

Furlough – noun – a leave of absence

Recruiters and the Coronavirus Job Retention Scheme

Since the Chancellor announced his unprecedented job retention scheme on Friday 20th March 2020 we've been inundated with queries – unfortunately at this stage we don't have all the answers but we thought it would be useful to share what we know so far:

1. All businesses are eligible for support from the Job Retention Scheme.
2. The scheme covers all employees and workers who have tax and national insurance deducted at source through the PAYE scheme – so temporary workers, umbrella employees, zero hours employees, 336-hour flexible employees and Swedish Derogation/Regulation 10 employees are all included.
3. If the “*employer*” cannot provide the employees/workers with work then the “*employer*” will need to designate them as “*furloughed employees*” to benefit from the scheme.
4. You will have to notify employees of this change in status to “*furloughed employees*”. The change in status remains subject to existing employment law and as such, it would be best to get an employee's agreement/consent to the change in status – if that's not possible then we will need to consider each set of circumstances on its own facts to decide the best way to proceed.
5. The scheme will pay a furloughed employee 80% of their average pay up to a maximum of £2,500 net per month. Unofficially we understand that the average will be worked out using the last 4 weeks' pay rather than the usual 12 weeks' which we often see being used for employment law purposes. This basically means that employees earning up to £40,000 a year will be able to receive 80% of their net pay under the scheme.
6. The scheme will be managed through a new online portal and a new system of reimbursement both of which are currently being set up. Ultimately, it sounds as though it will be a reverse of the PAYE payments to HMRC, which is why it's likely that the company that pays the tax deduction to HMRC will be deemed to be the “*employer*” and required to manage the scheme and receive the grant.
7. The first payment isn't likely to be paid out to employers until towards the end of April which will especially cause a problem for recruiters who have to run a weekly payroll for workers

and rely on clients paying for the workers to generate their income. Recruiters won't have the available funds to support the payroll of furloughed workers until the first grant payment is made by HMRC. Recruiters won't be able to invoice clients in respect of furloughed workers unless they can agree something different with the client, which is unlikely so will have no funds coming in from which they can pay the payroll costs.

8. For those businesses with a turnover of under £45 million per annum they can apply for a business interruption loan which is interest free for 12 months. Recruiters will need to consider borrowing enough to cover their payroll until the first grant payment is made at the end of April. For those with a turnover in excess of £45million the corporate finance support package is due to be launched in the next couple of weeks so a review of the available cash in the business as a result of VAT and tax payments being deferred would need to be considered before discussing with your bank, who we're told should be supportive.
9. We understand that no holiday pay or leave will accrue while an employee is furloughed and no tax or NI is payable on the furlough pay both of which are logical as it would be a period of leave and the government would be paying themselves the tax and NI.

There are some important things we don't know yet including:

- ***How flexible will the scheme be?*** If a temporary worker has no assignment and is furloughed but then has a week of work will they be able to change their status of furloughed to take the assignment temporarily? It seems logical that they will as this keeps the government's costs down but we don't know at this stage.
- ***Will a furloughed employee not be able to do any work at all?*** It's likely that they won't otherwise it would undermine the scheme.
- ***Will average pay be based on basic pay or actual take home pay?*** I would assume actual take home but we will have to wait and see.
- ***How will you evidence whether someone is not working or has no work to do?*** I expect that this will be relatively straightforward via a declaration.
- ***What happens if the business is unable to continue and redundancies are required whilst an employee is furloughed?*** I suspect unless the business enters insolvency that this will be something for consideration at the end of the period.
- ***How do you go about choosing which employees are furloughed if there's a reduction in work rather than a workplace shut down?*** Employers will need to be careful to make sure that some procedure is followed and that selection due to protected characteristics are avoided. The sensible starting position would be to ask for volunteers and go from there.

There's a lot for us to learn about furloughing in the coming days and we are here to help you avoid unnecessary claims or disputes and to make sure that you are able to claim the grant to preserve jobs and help you and your employees in this difficult time.

For assistance please call the **Brabners Covid-19 helpline on 03330 433230** or contact me directly for further help and assistance.



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