REVISED CORONAVIRUS JOB RETENTION SCHEME
FLEXIBLE FROM 1 JULY 2020

This edition of Workforce Matters summarises the latest Government guidance published on 12 June 2020 about how the Coronavirus Job Retention Scheme (CJRS) will operate from 1 July. It updates our previous guidance in issue 15 of Workforce Matters [dated 1 June 2020], which reviewed the Chancellor of the Exchequer’s initial announcement (and limited information) on 29 May about how things would change, including ‘flexible furlough’ between 1 July and 31 October 2020, the gradual tapering down of Government funding and confirmation that the scheme is to close completely on 31 October 2020.

INTRODUCTION

On 12 June 2020, the Government published several new and updated guidance documents setting out details of a flexible furlough scheme that will run from 1 July to 31 October. Under the revised rules employers will be able to bring employees back on reduced hours whilst still claiming a grant for any usual hours not worked. However, only employees who have been furloughed for a full three weeks prior to 30 June can be furloughed after 1 July, unless they are returning from family-related leave. From August employer will need to contribute towards the costs of furloughed employees.

The guidance documents are listed below, and this edition of Workforce Matters will focus primarily on the changes to the Scheme.

New Guidance

1. Changes to the Coronavirus Job Retention Scheme – summarises the changes that will take effect from 1 July 2020

2. Steps to take before calculating your claim using the Coronavirus Job Retention Scheme – examines a series of considerations, investigations and calculations that are needed before submitting a claim under the revised CJRS. It includes calculation methods for both fixed and variable hours employees.

3. Calculate how much you can claim using the Coronavirus Job Retention Scheme – examines the mechanics of claim calculation under the revised Scheme, including worked examples
Updated Guidance (note: the changes made to the existing guidance documents listed below accord with the features of the revised version of the CJRS outlined in the 3 new documents referred to above and are included here for ease of reference).

4. Guidance for employers: Check if you can claim for your employees’ wages through the Coronavirus Job Retention Scheme

5. Check which employees you can put on furlough to use the Coronavirus Job Retention Scheme

6. Claim for wages through the Coronavirus Job Retention Scheme

7. Examples of how to calculate your employees’ wages, National Insurance contributions and pension contributions (renamed and updated)

8. Reporting payments in PAYE Real Time Information from the Coronavirus Job Retention Scheme

OVERVIEW

The table below provides a general timeline of how the CJRS will change over the coming months before it closes completely on 31 October 2020.

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<th>TIMELINE OF CHANGES</th>
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<td><strong>JUNE</strong></td>
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<td>30 June: this phase of the scheme will close to new entrants as new flexibilities are introduced from <em>1 July</em>*</td>
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<td><strong>10 June: deadline by which an employer could furlough an employee for the first time</strong></td>
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<td>31 July – final date for employers to make claim for period to 30 June</td>
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* from this point onwards, employers will only be able to furlough employees that they have furloughed for a full 3-week period prior to 30 June.

** the only exception to this cut-off date, and who will be eligible for registration on the scheme, are parents returning to work after a period of extended statutory family-related leave (maternity/paternity/adoption). However, this will be on the basis that the employer has previously made use of the CJRS for a period of at least three consecutive weeks any time between 1 March and 30 June. Also, the statutory leave would need to have commenced before 10 June and the employee on the employer’s PAYE payroll on or before 19 March 2020 (see Guidance for Employers – 4 above).
WHAT TRANSITIONAL ARRANGEMENTS APPLY BETWEEN NOW AND THE END OF JUNE 2020?

The Guidance for Employers document also explains the transitional arrangements covering the situation where a previously furloughed employee starts a new period of furlough at some point after 10 June, but before 1 July. In this case, the new furlough period must be for a minimum of three consecutive weeks, in line with earlier CJRS guidance. Therefore, if a previously furloughed employee commences a new period of furlough on 22 June, this will have to continue for at least three consecutive weeks, ending on or after 12 July. After this period, the employee can be moved onto flexible furlough for any period or remain on full-time furlough. However, after 1 July, employers cannot make claims that cross calendar months, so separate claims will have to be submitted.

As summarised in the table above, the CJRS will continue in its current form until 30 June 2020. Up to and including that date:

- Employers can agree with employees that they are to be ‘furloughed’ under the scheme (REMEMBER: the minimum three-week period applies up to and including 30 June).
- Furloughed workers cannot, subject to some limited exceptions, undertake any work for their employer (or a connected company);
- HMRC will pay the employer a grant equal to:
  - 80 percent of the furloughed worker’s reference pay (these payments are capped at £2,500 per month), which represents the furloughed worker’s minimum entitlement to pay under the Scheme; and
  - The associated employer’s NIC and minimum automatic employer pension contributions;
- The employer bears the full cost of any ‘top up’ payments made to furloughed workers over and above their minimum entitlements under the scheme.

WHAT ABOUT THOSE WHO ARE ON SICKNESS ABSENCE, SHIELDING OR HAVE CARING RESPONSIBILITIES?

It remains possible for employers to agree to furlough employees who are shielding, on long-term sickness absence or have caring responsibilities. However, to do so from 1 July, the employee must have been furloughed for a least three consecutive weeks between 1 March and 30 June 2020. There is no exception to this requirement.

WHAT CHANGES WILL COME INTO EFFECT FROM 1 JULY 2020

FLEXIBLE FURLOUGH – FACTSHEET and FAQs

What changes will come into effect from July?

A number of changes to the Coronavirus Job Retention Scheme (CJRS) has been announced by Government and will take effect from 1 July 2020. A timeline of changes is shown in the table above and confirm that:

- 1 July 2020: The new flexible furlough scheme starts for employers who have used CJRS already but only in respect of employees previously furloughed.
- 1 August 2020: Level of the grant will progressively reduce. The government will pay 80% of wages up to a cap of £2,500. Employers will pay employer NICs and pension contributions
- 1 September 2020: The government will pay 70% of wages up to a cap of £2,190. Employers will pay employer NICs and pension contributions and 10% of wages to make up 80% total up to a cap of £2,500
- 1 October 2020: The government will pay 60% of wages up to a cap of £1,875. Employers will pay employer NICs and pension contributions and 20% of wages to make up 80% total up to a cap of £2,500
What is flexible furlough?

Under the current rules an employee must be furloughed for a minimum of three weeks and cannot undertake any work for their employer while on furlough. Under the flexible furlough scheme employers will be allowed to bring employees back for any amount of time and on any work pattern while still claiming under the Scheme for any usual hours they do not work. It is also open to employers to keep employees fully furloughed.

As is the case now, during hours which an employer records an employee as being on furlough, the employer cannot ask them to undertake any work that makes money, or provides services, for the employer’s business or any linked or associated business. An employee can, however, take part in training, volunteering or work for another employer.

Which employees can be flexibly furloughed?

From 1 July employers will only be able to furlough an employee they have already successfully claimed a grant for. This means that the employee must have been furloughed for at least one full three-week period prior to 1 July. The last date by which an employee would need to have been furloughed for the first time was 10 June (this deadline now passed subject to the exceptions referred to above).

The Guidance for Employers makes clear that the total number of employees furloughed in one claim period after 1 July cannot exceed the maximum number of employees furloughed in a single claim period before 30 June. For example, if an employer had previously made two claims for 40 and 10 employees respectively, the maximum number of employees they can furlough in one claim period after 1 July is 40.

How do employers flexibly furlough an employee?

In order to furlough employees an employer must enter into a furlough agreement. The Guidance for Employers state that employers wishing to flexibly furlough employees will need to enter into a “new written agreement.” It is unclear whether the agreement itself will need to be in writing or whether, as per the current rules, it only needs to be notified in writing. We take the view that employers should enter into a written agreement with their employees. [A template document for this purpose can be downloaded here for BESA members only].

How do employers make flexible furlough claims to HMRC?

There are three main steps employers will need to take when making a flexible furlough claim:

1 Decide length of a claim period;
2 Calculate an employee’s worked hours and furloughed hours; and
3 Calculate the employee’s reference salary for furloughed hours.

1. Length of Claim Period

Employers will need to determine the length of their claim period (the number of days they are claiming a grant for). Claim periods can be a minimum of seven days and a maximum of one month. Guidance on the steps to take before calculating your claim (document 2 above) suggests that employers should choose a period that matches their payroll and also that employers can make a claim before, during or after running payroll, and that claims can be made up to 14 days before the end of a claim period.

Claims should not be made until employers know exactly how many hours a flexibly furloughed employee will work. Claim periods cannot run over into a new month. If an employer wishes to claim for a period from 27 July
to 9 August, there will need to be two claim periods: 27 July to 31 July and 1 August to 9 August. In such cases, a claim period can be shorter than the minimum seven days.

The deadline for employers to claim under the CJRS for the period to 30 June 2020 is 31 July 2020.

For the period from 1 July, claim periods will no longer be able to overlap months, i.e. you will not be able to claim for part of July and part of August in one claim – this is necessary to reflect the forthcoming changes to the scheme.

Employers may furlough different groups and numbers of employees at different times, but an employer can only make one claim during a claim period for each PAYE scheme it operates.

2. Calculating ‘usual’, ‘worked, and ‘furloughed hours

To make a claim under the Scheme from 1 July 2020 employers are required to submit the usual hours the employee would be expected to work in the relevant period, the actual hours the employee actually worked and the number of furloughed hours in the relevant claim period. Employers must keep detailed records of the number of hours an employee works and the number of hours they are furloughed not least for the purposes of any subsequent audit by HMRC.

For full details of the various calculations required when it comes to employees on flexible furlough, employers are advised to directly consult the calculate how much you can claim using the Coronavirus Job Retention Scheme guidance. However, employers should note the key points below:

➢ For employees with fixed hours (hours set out in the contract) the starting point is the number of hours they were contracted to work in the last pay period before 19 March 2020.

➢ For employees whose hours vary, the starting point is the higher of:
  - The average hours worked in the 2019-20 tax year; or
  - The number of hours worked in the same calendar period in the 2019-20 tax year.

➢ This number must then be divided by the number of calendar days in the ‘repeating work pattern’ (usually seven days) and multiplied by the number of calendar days in the claim period. This number, rounded up to the next whole number, is the employee’s ‘usual hours’. Once ‘usual hours’ have been calculated an employer simply deducts the number of hours worked in the claim period to arrive at the number of furloughed hours.

➢ In working out the usual hours, items such as annual leave and overtime are included. Note, where the pay varies by the amount of time worked, the number of hours worked will be shown on an employees' previous payslips in line with legislation introduced in April 2019. Employer should therefore have records of the number of hours worked.

➢ The calculation complexities are compounded by the need to ensure claims are contained within the same month (see above), and also the government's advice that an employer should not claim until it is sure of the exact number of hours an employee will have worked during the claim period. There is, however, now a mechanism under which a claim can be corrected

➢ A range of short examples and one detailed worked example of how to undertake this calculation can be found in the examples on how to calculate wages guidance (document 7 above).
3. **Reference Salary for furloughed hours**

Once an employer has calculated worked hours and furloughed hours they must work out 80% of the employee’s reference salary. This is done in using the existing rules.

Once done, an employer must multiply this figure with the number of furloughed hours divided by the employee’s usual hours. This gives the figure the employer can claim from HMRC. Again, the Government’s worked examples shows how this is done.

**How will flexibly furloughed workers be paid?**

Employees must be paid in accordance with their employment contract, as amended by any new flexible furlough agreement. In most cases, employees will be entitled to full pay for hours worked. As at present, the question of whether an employer is required to top up the CJRS grant to full pay for furloughed hours will depend on what is agreed in the furlough agreement.

**What happens after claim is submitted?**

After submitting a claim, employers are required to keep a copy of all records for six years, including:

- amount claimed and claim period for each employee
- claim reference number
- calculations in case HMRC require more information
- employees flexibly furloughed:
  - usual hours worked, including any calculations that were required
  - actual hours worked
- tell employees that a claim has been made and that they do not need to take any action
- pay employee wages, it not already paid.

**What happens when the Scheme ends?**

The Scheme closes on 31 October 2020. Employer will need to pay full salary and NICs as before the pandemic unless any other contractual arrangement is or has been agreed with the employee. Depending on the employer’s circumstances, it may be necessary to consider other resource efficiency measures such as reducing employees’ hours, or a termination of employment (redundancy). Normal redundancy rules apply to furloughed employees. BESA’s Guide to Employment document contains a chapter on Handling Redundancy and can be accessed from the Members’ area of our website www.thebesa.com

**What should employers do now?**

Employers should now give careful consideration to what their staffing requirements will be from 1 July and how that will impact the employees they currently have on furlough and those who have been working:

1. Carefully consider who to bring back, but be mindful of employees’ individual circumstances, such as childcare needs or shielding requirements, but do not make assumptions about them.

2. Have a clear communication strategy and ensure you communicate with employees in good time
If keeping employees on full furlough:

3. Check your furlough agreements to see if they need extension

4. Consider whether the required employer NICs, pension contributions and top-up payments coming in from 1 August will be affordable

If using flexible furlough:

5. Put in place a new flexible furlough agreement and consider the new calculation requirements [template document can be downloaded here]

6. Ensure record keeping procedures are in place in relation to the additional information required to be submitted

If rotating furlough previously used:

7. Consider the cap on the number of employees that can be furloughed in a given claim period before agreeing new arrangements

8. Remember the transitional provisions for those commencing a fresh furlough period between 11 and 30 June

Also, consider the employee relations impact of bringing furloughed employees back under flexible furlough on staff who have been working throughout or staff who remain on full furlough with no top up pay. If those on flexible furlough are financially better off than colleagues, this may have a negative impact on employee relations

Finally, consider what will happen from 1 November when the scheme is closed. For some employers, restructuring and/or redundancies may be needed, in which case it will be important to start planning and seek appropriate advice on your consultation obligations.

REMEMBER: The BESA Employment Affairs team will continue to publish further guidance as and when this becomes available. Meanwhile, the team remains available to provide support and guidance on all aspects of employing people and can be contacted at employment.affairs@thebesa.com or 020 7313 4900.

Additionally, the BESA Guide to Employment holds detailed guidance on the complete employment lifecycle and is available as a member only resource via our website.