

Good morning,

The Coronavirus Job Retention Scheme (furlough) was announced by the Government on 20 March 2020. All UK employers can claim a grant from HMRC to cover 80% of the wages of employees who are not working but kept on the payroll, of up to £2,500 per calendar month for each employee. Employers may decide to top up the 20%, but there is no requirement to do so.

The Chancellor has announced that the Scheme will be backdated to 1 March 2020, be open for at least three months and will be extended if necessary. HMRC are urgently working to set up a new system of reimbursement, but the Government hopes that the first grants should be paid within weeks. There is general guidance at this stage which is worth accessing. This guidance (on the Government website) will be developed and updated. The Scheme is in addition to other options you may have such as lay-off but most employers will use it where they can.

The Scheme will apply to all employees on PAYE, including those on zero-hours contracts. A similar and separate scheme is being developed for the self-employed.

How do you put employees on furlough leave?

You should:

- Decide which employees are to be furloughed and give them notice. You should do this ideally in consultation and seek agreement.
- You may need to consult under the legislation if furlough affects more than 20 employees and dismissal (for redundancy) might be an option if not accepted.
- Confirm the employees new status in writing. Where possible you should advise how long you expect furlough leave to continue although understandably this may be difficult in a developing situation. Furlough leave could be for an initial period and then reviewed.
- Submit information to HMRC about the employees that have been furloughed and their earnings through the online portal. This will of course be heavily used. Employees should not carry out any further work while on furlough leave.

The £2,500 seems to cover?

- The guidance states employers will be reimbursed “80% of furloughed workers wages, costs, up to a cap of £2,500 per month”. It is unclear at this stage whether the reimbursement is intended to cover anything other than basic salary.

Are you obliged to top up the remaining 20%?

- You are not obliged to top up the scheme although the guidance states that “your employer could chose to fund the difference between this payment and your salary, but does not have to”. Withholding 20% does of course amount to a breach of contract and unlawful deduction from wages unless the employee gives their consent. Again, it is expected that most employees will consent since furlough leave is a better alternative than lay-off or redundancy.

The situation is developing. Please do not hesitate to contact Iain Jenkins at i.jenkins@mccormicks-solicitors.com if you need any assistance.

Kind regards

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