

Furlough: a user's manual

Many employers are currently worried about how best to help their employees and manage their own cashflow. The government's Coronavirus Job Retention Scheme can help take off some pressure. It's a temporary scheme put in place by the Government to support those workers who would otherwise have been laid-off as a result of the crisis. Such workers have been designated as 'furloughed'.

But who qualifies as a furloughed employee? A furloughed employee must have been on the payroll at 28 February 2020 (note: not 29 February) and can be on any type of contract. Agency and Zero-Hour contracts are included. The Scheme covers employees who were made redundant since 28 February 2020, if they are rehired by their employer.

A furloughed employee can not undertake any work for their employer to qualify for the grant. This is a very strict definition, and the only activities they can undertake are voluntary work or training, as long as it does not provide services to or generate revenue for, or on behalf of the organisation. There is a very limited exception for directors, who can carry out particular duties to fulfil the statutory obligations they owe to their company, to the extent necessary.

Reduced hours employees do not qualify for the scheme. Employers will need to clearly think about the structure of their remaining team given this restriction.

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The Government advises that employers should discuss with their staff when deciding to offer furlough and make changes to the employment contract by agreement. They also advise that it may be necessary to engage collective consultation practices to secure agreement to changes to terms of employment. We would recommend that legal advice is sought on this process.

To be eligible for the subsidy, employers should write to their employee confirming that they have been furloughed and keep a copy of the letter for five years. For directors, the decision to furlough should be formally adopted as a decision of the company and noted in the company records, as well as being communicated in writing to the director.

Employees hired after 28 February 2020 are excluded, as are those who were on unpaid leave before 28 February 2020.

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Employees on sick leave or self-isolating are subject to Statutory Sick Pay provisions and can only be furloughed once they can return to work.

Employees who are self-isolating in line with public health guidance can be placed on furlough, if they are unable to work from home and the employer would otherwise have had to make them redundant. Employees who are unable to work because they have caring responsibilities, such as childcare, can be furloughed.

If an employee has more than one employer, they can be furloughed for each job. Being furloughed by one employer will not prevent an employee from continuing to work for another employer. An employee who has been furloughed can take on a new job with another employer, if their original employment contract permits it. Furloughed employees can also take part in

volunteer work.

There are specific rules for employees on maternity and paternity pay and the minimum furlough period is three weeks.

Blick Rothenberg is a leading tax, accounting and business advisory firm who are providing practical guidance to small and medium-sized businesses on how to plan and respond to the Coronavirus crisis. If you would like to know more, you can visit their Coronavirus – Practical Guidance for businesses today Hub for their latest updates and insights.

If you would like to talk about the issues you are facing as a business and employer at this time, please contact Vanesha Kistoo.

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So who qualifies as a furloughed employee?

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