

Xact Group – Coronavirus Job Retention Scheme - FAQ

The Coronavirus Job Retention Scheme is a temporary scheme open to all UK employers for at **least three months** starting from 1 March 2020. We expect the scheme to be up and running by the end of April. It is designed to support employers whose operations have been severely affected by coronavirus (COVID-19).

Staff should only designate employees as being furloughed if they have no work for them to do and they would be at risk of being laid off or put on short-time working. This should not be used where work is available. Any decision you make on furloughing an employee may not be guaranteed and you may not be able to claim back the payments from HMRC if you do not follow this general guidance. **Please note, this FAQ is subject to being updated on a regular basis as the guidance and Government advice is constantly changing and therefore we do not accept any liability for the advice contained within this document and we recommend you seek specialist advice on any case you are unsure of.**

Employers can use a portal to claim for 80% of furloughed employees' (employees on a leave of absence) usual monthly wage costs, up to £2,500 a month, plus the associated Employer National Insurance contributions and minimum automatic enrolment employer pension contributions on that wage. Employers can use this scheme anytime during this period.

The scheme is open to all UK employers, including charities **with the exception of public sector workers**, that had created and started a PAYE payroll scheme on **28 February 2020**.

Key points:

- Eligible employees must have been on your payroll on 28th February 2020
- Employees must be furloughed for a minimum of three weeks
- Employees who are shielding in line with public health guidance (i.e. have been deemed very high risk and have received notification from the Govt that they fall into this category) can be placed on furlough.
- The grant will cover the lower of 80% of usual salary or £2,500 plus National Insurance and minimum automatic enrolment employer pension contributions; and
- The Scheme is likely to be open by the end of April

Can you rotate employees on furlough?

Yes. But only up to 3 weeks at a time. For example, you can designate one employee to be furloughed for 3 weeks then designate another employee to be furloughed for a further 3 weeks and rotate them. However, each claim will need to be made separately in respect of each "block" of furlough leave (to a **minimum** of 3 weeks each time but maximum of 3 months). You cannot have one employee work half the week and another employee work the other half of the same week.

Can I take annual leave during furlough?

This depends. We do not have clarification on this point yet from the Government except to say that annual leave will continue to accrue during a period of annual leave.

Our view on this is that you cannot take annual leave during a period of furlough which is given in 3 week blocks but that you can take it immediately before or after the 3 week block which is what we would recommend employers do to keep it simple.

However, you cannot expect your employees to use up a significant portion of their annual leave for this and we would suggest a maximum of 5 days. Recent Government announcements have also suggested that they will be making changes to the legislation affecting what holidays can be carried over from a year to year basis. They are looking at extending this to 2 years (for the 4 weeks of annual leave not for the 5.6 weeks that UK employees are entitled to).



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It is also important to remember that employees will need annual leave to use for company shutdown periods including over the Christmas period.

Please note, the employer should also give you twice as much notice as the length of your annual leave to take it and this should be paid at the employee's full salary rate and not the 80%.

What if we have employees starting after 28 February that are currently employed?

If they were employed at the date the Prime Minister made his speech on Friday 20 March then we believed that they would be entitled to Furlough however further guidance issues states:-

“Employees hired after 28 February 2020 cannot be furloughed or claimed for in accordance with this scheme.”

Therefore, no they would not be entitled to be furloughed. However, there may be some exceptions to this rule when the legislation is released. We do not know when this is likely to be released therefore we would advise remaining cautious until this time. We would recommend **not designating** those who started after this date as being furloughed at this time.

2 new employees are due to start soon (but after 27 March 2020) and the work they were going to be doing is no longer available to them, what can we do?

The earlier advice suggested that you could continue to employ them and then designate them as furloughed workers if there was no work available however the Government's recent guidance issued on 26 March advised only employees hired after 28 February would be entitled to be furloughed.

Therefore, if there is no work for them to be done **and** the start is date is more than one week away then we would suggest withdrawing the offer of employment and give them notice under the contract (if no notice clause then the statutory minimum would apply of one week at full pay). There still could potentially be a breach of contract claim by doing this but any losses/damages suffered by the employee would likely to be minimal.

If the employee is due to start within the next week then we would recommend you have an informal discussion with them to see if they would be willing to agree to a later start date. If they do not agree, then you could pay them the notice as above but may face a higher risk of breach of contract claim as there is less time for them to get an alternative job. This risk may be more attractive than the alternative option which would be to let them start and then have to consider redundancy or laying them off as unpaid leave or short time working.

What does the £2,500 maximum payment cover? What do we need to pay?

The employer will receive a grant from HMRC to cover the lower of 80% of an **employee's regular wage** or **£2,500 per month**, plus the associated Employer National Insurance contributions and minimum automatic enrolment employer pension contributions on that subsidised wage. Fees, commission and bonuses should **not** be included.

At a minimum, employers must pay their employee the lower of 80% of their regular wage or £2,500 per month. An employer can also choose to top up an employee's salary beyond this but is not obliged to under this scheme.

Further more guidance on how employers should calculate their claims for Employer National Insurance Contributions and minimum automatic enrolment employer pension contributions, before the scheme becomes live will be issued by the Government in due course and we will need to just wait and see what this says.



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If someone is on sick leave then is it sick pay or furlough pay?

It depends on the reason for the cause of absence. If they are self-isolating under Public Health England/Scotland advice then they will be entitled to SSP from day one rather than day four.

Once the self-isolation period expires (currently 7 days) then they can be brought back to work and considered to be designated for furlough in the same way as other employees.

After 14 days self-isolating, employees can now download an isolation note from NHS 111 to ensure entitlement to SSP.

HOWEVER, if someone is on long-term sick leave or on sick leave non-related to coronavirus then they will remain on SSP or sick leave until they get a fit note to return to work or are “capable” of work. Only then would they potentially be entitled to be furloughed.

Can directors be placed on furloughed?

There are two types of Directors:-

- Non-exec director – Will not be considered employee so cannot be placed on furlough as they don't fall into the “employee” category
- Exec director will usually be classed as employees provided they have a contract of employee and are paid through the PAYE system. If they draw additional dividends then they will not be entitled to this and only the 80% of basic pay.

Can an employer carry out redundancy whilst furloughed?

Yes, however extra care should be taken if there is the option to furlough the employee and the downturn in work is directly related to COVID-19. Consider whether, after this period (the next 12 weeks), if the work is likely to pick up again before making the decision to begin the redundancy process. We would recommend you take specific advice on this due to the high risk nature of any potential claims being brought against you.

What about an employee who was made redundant before 28 February or after?

They can be re-engaged and can be designated as furloughed.

Can redundancy notice run alongside furlough leave?

It appears to be however we are still awaiting further guidance on this point from the Government. The employer would have to pay the full 100% notice pay and not 80% however.

How would furlough leave apply to agency workers and fixed term?

This has now been clarified by the updated guidance which states:-

Furloughed employees must have been on your PAYE payroll on 28 February 2020, and can be on any type of contract, including:

- Full-time employees
- Part-time employees
- Employees on agency contracts
- Employees on flexible or zero-hour contracts

This scheme is only for employees on agency contracts who are **not** working.

Those on fixed-term contracts would not normally be entitled to furlough if the end date of the contract is during this period however you can agree to extend this date with the employee should you wish. There is no guarantee you would be able to reclaim from HMRC in this event however so tread very carefully and seek specific advice if you have employees who fall into this category.



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How do you work out how to pay employees whose hours vary?

If the employee has been employed (or engaged by an employment business) for a full twelve months prior to the claim, you can claim for the **higher** of either:

- The same month's earning from the previous year (i.e. March 2019)
- Average monthly earnings from the 2019-20 tax year

If the employee has been employed for **less** than a year, you can claim for an average of their monthly earnings since they started work.

If the employee only started in February 2020, use a pro-rata for their earnings so far to claim.

Once you've worked out how much of an employee's salary you can claim for, you must then work out the amount of Employer National Insurance Contributions and minimum automatic enrolment employer pension contributions you are entitled to claim.

Can an employee on maternity leave come back early and get furloughed?

Yes, depending on the stage of maternity but the employer has to agree. The employee should normally give 8 weeks notice to return early but this can be agreed earlier. If there is no work to be done and the employee would otherwise be laid off then they can be furloughed.

Can an employee do work on furlough?

No, the employee should not be doing any work.

Xact Group

Xact have been delivering Health & Safety, HR and Employment Law services to companies for over 17 years.

Our services are tailored specifically to the business and deal with all of the best practice and compliance issues a business will face. In the HR area our support would include sector specific contracts of employment, employee handbooks and job descriptions and help to guide business owners and managers through the dynamic changes in Employment Law including the recent developments due to COVID-19.

If you would like any further information on the services available from the Xact Group including advice on the above scheme please contact:

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