

Summary of up to date guidance on CJRS

[ICAEW - coronavirus-job-retention-scheme-further-clarification 6 April 2020](#)

[GOV.UK -guidance employers - claim-for-wage-costs-through-the-coronavirus-job-retention-scheme](#)

[GOV.UK - guidance employees - check-if-you-could-be-covered-by-the-coronavirus-job-retention-scheme](#)

Access to the CJRS grant

Any entity with a UK payroll and a UK bank account will be able to claim, including individuals, businesses, charities, recruitment agencies and public authorities.

The online service through which claims will be made is expected to be available at the end of April 2020. The claimant, not HMRC, will need to calculate the amount being claimed. It is not yet clear whether, and if so how, agents will be able to apply on behalf of their clients.

The following information will be needed:

- ePAYE reference number
- the number of employees being furloughed
- the claim period (start and end date)
- amount claimed (per the minimum length of furloughing of 3 consecutive weeks)
- the relevant bank account number and sort code
- claimant's contact name
- a contact phone number

After checking the claim, HMRC will pay it by BACS to a UK bank account.

The guidance states that HMRC will retain the right to audit retrospectively all aspects of the claim. Clearly since the employer will have submitted their payroll through the Real Time Information (RTI) system, HMRC will use this to make the necessary checks.

Note that the employer must pay the employee all the grant received for the employee's gross pay. The employer cannot charge and deduct a fee from the grant.

Timing of claims

The intention is that employers will make their claims either shortly before or during running the payroll. Some employers who were quick to act to furlough staff shortly after the announcement of the CJRS, will be backdating claims to 1 March.

Given the employment law procedures needed to obtain employees agreements to vary employment contracts etc, it is likely that many staff will have already received their March salary. The grant will only accrue once the employee finishes work and starts furlough, not when the decision to furlough is made or when they are written to confirming their furloughed status. Grants will be prorated if the employee is only furloughed for part of a pay period.

The HMRC guidance notes that 'if appropriate, workers' wages should be reduced to 80% of their salary within your payroll before they are paid. This adjustment will not be made by HMRC'.

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Salary on which claim is based

The grant is based on the lower of 80% of the monthly salary and £2,500, plus the associated employers NIC and pension contributions. For employees on a regular salary, use 80% of the employee's gross salary as at 28 February 2020.

For an employee who has been employed for more than 12 months, but whose pay varies, use the highest of the:

- Same month's earnings from the previous year
- Average monthly earnings for the tax year 2019/20.

For an employee who 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, pro rate their earnings to date and use that as a base.

Employers can claim for any regular payments they are obliged to pay employees. This includes:

- wages
- past overtime
- fees
- 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. Benefits provided through salary sacrifice, such as pension contributions, should not be included in the reference salary. So for example, if the salary was £40,000 but £5,000 was paid into the employee's pension as a salary sacrifice, the reference salary becomes £35,000.

HMRC guidance makes it clear that where an 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.

HMRC has also confirmed that COVID-19 counts as a life event for the purposes of an employee's right to request changes to salary sacrifice arrangements, if the employment contract is updated accordingly.

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Illustration 1

X Ltd employs Mr A at an annual salary of £24,000, so £2,000 per month. Mr A has opted out of auto enrolment.

Each month, Mr A currently receives net pay of £1,655 which is after deducting PAYE of £191 and employees NIC of £154. On this salary, the employer pays employers' NIC of £177. The available grant for the employer is the lower of:

(a) 80% of £2,000, and (b) £2,500 Plus employers' NIC on this amount
X Ltd claims a grant of £1,600 plus £122 = £1,722.

The net amount of cash required by X Ltd to furlough Mr A based on maintaining the existing salary is $£2,000 + £177 - £1,722 = £455$ per month.

It is a matter for employment law whether the employer is actually required to pay this top up. Employees and employers can agree to a different arrangement during the furlough.

Illustration 2

X Ltd employs Mr B at an annual salary of £42,000, so £3,500 per month. Mr B has opted out of auto enrolment.

Each month, Mr B currently receives net pay of £2,675 which is after deducting PAYE of £492 and employees NIC of £333. On this salary, the employer pays employers' NIC of £383. The available grant for the employer is the lower of

(c) 80% of £3,500 = £2,800, and (d) £2,500 Plus employers' NIC, £245, on this amount

X Ltd claims a grant of £2,500 plus £245 = £2,745.

The net amount of cash required by X Ltd to furlough Mr A based on maintaining the existing salary is $£3,500 + £383 - £2,745 = £1,138$ per month.

It is again a matter for employment law whether the employer is actually required to pay this top up. Employees and employers can agreed to a different arrangement during their furlough.

Period of furlough and multiple jobs

Employees 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.

Employees cannot work for the employer during the period of furlough leave. They can however work for a different and unconnected employer during this period. An employee with multiple employers can be furloughed by more than one at the same time and in that case, each employment can pay the worker up to the maximum £2,500 at the same time.

If an employer takes on a worker who is currently already furloughed by a different employer, they should complete the usual starter checklist as usual and complete Statement C.

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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.

Tax consequences of the grant

The grant paid to the employer is included within the business' taxable profits for income tax or corporation tax purposes. It is not clear whether the grant is taxable on an employer who is not trading, such as those employing domestic staff, eg, an individual employing a nanny. The gross salary and associated NIC and pension costs continue to be tax deductible in the usual way.

The employee is taxed on the salary paid by the employer as usual.

Company directors

The HMRC guidance confirms our understanding that directors, including those who are directors of their own personal service company, can be furloughed. The HMRC guidance reminds companies that:

'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.'

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Further questions answered

1. Employees who were made redundant on or after 28 February 2020 can be re-employed and furloughed.
2. A worker whose hours or pay have been reduced but who continues to work cannot be furloughed.
3. Foreign nationals can be furloughed.
4. An individual employing a nanny or other domestic employee can furlough them as long as they were employed and paid through PAYE on or before 28 February 2020.
5. A worker can undertake training as long as that training does not provide services to, or generate revenue for, or on behalf of their organisation. The guidance specifically states that furloughed employees should be encouraged to undertake training. They can also take part in volunteer work.
6. Agency workers may be furloughed. This will be agreed by the agency as the deemed employer, and the worker. Although it isn't a specific requirement, it is advisable to discuss the need to furlough with any end client involved. If the employee is engaged by an umbrella, the umbrella must discuss the furlough with the worker in the place of the agency. Limb (b) workers can also be furloughed or alternatively they can receive support through the Self-Employed Income Support Scheme where they pay tax on their income as trading profits.
7. Other groups who are paid via PAYE may also be eligible for furlough, even though they are not necessarily employees under employment law. For example, an office holder or a member of a Limited Liability Partnership (LLP). The LLP agreement, or in its absence, the Limited Liability Partnership Act 2000, may detail the relationship between the LLP and the individual member, which may need to be varied to permit a member to be furloughed.
8. Contingent workers in the public sector are also eligible to be furloughed.

Unanswered questions still exist around TUPE, although it seems likely that if the new (but continuous) employment was effected after 28 Feb 2020, the employee will not qualify.

Useful Zoom webinar provided by [Gannons Solicitors, London](#) can be accessed here: [CJRS update webinar](#)

If you need further help, please contact:

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