

CORONAVIRUS JOB RETENTION SCHEME FURTHER GOVERNMENT UPDATE and GUIDANCE

Introduction

On 15 April 2020 Government issued further updates to the [Coronavirus Job Retention Scheme](#) (CJRS).

On the same date, the Treasury issued technical [direction](#) to HM Revenue and Customs setting out the legal framework for making payments under the CJRS. We would like to believe that this means the latest guidance (above) represents the definitive position on how the Scheme will operate, but should further updates become available we will notify you.

Unfortunately, the latest guidance is completely silent on annual leave and how this should be treated for furloughed employees. This omission is disappointing as the issue continues to be a source of much confusion and uncertainty. That said we have attempted, in our separate [guidance](#) about annual and recognised bank/public holidays, to provide some information on this issue using recent guidance published by the Advisory, Conciliatory and Arbitration Service (ACAS) and with reference to existing employment law in this area.

This guidance note provides a summary of some the recent key changes to the CJRS and should be read in conjunction with our previous guidance notes on the Scheme. We are currently putting together

Key Guidance/Updates

- 1) The **qualifying date**, when the employee must have been on the employer's payroll, has been changed to **19 March 2020** (previously 28 February). This means that employees who were employed on 19 March are now eligible for furlough, provided the employer had sent to HMRC a Real Time Information submission notifying a payment in respect of the employee on or before 19 March.
- 2) An employer can switch employees between statutory sick pay to furlough and vice versa. The intention here is not to use furlough to 'top-up' statutory sick pay for employees on short-term absences, such as those self-isolating for 7 or 14 days in line with guidance previously published by Government, but for business reasons, where an employer can decide to furlough employees on long-term sickness absence.
- 3) clarification that those employees who are 'shielding' (or need to stay home with someone who is shielding) in line with [public health guidance](#) can be placed furloughed. The Scheme is not limited to those 'shielding' employees who would otherwise be made redundant (as previously stated). It applies to any who are furloughed '*by reason of circumstances as a result of coronavirus or coronavirus disease*'



- 4) confirmation that employees transferred under the *Transfer of Undertakings (Protection of Employment) Regulations 2006 [TUPE]* can be furloughed. “a new employer is eligible to claim under the CJRS in respect of the employees of a previous business transferred after 28th February 2020[...]”.
- 5) to qualify for the CJRS, the employer and employee must agree in writing that the employee will cease all work. We are already aware from earlier guidance of the requirement for the employer and employee to reach agreement to change the employment contract. The template letters produced by BESA also make it clear that a furloughed employee cannot undertake any work for the employer during furlough .
- 6) confirmation that the employer can claim for earnings which it “reasonably expects to be paid” to the employee. This would appear to include deferred earnings which may have been deferred until the Scheme pays out, and not on a condition of the Scheme paying out.
- 7) confirmation that grants paid under the scheme are not counted as ‘access to public funds’ and employers can furlough employees on all categories of visa; meaning those with certain work visas will not be regarded as breaching their visa conditions if they receive funds under the CJRS.
- 8) clarification that a PAYE director who is furloughed can only undertake work to fulfil a statutory duty or other legal obligation arising from an Act of parliament, such as the filing of the company’s accounts or the provision of other relevant information relating to the administration of the company.

MAKING A CLAIM – POINTS TO NOTE

- As well as having a PAYE system, employers **MUST** have also enrolled for PAYE online to be eligible to claim a grant
- Employer and employee **MUST** reach agreement, in writing, to make changes to the employment contract to designate employees as a ‘furloughed worker’. If sufficient numbers are involved, collective consultation may be required.
- HMRC portal for making claims will go live on Monday, 20 April 2020 with the first grants being paid directly to the employer by 30 April.
- Responsibility for calculating the amount being claimed for furloughed employees fall to the employer – 80% of wages up to a maximum of £2,500 per month – HMRC will not undertake the calculation on your behalf but reserves the right to audit all aspects of each claim.
- Minimum length of furlough is 3 consecutive weeks.
- Fewer than 100 furloughed employees – details to be entered directly into the system for each employee
- More than 100 furloughed employees – employers will be required to upload a file with the information rather than enter details directly onto the system.

