

Below is a Q&A on how the UK financial support for employees is currently operating

Who can claim a furlough grant?

Any UK employer (including individuals) can claim the furlough grant until 30 June 2020 if you:

- have a UK bank account
- are enrolled for PAYE online - this can take up to 10 days
- are operating a PAYE payroll scheme on 19 March 2020.

Which employees can I claim furlough grant for?

It covers employees being paid through PAYE on 19 March 2020. You must have sent HMRC an RTI payment submission in respect of that employee on or before 19 March 2020.

- If an employee was hired after that date they are not covered.
- If an employee was made redundant on or after 28 February 2020 and prior to 19 March 2020, the employer can rehire them and claim for them.

Full time, part time, employees on zero hours, flexible or fixed term contracts and apprentices can be claimed for. Fixed term contracts can be renewed or extended during the furlough period without breaking the terms of the scheme.

Agencies who pay agency workers through PAYE can claim for those workers if they are not working through or on behalf of the agency, including 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.

Individuals can furlough employees such as nannies provided they sent HMRC an RTI payment submission in respect of that employee on or before 19 March 2020.

Employees who are unable to work because they have caring responsibilities due to COVID-19 can be furloughed (e.g. employees that need to look after children). You can also claim for employees who are shielding in line with public health guidance (or need to stay home with someone who is shielding) if they are unable to work from home and you would otherwise have to make them redundant.

An employee with more than one job can be furloughed from each job, and each employer can receive the grant for each job. The cap will apply to each job – it is not aggregated across all jobs. If contractually allowed, your employees are permitted to work for another employer whilst you have placed them on furlough.

Can I furlough company directors/LLP members?

Salaried company directors paid through PAYE can be furloughed. The decision to furlough a company director should be formally adopted as a decision of the company, noted in the company records and communicated in writing to the director(s) concerned.

A furloughed director can still carry out their statutory duties to their company but they should not carry their normal day-to-day work, such as generating commercial revenue or providing services to or on behalf of the company.

This also applies to individuals salaried through PAYE who are directors of their own personal service company.

Members of LLPs who are designated as employees for tax purposes under the Income Tax (Trading and Other Income) Act (ITTOIA) 2005 can be furloughed. The terms of the LLP agreement (or any services agreement between the LLP and the member) may need to be varied by a formal decision of the LLP to effect this. Their reference salary for the furlough grant is the LLP member's profit allocation other than any amounts which are determined by the LLP member's performance or the overall performance of the LLP.

How much will I receive from the furlough grant?

The grant will reimburse you for 80% of furloughed employees' usual wages costs (so the amount received will include the income tax and employee's NICs which you need to deduct) as at 19 March 2020 up to £2,500 a month per employee. So employees will not receive £2,500.

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 bonuses (including tips) and commission payments and non-cash payments should be excluded.

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. 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.

The employee will have to decide whether to continue making their pension contributions out of the money they receive. Failure to do so may have consequences under their pension scheme. Deductions for student loans will continue as usual and are not covered by the grant. Employees should contact the relevant agencies to see if they can arrange a suspension of payments.

HMRC provides an online calculator to assist you in calculating how much you can claim.

Employers can choose whether to pay any salary or benefits due which exceed the grant – or not. Failure to do so does not prevent them claiming the grant. But if you do not get an employee's consent to any such reduction in salary or benefits (or the reduction is not permitted through the employee's zero hours or flexible contract) you

may be liable for a claim from the employee.

Unless you furloughed employees from 1 March you will not be able to claim 3 months of wages – unless the Government extends the scheme. You can only claim the grant from the point the employee is furloughed.

What if the employee is on a zero hours or flexible contract?

If the employee has been employed for more than 12 months up to the date of the claim, they get the higher of:

- the same month's salary for 2019
- average monthly earnings from 2019-20 **tax year (not calendar year)**. Using the tax year is strange as reductions in salary in March and April 2020 will affect the amount and there could be a mismatch in the timings. Presumably it has been used because the amount can be checked through PAYE records.

If they have been employed for less than 12 months before the claim starts, then the claim is for their average monthly earnings since they started. If they only started in February 2020 then it is 80% of the pro rata amount of those earnings.

Who pays the employer's NICs etc.?

UK employers will get an additional grant to cover employer's NICs and minimum statutory auto-enrolment employer pension contributions on the amount reimbursed through the grant – not the full amount of salary if the employer chooses to pay more. Guidance on how to claim this will follow.

The apprentice levy should continue to be paid as usual – the furlough grant will not cover this.

If the employer's auto-enrolment contribution is more than £512 p/month (up to 5 April 2020) or £520 p/month (from 6 April 2020), the employer continues to be liable to pay that. If the employer does not want to make those additional payments they will need to agree this with the employee.

When will I receive the cash?

The online service for making claims opened on 20 April 2020. You will receive payment 6 working days after making an application.

How do I work out if someone is "furloughed"?

An employee has to stop working and be instructed that they have been furloughed. The Treasury has said that an employee has been instructed only if the employer and employee have agreed in writing (which may be in an electronic form such as an email) that the employee will cease all work. Where you confirm to your employee in writing that they will be furloughed unless they object and they do not provide a written response, this communication is a valid consent and you must keep a record of it for five years.

"Furloughed" means on a leave of absence from work. The employee cannot do any work for the business –

including providing services or generating revenue. Agency workers must not be working for the recruitment agency claiming a grant for them. See below for exceptions for training.

If an employee is still working but doing reduced hours they are not covered. The aim of the scheme is to help people comply with public policy to self-isolate at home.

The employee must be furloughed in 3 week blocks to be covered. Different employees can be rotated in and out of furlough provided they are off for 3 week blocks.

Employees hired after 19 March 2020 cannot be furloughed or claimed for under this scheme by their new employer.

Can I furlough employees without their consent?

No. To be eligible for the furlough grant, you must agree with the employee that they are to be furloughed and confirm such agreement in writing.

In addition, if you furlough employees and reduce their salary to 80% or the £2,500 cap without their consent, you may be in breach of their employment contract or employment law. Most fixed salary employment contracts will not allow you to reduce their salary without their consent.

The Government has also said that employers should discuss furloughing with their staff and they have suggested that redundancy consultation procedures may apply if enough employees are having their employment terms changed. This is unhelpful and will delay employers in being able to claim the grant and therefore reduce the amount they can claim.

Zero hours and flexible employees can probably be furloughed or their wages reduced without their consent – unless their contracts guarantee them a minimum number of hours.

Can I furlough some employees but keep others working?

Yes, but there is a risk that an employee could bring a claim that selection has been unfair or discriminatory. This could be a claim by employees required to work when others are not or a claim by employees only receiving 80% of their salary if other employees still working are receiving full salary. When making decisions in relation to the process, including deciding who to offer furlough to, equality and discrimination laws will apply in the usual way.

In most businesses it is likely that the CEO, FD & HR teams and others will need to continue working from home.

Can a furloughed employee still do some work for me?

No. But the employee can still volunteer or do training with you provided they are not providing services to or generating revenue for the business. So producing marketing materials or other “work products” which can be used to generate revenue is probably not permitted. If employees do online training while furloughed they must still receive the National Living Wage or Minimum Wage (as applicable) for the time spent training - even if that takes them over the 80% of their wage that will be subsidised. So hours required for training should be carefully

monitored.

Can I claim the furlough grant for wages since 1 March?

Only if employees were not carrying out any work for this period – and so were furloughed. See process below.

Some businesses will have been hoping to receive the grant for their March payroll but it looks like this will not be possible. So the grant does not cover 4 months of payroll from the announcement on 20th March.

Do I have to guarantee employment to get the furlough grant?

No. You can make the furloughed employees redundant at any time. The usual redundancy procedures will need to be followed.

What happens to holiday pay and other benefits?

Furloughed employees continue to have their employment rights as before. For example they are entitled to Statutory Sick Pay and Maternity and other parent rights. Some zero hours or flexible workers may be entitled to more money through Statutory Sick Pay than this grant.

Unfair dismissal and redundancy rules will still apply if you terminate their employment.

Employees are entitled to request and take holidays in the usual way during furlough. Holiday pay entitlements will continue to accrue. **They are entitled to 100% of their normal pay for any holidays taken during furlough, including bank holidays.** You will continue to receive the 80% grant for furloughed employees for these holiday days. But holiday pay is calculated on a different basis to wages for the furlough grant. So you may get back less than 80% of holiday pay.

See below for more details.

How is the furlough grant calculated if an employee is on SSP or maternity/paternity leave (etc.) or has been re-employed?

If an employee is on sick leave or self-isolating because of sickness (not the general Public Health orders to remain at home) they should get Statutory Sick Pay (“**SSP**”). Once this finishes they can be furloughed. You can also furlough employees who are being shielded or off on long-term sick leave.

If an employee is on maternity leave or adoption, paternity or shared parental pay they will continue to receive these allowances for the normal periods. After it finishes they can be furloughed. If you pay enhanced contractual pay to employees on maternity leave etc. that counts as “wages” (even though those employees are not technically furloughed) and can be claimed – subject to the caps.

If an employee started unpaid leave after 28 February 2020 you can furlough them instead. You cannot furlough an employee that started unpaid leave on or before 28 February 2020 until the date on which it was agreed they would return from unpaid leave.

Where you have re-employed someone who had stopped working for you after 28 February 2020, you can only claim wages from the point at which you re-employed and immediately furloughed them. You cannot back date claims to the date that they left your employment.

How do I get the furlough grant?

You need to notify the furlough to employees in writing and keep a copy of this communication for five years. If an employee's agreement is needed to reduce their salary they may be able to bring a claim against you if you do not get their consent.

Consultation may also be needed – depending on the numbers of employees and whether you are considering redundancy. This will delay the furloughing of employees and reduce the amount that can be claimed. In practice this is going to be difficult for employers to comply with. Some businesses may decide they need to take the risk in order to get as much out of the grant as possible.

You calculate the amount you claim using the actual payroll amounts you would usually run. HMRC can choose to audit it in the future. You can claim once every three weeks – no matter when the employee is furloughed. All amounts received must benefit the employee. You cannot charge any fees or admin costs of running the grant.

Once ready, you put:

- your employer PAYE scheme reference number
- your Corporation Tax Unique Taxpayer Reference, Self-Assessment Unique Taxpayer Reference or Company Registration Number, as appropriate for your entity
- number of employees furloughed
- when the furlough started and ended
- the amount claimed - which must be for at least 3 weeks to encourage self-isolation
- your bank account number and sort code
- your contact name and telephone number

into the HMRC portal – which was opened on 20 April 2020.

Employers with fewer than 100 furloughed staff will be asked to enter details of each employee for whom they are claiming directly into the system. They will be asked to provide the following information:

- name
- National Insurance number
- claim period and claim amount
- payroll/employee number (optional).

Employees with 100 or more furloughed staff will need to upload a file with the above information directly into the system. The following file types will be acceptable: .xls .xlsx .csv .ods.

You will need to keep all records and calculations related to these claims for five years.

You should also keep your employees informed of the furlough claims submitted as HMRC cannot provide employees with details of claims made on their behalf.

Are there restrictions on publicly funded businesses?

If your business continues to receive public funding for staff costs then you should pay employees in the usual way with that funding – and not furlough them. This applies to public and private businesses receiving public funding for staff costs. 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 COVID-19 response, the furlough scheme may be appropriate for some staff.

Is there any effect on Share Schemes and other Incentivisation Agreements?

Furloughing employees may have unintended consequences on employees; eligibility for EMI option schemes and similar tax approved schemes. Employees on furlough may not meet the relevant technical requirements. Representations have been made to HMRC on this.

In most cases, furloughing an employee should not trigger “Leaver” provisions but you should check that it is not caught by any “non-contributory” provisions in the documents.

What do I do next?

You should review your employees’ contracts, offer letters and terms and conditions to decide whether you need to obtain their consent to reduce their salary. If you are topping up the payments so employees still receive their full salary and benefits then you should be able to take a light touch approach.

You will also need to decide if you need to consult with employees. Some businesses may decide that they do not have time to obtain consent and go through a consultation process and that redundancy or insolvency would be the only alternative.

Once you have decided on your approach you need to notify employees in writing that they have been furloughed.

The online portal for submitting claims opened on 20 April 2020. If you have an authorised agent, decide whether you want to make your own claim or if you want your agent to act on your behalf.

You will receive payment 6 working days after making an application. HMRC will make the payments to you via BACS payment to a UK bank account.

Can I claim back SSP?

Yes. Small businesses can reclaim the amount of employees’ COVID-19 related statutory sick pay for up to 2 weeks through a separate COVID-19 Statutory Sick Pay Rebate Scheme (the “**SSP Scheme**”). The SSP Scheme covers full time, part time, zero hours or flexible contract employees and employees on agency contracts.

The repayment will cover up to 2 weeks starting from the first day of sickness if an employee cannot work because they either have COVID-19 or because they are self-isolating at home.

You can reclaim the current rate of SSP that you pay to current or former employees for periods of sickness starting on or after 13 March 2020. If you are an employer who pays more than the current statutory rate of SSP (£95.85 per week) you can only claim the current rate amount. There is currently no end date for claims to be made under the SSP Scheme – HMRC will inform us of this.

Employees do not have to provide a doctor's fit note for you to make a claim.

The SSP Scheme is available to employers which:

- are claiming for an employee who is eligible for sick pay due to COVID-19
- had a PAYE payroll on 28 February 2020
- had fewer than 250 employees on 28 February 2020.

You must keep records of all the SSP payments that you want to claim from HMRC, including:

- the reason why an employee could not work
- details of each period when an employee could not work, including start and end dates
- details of the SSP qualifying days when an employee could not work
- National Insurance numbers of all employees paid SSP to.

You'll have to keep these records for at least 3 years following your SSP claim.

Please note that you now must pay statutory sick pay to employees who are self-isolating and cannot work as a result – even if they are not sick.

You cannot claim under the SSP Scheme for an employee on furlough. If a furloughed employee becomes sick you will need to decide whether to move the sick employee onto statutory sick pay or to keep them on furlough, at their furloughed rate. If you move your employee onto statutory sick pay, you can no longer claim for the furloughed salary.

Do furloughed employees accrue annual leave?

Employees on furlough have the same employment rights as previously, including holiday accrual. It is likely that you will be able to require your employees to take accrued holiday during the furlough leave in the usual way.

Can I ask furloughed employees to take their annual leave now?

Yes, provided they are not sick. Employers can ask employees to take holiday at a particular time, provided they give sufficient notice. Unless this is specifically dealt with in the employment contract, the notice to take annual leave should be at least double the amount of holiday leave the employee is asked to take.

Can employees cancel booked holiday time?

When an employee has to cancel their holiday plans and wants to retract their holiday request, the employer can choose whether to allow them to do so. Many employers prefer employees to take as much of their holiday as

possible during the crisis when there is a reduction in work and are entitled to refuse a request to cancel holiday.

If an employee has to cancel their holiday because they are sick, or because they have been advised to self-isolate, the position is different - the employee has the right to postpone its holiday.

How much holiday can be rolled forward?

The Working Time Regulations 1998 have been amended so that where it is not reasonably practicable for a worker to take some, or all, of the holiday to which they are entitled due to COVID-19, they will now be able to carry it over into the next two holiday years. The aim is to ensure staff can continue working in the national effort against COVID-19 without losing out on annual leave entitlement.

This amendment means that instead of insisting that workers take their full holiday entitlement in this current leave year, up to four weeks leave can be carried forward for up to two years.

This extension of the ability to roll holiday days applies only to the minimum four weeks annual leave - not the full 5.6 weeks annual leave or any additional contractual holiday. As an employer you can agree for this to be carried forward in any event.

Does the two year roll over extension apply to all employees?

No. The ability to roll over holidays for the next two leave years only applies if it wasn't reasonably practicable for a worker to take some or all of their annual leave as a result of the effects of COVID-19 - whether the effects are on the worker, the employer or the wider economy or society.

However you can expect requests from most employees as it may be difficult to distinguish between what is COVID-19 affected and what is not.

What if I still need to make redundancies during or after the furlough period?

You can make employees redundant during or after their furlough period.

There is no need for redundancy consultation to have started before you place an employee on furlough. You can start the redundancy consultation process during or after furlough, if you subsequently decide you need to make redundancies.

What are my key redundancy obligations to employees?

Employees with more than two years' service have the right not to be unfairly dismissed. You should consult with employees at risk of redundancy and apply a fair selection process based on objective criteria. Redundancies should not be confirmed until a consultation has taken place.

All employees to be made redundant should be given their contractual notice (or payment in lieu of notice) together with a statutory redundancy payment (for those with more than two years' service).

If you are proposing to make 20 or more employees redundant then you should also conduct collective consultation with specially elected employee representatives (or the union or an appropriate representative staff body if there is one) for at least 30 or 45 days depending on the numbers. You may be able to argue that this period can be reduced or dispensed with because of the extreme circumstances businesses are facing - this so called "special circumstances" defence is extremely difficult to rely on so this will be a risky strategy.

There are set rules surrounding the redundancy of 20 or more employees redundant, such as giving the government advance notification of your plans.

There are no set rules for consultations with fewer than 20 redundancies but it is good practice to engage in a similar consultation process.

You do not need to reach agreement for the consultation to come to an end. You simply need to show that the consultation was genuine and that you aimed to reach agreement. You must be able to show that you've listened to your employees and that you responded to questions and suggestions.

If making redundancy payments puts your business at risk you can ask the Redundancy Payments Service for financial help.