

### FURLOUGHED SALARY GRANTS

#### Who can claim?

A UK employer operating a PAYE payroll scheme on 28 February 2020 can claim the grant until 1 June 2020.

#### Which employees can I claim for?

It covers employees being paid through PAYE on 28 February 2020:

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

Full time, part time and employees on zero hours or flexible contracts can be claimed for. Recruitment agencies who pay agency workers through PAYE can claim for those workers - if they are not working.

An employee with more than one job they can be furloughed by each employer and receive the grant from each employer. The cap will apply to each job – it is not aggregated across all jobs.

#### How much will I receive?

The grants will reimburse you for 80% of furloughed employees' usual wages costs (so the amount received includes the income tax and employee's NICs to be deducted) as at 28 February 2020 up to £2,500 a month. So employees won't receive up to £2,500.

Fees, commissions and bonuses are not included as wages and can not be claimed. Overtime is not expressly included or excluded but may be caught in the flexible worker calculations. TRONC is not mentioned – particularly important for hospitality industry workers.

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. We presume deductions for student loans etc. will continue to be made from the amount covered. Employees should contact the relevant agencies to see if they can arrange a suspension of payments.

Employers can choose whether to pay any salary or benefits 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 scheme is extended. 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, he gets the higher of:

- earnings for same month in 2019; and
- 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 effect the amount and there could be a mismatch in the timings. But presumably they have used it because they can check the amount through PAYE records.

If they have been employed for less than 12 months before the claim starts, their average monthly earnings since they started are covered. If they only started in February 2020 then it is a 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 statutory minimum 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 Guidance does not say if the apprentice levy is also covered.

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 scheme is expected to start operating by the end of April so money will not be received until after that. HMRC will also have to process your claims first – and this may take some time.

Business will have to fund employee costs until then.

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

You have to stop the employee from working and notify them of that. "Furloughed" means on a leave of absence from work. The employee can not 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 on 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. It looks like you can rotate different employees in and out of furlough as long as they are off for 3 week blocks.

### Can I furlough employees without their consent?

If you furlough employees or 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 lay off employees or reduce their salary without their consent.

The Government has also said that employers should discuss furloughing with their staff and suggest that redundancy consultation procedures may apply if enough employees are having their employment terms changed. Furlough is likely to be a "change". This is very unhelpful and will delay employers in being able to claim the grant and will 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. 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.

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?

The employee still can 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 hours spent - even if that takes them over the 80%. So hours required for training should be carefully monitored.

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

Only if employees were not carrying out any work during 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 will not cover 3 months of payroll from the announcement on 20<sup>th</sup> March unless it is extended.

### Do I have to guarantee employment to get the 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 usual employment rights. 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. Holiday pay entitlements will continue to accrue.

### How is the grant calculated if an employee is on SSP or maternity/paternity leave etc.?

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. Once this finishes they can be furloughed.

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.

An employee on unpaid leave before 28 February 2020 can not be furloughed. You can still change someone from unpaid leave to furloughed after 28 February – so they can take advantage of this grant.

### How do I get the grant?

You need to notify the furlough with employees. If an employee's agreement is needed to the reduction in 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. 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. Some businesses may decide they need to take the risk in order to move quickly and get as much out of the grant as possible.

You need to notify the employees they are being furloughed and keep a copy of this communication.

You need to put:

- your ePAYE number
- number of employees furloughed
- when the furloughed started and ended
- amount claimed - which must be for at least 3 weeks to encourage self-isolation.

into the HMRC portal – still to be set up.

You calculate the amount you claim using the actual payroll amounts you run through. 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 can not charge any fees or admin costs of running the grant.

### 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 business receiving public funding for staff costs.

### 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 are 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. We believe the requirements will be similar to the redundancy process but this has not been confirmed.

When the portal is up and running you can submit the information taken from the next pay roll following the start of the furlough. This is not expected to be available until late April.