

Update

Coronavirus Job Retention Scheme (JRS) and Furloughing Employees

As the detail of Government measures to support businesses and employees becomes clearer, we will continue to keep you updated. Below breakdown of the current understanding of what JRS covers, who it applies to and steps you should take now to access and activate the relief.

Understanding CJRS

What is the Job Retention Scheme (JRS)?

The Coronavirus Job Retention Scheme (JRS) is a government grant that was introduced by the Government on 20 March 2020 to help employers who cannot cover staff costs due to COVID-19 and is aimed at helping to limit redundancies.

To which businesses and employers does the scheme apply?

Any employer in the country with a PAYE scheme, including public-sector employers and charities will be eligible for the scheme. Employers can access support to continue paying part of their employee's wage, in order to avoid redundancies.

However, the scheme is intended to apply only to employers who cannot cover staff costs due to COVID-19. It is not known if any evidence is required to demonstrate eligibility or if there is any room for dispute with HMRC concerning whether the employer would otherwise have made redundancies.

What support is offered?

All UK employers will be able to access support to continue paying part of their employees' salary for those employees that would otherwise have been laid off during this crisis.

When does JRS come into effect?

The scheme applied to employees on payroll from 28 February 2020. Employment costs can be claimed from 1 March 2020.

Are payments to the furloughed workers CJRS, a loan or a grant?

Under the Coronavirus Job Retention Scheme, all UK employers who would otherwise have dismissed employees during this crisis can access payments for part of the employees' salary. This is a grant which employers do not have to pay back. The scheme will run for three months but may be extended as necessary. The details we have so far are as follows:

- HMRC will pay 80% of furloughed workers wages, up to a cap of £2,500 per month.
- Whilst industry bodies understand that this includes employers' NIC and pension contributions, we are waiting for confirmation.
- HMRC are setting up a new online portal for reimbursement.
- The pay will be backdated to wages payable from 1 March 2020.

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Details of what is covered and how access will work

How long will the Coronavirus Job Retention Scheme run for?

The Government has stated that the JRS will run for **at least 3 months from 1 March 2020**, but this will be extended if necessary.

How will employers access the scheme?

Employers will access the scheme through an online portal although this is not yet active. The employer will need to provide details of the affected furloughed employees online and submit information to HMRC about employee earnings and any other relevant details, which will presumably include the employee's NI number.

Employers should give consideration to:

- whether to pay 80% of salary or to supplement it
- gain the employees' written consent unless contractual provisions already cover lay off.
- stop affected employees from working if they are now working from home, or send them home from the workplace.
- fairly select employees affected for being furloughed (the government have not said this but it seems sensible).

The rules around furloughed employees

What does 'furloughed employee' mean?

The word furlough (*fur-low*) generally means temporary leave of absence from work.

Furlough leave has been introduced by the government during the coronavirus pandemic to mean leave offered which keeps employees on the payroll without them working. As the furloughed staff are kept on the payroll, this is different to being laid off without pay or being made redundant.

People who get furloughed **must not** work for the employer during the period of furlough but usually return to their job afterwards unless redundancies follow.

Which employees can be furloughed?

The employees that can agree to being furloughed are those working for businesses that would otherwise have to dismiss as redundant or lay off part or all of their workforce.

The self-employed are not covered. The government has issued a separate package of support for self-employed people involving the relaxation of rules around universal credit and the minimum income floor.

What about part-time workers?

There is no guidance as yet relating to part-time employees.

If there is some work to be done by some employees, how will employers choose which employees are to be furloughed?

Workers who cannot work from home and who currently have no work to do will be obvious candidates for furloughing. Otherwise, employers may need to consider a process of calling for volunteers, pooling and selection – as with a redundancy process. There is a risk of claims (including discrimination claims) if the process is not handled correctly.

Who will agree?

Furloughing may be particularly attractive to individuals who might otherwise need to take unpaid dependant's leave. It may also be an attractive option for those who are struggling to take care of family members and work at home or who have limited space to work at home with family members/house mates.

Other workers may only agree to furlough as a last-resort alternative to being made redundant or put onto an unpaid lay-off arrangement.

Do employees have to agree to be furloughed?

Yes, employees must be consulted and agree to being furloughed. Changing the status of employees is always subject to existing employment law.

If employees do not agree to be furloughed can redundancy be pursued?

Yes, if employees do not agree to be furloughed employers can dismiss, by reason of redundancy, if the redundancy definitions are met and a proper process followed.

Can employees work for their employer when furloughed?

No. To qualify for the scheme, employees must not undertake work for the employer while furloughed.

The grants do not cover the wages of employees working a reduced schedule due to the virus; the employees must not work for the employer at all during the furlough period.

Is an employer required to supplement employees' salary over the 80%?

No, employers can make up the additional pay, but they are not required to do so.

For employees who have been furloughed employers can choose whether to:

- Only make the salary payment reimbursed by the government.
- Pay all of the difference between the grant and the employee's normal salary.
- Pay part of the difference between the grant and the employee's normal salary.

What happens to contractual employment rights?

- Employees would continue to accrue holidays and all contractual employment rights.

What if a furloughed employee becomes sick?

It seems likely that furloughed employee who become sick would be eligible for statutory sick pay (SSP) but this could be at a lower rate than furlough pay. The position on company sick pay beyond SSP for furloughed workers is currently unclear.

New information is constantly emerging, stay up to date with the latest on the [Gov.uk](https://www.gov.uk) and [Business Support](#) websites.

As always, we are here to talk to, to offer support and counsel in whatever way we can. Please stay in touch.

Sources:

<https://www.cipd.co.uk/news-views/coronavirus/faqs>

COVID19: Advice for Employers, Leap People Solutions Limited

[Xpert HR - What is the Coronavirus Job Retention Scheme?](#)

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