

Our view- updated 27 March 2020 - Coronavirus Job Retention Scheme

HMRC have now issued further guidance on the **Coronavirus Job Retention Scheme (CJRS)** and this is our summary of the guidance. You will appreciate that this is brand new and there will be queries still to be answered and interpretations made. This is our view of the matter “hot off the presses” and is subject to change as we read more about the matter. Please call us to discuss this and you may also need to take employment law advice.

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

The guidance can be found at <https://www.gov.uk/guidance/claim-for-wage-costs-through-the-coronavirus-job-retention-scheme>

Who can claim?

- / **ALL** UK organisations with employees and this includes not for profit organisations and charities (though members of staff funded by public money/grants are not eligible)
- / You must have created and started a PAYE scheme on or before 28/2/2020 and have a UK bank account

Employees you can claim for

- / The employee **MUST** be on your payroll at 28 February 2020. If they are not, then they cannot be in the CJRS and you will need to review their status. You may need to seek legal advice on this point.
- / The employee can be on any type of contract and the list set out in the guidance is:
 - o full-time employees
 - o part-time employees
 - o employees on agency contracts who are not working
 - o employees on flexible or zero-hour contracts
- / You can include an employee if you made them redundant on or after 1st March 2020 if you rehire them as soon as possible. Once they are back on your payroll you can then furlough them.
- / Whilst under furlough, the employee’s wages will be subject to income tax and deductions as usual.
- / If you decide to furlough an employee, then this should be discussed with them and the necessary changes made to their contract of employment. We recommend that you seek employment law advice on this to ensure that this is carried out correctly.
- / To qualify for CJRS, you should write to your employee who is furloughed to confirm the position and keep this with your records.
- / You do not have to place all of your employees on furlough but, obviously, you cannot breach discrimination law when making your decision.
- / Employees who are shielding in line with public health guidance can be placed on furlough
- / Please see the notes on the attached regarding employees on maternity, paternity, adoption or shared parental leave/pay

IMPORTANT - THE EMPLOYEE CANNOT WORK FOR YOU IN ANY CAPACITY DURING THIS TIME. This means that if your employee is working but on reduced hours or for reduced pay, then they are not

eligible for CJRS. Answering the telephone or emails, even for a few minutes, is likely to be deemed 'working'.

Our comments regarding Directors

These comments are our view and not based on guidance from HMRC. It is our view that whilst directors are within the CJRS, as a director, it would be more difficult to say that you are not working even if the company is not undertaking any work at that time. You are always doing something even if it is checking emails, answering the phone, dealing with staff queries or processing a payroll for example. As we all know, being a director is pretty much a 7-day a week, 24 hours a day job which unless the company no longer exists, will always be an active role. It is therefore our view that any claim under the CJRS may be difficult to support for a director.

There are of course always exceptions and there may be a director who is no longer working but we expect this to be quite unusual.

Also, please bear in mind that the CJRS only applies to salaries and not dividends. For most shareholder/directors, your salary will be minimal anyway.

Employees you cannot claim for

- / Employees who were hired after 28 February 2020
- / Employees placed on unpaid leave **before** 28 February 2020
- / Employees on sick leave or self isolating should get SSP but can be furloughed after this

What can you claim for?

Remember that this is a grant from the government and is not repayable.

- / You have to make a claim under the CJRS. If we look after your payroll, then this will be dealt with by us once we have the revised software from HMRC. You will of course need to notify us of who you wish to furlough and go through these procedures yourself. We will deal with the mechanics of the claim as part of your payroll services.
- / If you deal with your own payroll, then you should receive an update to your payroll software during April and this should have the facility to process the furlough information
- / Your grant from HMRC will be the lower of:
 - o 80% of an employee's regular wage OR
 - o £2,500 per month
 - **PLUS**
 - o The associated employers NIC and minimum auto enrolment employer pension contributions due on the subsidised wage.
 - o You cannot include fees, commission or bonuses
 - o You use the employee's actual salary before tax as of 28 February 2020 to calculate the 80%. This applies to full and part timers.
- / Employees who wages varies – please see the specific guidance below
- / The above is the minimum, which you **MUST** pay to your employee i.e. the lower of 80% of their regular wage or £2,500 per month.
- / If you wish, and it is at your discretion, you can top up the employee's salary on top of this but there is no obligation to do so.
- / The minimum length of time that employees can be furloughed for is 3 weeks and you can only submit a claim every three weeks.

- / Claims can be backdated to 1st March 2020 if this is applicable to you

Employees whose wages varies

- / If your employee has been employed by you for a full 12 months “prior to the claim” (we interpret that to be 28 February 2020), you can claim for the **higher** of:
 - The same months earnings for the previous year
 - Average monthly earning from the 19/20 tax year
- / If the employee has been employed by you for less than a year, you can claim for an average of their monthly earnings since they started work.
- / If they only started in February 2020, use a pro-rate for their earnings so far to claim
- / HMRC have said that they will release further guidance before the scheme becomes live on how the calculations for Employers NIC and auto enrolment pension employer contributions will be prepared.

Tax Treatment for the Employee

The employee will pay tax and NIC as normal. They will also pay auto enrolment contributions as previously. Also, note that they continue to have the same employment rights as before which includes SSP, maternity and other parental rights plus the right against unfair dismissal and to redundancy payments.

Employers NIC and Pension Contributions

- / You remain liable for Employer NIC and the minimum auto enrolment employer pension contributions on behalf of any furloughed employees.
- / You can claim a grant from HMRC to cover the wage as set out above PLUS the associated Employers NIC and **minimum** auto enrolment pension contributions
- / If you pay more than the minimum auto enrolment contributions, then these cannot be claimed under the CJRS.

National Living Wage/National Minimum Wage

An employee is only entitled to either the National Living Wage (NLW) or National Minimum Wage (NMW) for the hours that they are working.

It follows then that a furloughed employee who must not work, must be paid the lower of 80% of their salary or £2,500 even if, based on the usual working hours, this would take them below NLW/NMW.

If you require them to complete online training courses whilst they are furloughed, then they must be paid NLW/NMW for that time even if this is more than the 80% of the wage that you will get a grant for. This wording is taken directly from the guidance and shows that your employee can undertake online training but cannot work.

What you need to make a claim

- / HMRC list the information that you will need to make a claim as:
 - your 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 weeks)
 - your bank account number and sort code
 - your contact name
 - your phone number

- / You can only submit one furlough claim every 3 weeks.
- / Once HMRC have received your claim and establish that you are eligible for the grant, they will pay it via BACs to your UK bank account
- / Your claim should be in accordance with actual payroll amounts at the point at which you run your payroll or in advance of it running imminently
- / You must pay over the entire grant to the employee for their gross pay and cannot charge a fee.

When the Government end the scheme

At that stage, you must make a decision whether the employee returns to work as before or you consider terminating their contract. We recommend at that point you seek employment law advice.

Tax Treatment of the Grant for the employer

As you would expect, the grant is included as taxable income in your calculation of business profits for both income tax and corporation tax – whichever is applicable to you. You can then deduct the employment costs as normal to leave you in the correct net position.