



Employers: Claiming back wages for furloughed employees

Under the Coronavirus Job Retention Scheme, the Government will provide a grant to cover 80% of furloughed employees' wages.

The scheme is expected to go live on 20 April, so here is all the information you need to get set up.

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URGENT: Check whether you are enrolled for PAYE Online

You need to check on the link below whether you are enrolled for PAYE online.

<https://www.gov.uk/log-in-register-hmrc-online-services/register>

PAYE online can take ten days to set up, so make sure you check as soon as you can.

If you are already set up for VAT, enrol for PAYE under 'Services you can add'. You will need your PAYE reference number and your accounts reference number.

If you are a completely new user, then enrol for 'PAYE for Employers' under 'Organisation' and follow the steps. Once you've enrolled, you will receive an activation code in the post from HMRC. You'll then need to log back into HMRC Online Services to activate your account.

Eligibility

To claim the grant you must have:

- created and started a PAYE payroll scheme on or before 19 March 2020
- enrolled for PAYE online
- a UK bank account

Any entity with a UK payroll can apply, including businesses, charities, recruitment agencies and public authorities.

Making a claim

To claim, you will need:

- your ePAYE reference number
- the number of employees being furloughed
- the employees' National Insurance numbers
- the claim period (start and end date)
- amount claimed (the minimum length of furloughing is 3 consecutive weeks)
- the employees' salary and National Insurance and pension contributions
- your bank account number and sort code

You will need to calculate the amount you are claiming using the amounts in your payroll either shortly before or during running payroll. Claims can be backdated until the 1 March where employees have already been furloughed. Please see below for how to work out your claim.

If appropriate, worker's wages should be reduced to 80% of their salary within your payroll before they are paid.

HMRC will retain the right to retrospectively audit all aspects of your claim.



How to work out your claim

You can claim for:

- 80% of your employees' wages (even for employees on National Minimum Wage) - up to a maximum of £2,500 per month
- minimum automatic enrolment employer pension contributions on the subsidised wage
- minimum National Insurance contributions on the subsidised wage

You can choose to top up your employee's salary, but you do not have to.

Claims should be started from the date that the employee finishes work and starts furlough, not when the decision is made, nor when they are written to confirming their furloughed status.

Full or part time workers on a salary

The way you work out your employees' wages is different depending on what type of contract they're on, and when they started work. For full or part time workers on a salary, claim for 80% of the employee's salary, as of 19 March 2020, before tax.

Employees whose pay varies each month

For employees whose pay varies and who have been employed for 12 months or longer, you can claim the highest of either the same month's earning from the previous year or the average monthly earnings for the 2019-2020 tax year. If the employee has been employed for less than 12 months, claim for 80% of their average monthly earnings since they started work. If the employee only started in February 2020, work out a pro-rata for their earnings so far, and claim for 80%.

Employer National Insurance and Pension Contributions

You'll still need to pay employer National Insurance and pension contributions on behalf of your furloughed employees, and you can claim for these too. You cannot claim for additional National Insurance or pension contributions you make because you chose to top up your employee's salary, or any pension contributions you make that are above the mandatory employer contribution.

Past Overtime, Fees, Commission, Bonuses and non-cash payments

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

Benefits in Kind and Salary Sacrifice Schemes

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. Where the employer provides benefits to



furloughed employees, this should be in addition to the wages that must be paid under the terms of the Job Retention Scheme.

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.

Apprenticeship Levy and Student Loans

Both the Apprenticeship Levy and Student Loans should continue to be paid as usual. Grants from the Job Retention Scheme do not cover these.

National Minimum Wage

Individuals are only entitled to the National Living Wage (NLW)/National Minimum Wage (NMW)/Apprentices Minimum Wage (AMW) for the hours they are working or treated as working under minimum wage rules.

This means that furloughed workers who are not working can be paid the lower of 80% of their salary or £2,500 even if, based on their usual working hours, this would be below their appropriate minimum wage. However, time spent training is treated as working time for the purposes of the minimum wage calculations and must be paid at the appropriate minimum wage, taking into account the increase in minimum wage rates from 1 April 2020. As such, employers will need to ensure that the furlough payment provides sufficient monies to cover these training hours. Where the furlough payment is less than the appropriate minimum wage entitlement for the training hours, the employer will need to pay the additional wages to ensure at least the appropriate minimum wage is paid for 100% of the training time.

Where a furloughed worker is paid close to minimum wage levels and asked to complete training courses for a substantial majority of their usual working time, employers are recommended to seek independent advice or contact ACAS.

Minimum furlough periods

Any employees you place on furlough must be furloughed for a minimum period of 3 consecutive weeks. When they return to work, they must be taken off furlough. Employees can be furloughed multiple times, but each separate instance must be for a minimum period of 3 consecutive weeks. They can undertake voluntary work or training but must not provide services or revenue to your organisation.

Maternity, paternity or adoption leave

You can claim through the scheme for enhanced (earnings related) contractual pay for employees who qualify for maternity pay, adoption pay, paternity pay or shared parental pay. The normal rules for maternity and other forms of parental leave and pay apply.



Who can be furloughed?

You can claim for any employee and some eligible individuals (see *Eligible individuals who are not employees*) on your PAYE payroll on or before 19 March 2020.

Employees on your PAYE payroll

Employees can be on any type of employment contract, including full-time, part-time, agency, flexible or zero-hour contracts. Foreign nationals are eligible to be furloughed.

If you made employees redundant, or they stopped working for you on or after 19 March 2020, you can re-employ them, put them on furlough and claim for their wages through the scheme.

If your employee is on unpaid leave, you can only claim for employees that started unpaid leave after 19 March 2020.

You can claim for furloughed 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.

Employees who are unable to work because they have caring responsibilities resulting from coronavirus (COVID-19) can be furloughed. For example, employees that need to look after children can be furloughed.

If your employee has more than one employer they can be furloughed for each job. Each job is separate, and the cap applies to each employer individually. Employees can be furloughed in one job and receive a furloughed payment but continue working for another employer and receive their normal wages.

Employees on fixed term contracts can be furloughed. Their contracts can be renewed or extended during the furlough period without breaking the terms of the scheme. Where a fixed term employee's contract ends because it is not extended or renewed you will no longer be able claim grant for them.

Eligible individuals who are not employees

As well as employees, the grant can be claimed for any of the following groups, if they are paid via PAYE. The guidance below sets out specific considerations for those individuals who are paid via PAYE, but who are not necessarily employees in employment law. Unless explicitly set out below, all other guidance is applicable to these cases, and should be followed:

- office holders (including company directors)
 - Office holders can be furloughed and receive support through this scheme. The furlough, and any ongoing payment during furlough, will need to be agreed between the office holder and the party who operates PAYE on the income they receive for holding their office. Where the office holder is a company director or member of a Limited Liability Partnership (LLP), the furlough arrangements should be adopted formally as a decision of the company or LLP.
 - As office holders, salaried company directors are eligible to be furloughed and receive support through this scheme. Company directors owe duties to their company which



- are set out in the Companies Act 2006. Where a company (acting through its board of directors) considers that it is in compliance with the statutory duties of one or more of its individual salaried directors, the board can decide that such directors should be furloughed. Where one or more individual directors' furlough is so decided by the board, this should be formally adopted as a decision of the company, noted in the company records and communicated in writing to the director(s) concerned.
- Where furloughed directors need to carry out particular duties to fulfil the statutory obligations they owe to their company, they may do so provided they do no more than would reasonably be judged necessary for that purpose, for instance, they should not do work of a kind they would carry out in normal circumstances to generate commercial revenue or provides services to or on behalf of their company.
 - This also applies to salaried individuals who are directors of their own personal service company (PSC).
- salaried members of Limited Liability Partnerships (LLPs)
 - Members of LLPs who are designated as employees for tax purposes ('salaried members') under the Income Tax (Trading and Other Income) Act (ITTOIA) 2005 are eligible to be furloughed and receive support through this scheme.
 - The rights and duties of a member of an LLP are set out in an LLP agreement and in the absence of an agreement, default provisions in the LLP Act 2000, based upon company and partnership law. Such an agreement may include separate agreement between the LLP and an individual member setting out the terms applicable to that member's relationship with the LLP.
 - To furlough a member, the terms of the LLP agreement (or any such agreement between the LLP and the member) may need to be varied by a formal decision of the LLP, for example to reflect the fact that the member will perform no work in the LLP for the period of furlough, and the effect of this on their remuneration from the LLP. For an LLP member who is treated as being employed by the LLP (in accordance with s863A of ITTOIA 2005), the reference salary for this scheme is the LLP member's profit allocation, excluding any amounts which are determined by the LLP member's performance, or the overall performance of the LLP.
 - agency workers (including those employed by umbrella companies)
 - Where agency workers are paid through PAYE, they are eligible to be furloughed and receive support through this scheme, including where they are employed by umbrella companies.
 - Furlough should be agreed between the agency, as the deemed employer, and the worker, though it would be advised to discuss the need to furlough with any end clients involved. As with employees, agency workers should perform no work for, through or on behalf of the agency that has furloughed them while they are furloughed, including for 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.
 - limb (b) workers
 - Where Limb (b) Workers are paid through PAYE, they can be furloughed and receive support through this scheme.



- Those who pay tax on their trading profits through Income Tax Self-Assessment, may instead be eligible for the Self-Employed Income Support Scheme (SEISS), announced by the Chancellor on 26 March 2020.

Who cannot be furloughed?

Employees hired after 19 March cannot be furloughed and claimed for under the scheme.

If an employee is working, but on reduced hours, or for reduced pay, they will not be eligible for this scheme.

You cannot claim for employees while they're getting Statutory Sick Pay due to sickness or self-isolation, but they can be furloughed and claimed for once they are no longer receiving Statutory Sick Pay.

Employee taxes

Your employees will still pay the taxes they normally pay out of their wages.

This includes pension contributions (both employer contributions and automatic contributions from the employee), unless the employee has opted out or stopped saving into their pension.

Employee rights

Employees still have the same rights at work, including:

- Statutory Sick Pay
- maternity and other parental rights
- rights against unfair dismissal
- redundancy payments

Grants cannot be used to substitute redundancy payments. HMRC will continue to monitor businesses after the scheme has closed.

Working for a different employer

If contractually allowed, your employees are permitted to work for another employer whilst you have placed them on furlough.

For any employer that takes on a new employee, the new employer should ensure they complete the starter checklist form correctly. If the employee is furloughed from another employment, they should complete Statement C.

Tax Treatment of the Coronavirus Job Retention Grant

Payments received by a business under the scheme are made to offset these deductible revenue costs. They must therefore be included as income in the business's calculation of its taxable profits for Income Tax and Corporation Tax purposes, in accordance with normal principles.



Businesses can deduct employment costs as normal when calculating taxable profits for Income Tax and Corporation Tax purposes.

More information

Visit the HMRC website (<https://www.gov.uk/business-and-industry/employing-people>) for the most up to date information. We will keep you informed when the scheme goes live, which we are anticipating to be on 20 April.