge the end-client for the staff needed to run the payroll for furloughed workers?</p> <p>.</p> <ul style="list-style-type: none"> • Importantly the grant does not include any agency margin or the costs to a business of administering the scheme This will be particularly important for agencies who cannot charge the client the margin for such time as a temporary worker is furloughed and for umbrella companies who charge a payroll or admin fee. • It will be a commercial negotiation between the client and the agency as to whether the client will cover the agency’s margin. However, clients are likely to argue the agency is not providing them with any temporary worker services during the furlough period therefore there is nothing to charge. It may depend on when the client expects to require temporary workers from the agency and whether they are prepared to support agencies during this time. |

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| 3.4 | <p>How should an agency calculate the 80% of a temporary worker's pay where their pay varies according to time worked?</p> |
| | <p>See section 1.32 of HMRC's guidance.</p> |
| 3.5 | <p><u>Agency question:</u> Is it safe to assume that if the client furloughs the temporary worker, and we continue to bill the client during the furlough period, HMRC will honour the grant?</p> <p>The scheme is new and difficult to follow – so it is important to break this question down:</p> <ul style="list-style-type: none"> • The client may terminate an assignment because it no longer requires the temporary worker's services but the client doesn't furlough the worker. Only the business which payrolls the temporary worker can furlough that worker. • What does the agency intend to bill the client for during the furlough period? <ul style="list-style-type: none"> ○ The remaining 20% of the temporary worker's pay? Remember there is no obligation to pay the remaining 20% - we expect few clients would be prepared to cover this cost. ○ The agency's margin? This will be a commercial negotiation between the agency and the client. The scheme does not cover agency margins. • Therefore, HMRC will only "honour" the grant for the lower of 80% of the worker's pay or £2500 per month (not including employer NICs and pension contribution). • Remember though, any employee/temporary worker who is furloughed is not able to continue to work for you. It is not clear on what basis you would be able to continue to bill the client if you are not supplying the temporary worker. You'd need to check your client terms. However, we do know that under the scheme you are required to keep records re the employees/temporary workers who are furloughed and that HMRC will have a right to carry out audits. We don't have any information as to what action they could take after payments have been made if monies paid out are not in accordance with the scheme. |
| 4. | <p>How to furlough workers</p> |
| 4.1 | <p>What process do agencies have to follow to furlough workers?</p> <p>An employer must have a written agreement with worker in order to place them on furlough and be able to access the grant. Employers must keep records relating to furlough for 5 years.</p> <p>See the REC Template documents on the Job Retention Scheme section of the Coronavirus hub.</p> |
| 4.2 | <p>Can I take someone back on once I have furloughed them?</p> <p>If you furlough an employee, their employment will still be ongoing. You can take them off furlough but they must be furloughed for a minimum of three weeks. An employer can furlough workers multiple times. This suggests that an employer could even rotate</p> |

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| | furlough leave amongst employees to ensure they share benefit/ brunt of furlough leave. However, again there is no requirement to do so - as always, the decision to furlough is entirely a business decision. |
| 4.3 | Has the REC produced any documents for agencies to use to furlough their workers? If yes, are these documents available to non-members? |
| | The REC has prepared template documents for agencies to use with both their own employees and temporary workers. These include: Document 1 – information about the scheme and why the agency wants to use it Document 2 – a template furlough agreement Document 3 – a letter confirming that the agency has furloughed the employee/temporary worker. Our legal templates and documents are available only to REC members. |
| 5. | How the scheme applies to those working through umbrella companies |
| 5.1 | Who is responsible for furloughing a temporary worker who works through an umbrella company? |
| | See section 1.20 of the HMRC guidance. <ul style="list-style-type: none"> • If a temporary worker is on the payroll of an umbrella company, the umbrella company is the 'employer' for the purpose of the scheme. • It is up to the umbrella company whether the temporary worker will be furloughed or not. |
| 5.2 | What if the umbrella company refuses to furlough the worker? |
| | <ul style="list-style-type: none"> • Employers are not under any obligation to place employees/temporary workers on furlough. If the umbrella company is the employer, then it can decide whether to furlough an employee/temporary worker or not. • If an umbrella does decide to furlough workers, it cannot charge a fee from the furlough grant. |
| 6. | How does the furlough scheme apply to those working through their own personal service companies (PSC)? |
| 6.1 | Can agencies furlough individuals who work through their own PSCs? |
| 6.2 | <u>Agency question:</u> What about small enterprises who are paid by dividends so are not covered by the job retention scheme or any support about to be announced for the self-employed? |
| | <ul style="list-style-type: none"> • The scheme only applies to employers in respect of PAYE employees on their payroll. • Therefore a contractor who works through their own PSC cannot be furloughed by the agency. • The PSC may be able to furlough the contractor and use the Scheme to cover 80% of the contractors pay if the contractor is on the PSC's payroll. See section 1.18 above. |

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| | <ul style="list-style-type: none"> There is a separate scheme for self-employed workers which is outside the scope of this guidance. |
| 6.3 | Can a company furlough its directors? |
| | <p>This will be of interest to agency owners. Please note:</p> <ul style="list-style-type: none"> Yes, company directors who are on the company's payroll can be furloughed and the company can access use the grant to cover 80% of a directors wages (up to the £2500 cap. But this only applies to wages paid through PAYE. If a director also receives dividends, this is not covered by the grant. The requirement to comply with company law will continue; and where furloughed directors need to carry out particular duties to fulfil the statutory obligations they owe to their company, they may do so provided they do no more than would reasonably be judged necessary for that purpose, i.e. they should not do work of a kind they would carry out in normal circumstances to generate commercial revenue or provides services to or on behalf of their company. See section 1.18 above. |
| 7. | Does the furlough scheme apply to those working through CIS intermediaries (in the construction sector?) |
| | <p>HMRC's guidance does not refer to the CIS. However, in order to be able to rely on the retention scheme, a temporary worker must have been on payroll on 19 March 2020.</p> <p>The CIS scheme applies to individuals who are self-employed, whether working through their own PSC or as sole traders. Therefore, they are highly unlikely to appear on anyone's payroll and so cannot be furloughed by the agency, and cannot be paid through the scheme <u>unless</u> they are payrolled by the PSC.</p> <p>There is a separate scheme for self-employed workers which is outside the scope of this guidance.</p> |
| 8. | Holiday and holiday pay |
| 8.1 | Do temporary workers accrue holiday leave and pay whilst on furlough? |
| | <p>Employees - Yes, while on furlough leave, the employment contract continues and holiday will continue to accrue.</p> <p>Temporary workers - This is a complex issue and there are differing views on this. Ordinarily a temporary worker engaged on a contract for services, where there is no contract between assignments, accrues holiday according to time worked when on assignment. If they have been furloughed by an agency, they cannot work for that agency and therefore cannot accrue holiday leave or pay during furlough leave from that agency. Some however will argue that holiday leave does accrue.</p> <p>The process of furloughing employees and temporary workers is a new concept in the UK. The government announced the job retention scheme as an emergency measure to protect the income and jobs of the majority of workers. The interaction of the scheme</p> |

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| | with other employment rights has not yet been fully worked out and certainly has not been tested in any cases and may not be for some time. |
| 9. | AWR |
| 9.1 | <p>If an agency worker has been furloughed, does that stop or suspend their qualifying clock for the purposes of the Agency Workers Regulations 2010 (AWR)?</p> <p>The AWR provide for the qualifying clock to be paused in specific circumstances. None of those circumstances apply specifically to workers furloughed under the Job Retention Scheme. However, the clock can be paused for breaks of up to six weeks. If the agency worker is furloughed for that period the clock will pause.</p> |
| 9.2 | <p>If an agency worker's furlough pay is below the pay that they would have received if entitled to equal pay for AWR purposes, does the agency have to top the pay up to meet that equal pay?</p> <ul style="list-style-type: none"> • HMRC's guidance does not refer to AWR or equal treatment. However, at section 1.28 the guidance sets out how to calculate pay for a temporary worker whose pay varies. • If the agency averages out the temporary worker's pay it may fall below an equal pay rate they had previously received or expected to receive. By analogy, the guidance also recognises that a temporary worker's pay might fall below national minimum wage if they receive only 80% of what they previously received. • However, we must bear in mind that this is an unprecedented scheme - the purpose of which is to retain jobs where possible. The alternative for some individuals will be to rely on SSP or Universal Credit, if they meet the criteria. |
| 10. | Questions we have raised with government |
| | <p>There are many remaining questions following the Job Retention Scheme guidance. The REC have been speaking to government on a daily basis to make sure the policy changes work for our members in as best way as possible. Throughout this document we identify some of the questions we have raised. Some more are listed below.</p> <p>We will update the Q&A above as soon as we know answers to questions. This is an unprecedented situation where policy is made before the detail is decided. Given our daily calls with government, when clarity is given - we hear quickly - so we will then pass on that information to you.</p> <p>There are some questions - although important - we know we will not get answers to as government does not want to complicate the scheme further. We will keep pushing hard to get answers to the questions agencies have raised with us.</p> |
| 10.1 | <p>Can an agency process the payroll and hold the payment from the worker until the money is received from the government?</p> <p>Yes, if they have an agreement with the worker to defer the date that they will be paid.</p> |