

Covid-19 Frequently Asked Questions

Updated 3 April 2020

1 Coronavirus Job Retention Scheme (CJRS)

1.1 *How does the scheme work?*

This scheme was announced on 20th March as one of a number of mechanisms to support employers and in particular to prevent the need for a large number of redundancies. It is open to all UK businesses including not-for-profit organisations and has been designated a grant rather than a loan. In order to receive money through the scheme, employers can only claim for employees and workers who are paid through the organisation's PAYE, have been classed as 'Furloughed' and have been employed before or on 28 February 2020. Furloughed is a common American expression for 'leave of absence' and may be short or long term. It is a state where employees are informed that they are not required to attend work as there is no work for them.

1.2 *Does it apply to all employees?*

It applies to all employees who were and remain on your PAYE on 28 February 2020 and who are on any type of employment contract including full-time, party-time, fixed term, variable hours or zero-hours.

1.3 *If employees are working from home or on short-time working can they receive payment from the CJRS?*

No, the CJRS does not include asking your employees to work from home nor does it include short-time working.

Employees who are furloughed cannot undertake any work for their employers including providing any services or generating any revenue. If an employee has more than one job (i.e. has more than one employer) each is treated separately and so they may be furloughed by both employers, neither employers or just one.

1.4 *How do we place an employee on furlough, do we have to give notice prior to furlough and also when we want them to return to work?*

At the current time all businesses that are considering furlough should review their employees' contracts of employment before taking any action. Some contracts may have a clause that states you may be able to 'lay-off' or place your staff on 'short-time' working, if you do not have this clause in your employees' terms and conditions you will need to consult with your employees and get their agreement before you can implement this. If you have this clause in your employees' terms and conditions you may be able to implement furloughed working without your employees' consent and with no notice. However, we would still encourage you to get your employees' agreement and support.

No notice is required unless your employees will only agree to furlough with prior notice but if you can provide advanced warning please do so.

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Any employee placed on furlough should receive written confirmation that they have been furloughed, the details of the arrangement and any changes to their terms and conditions which you may have agreed with them.

If your employees have agreed and have been placed on furlough you should provide them with reasonable notice of a return to work date, in most cases this would not have to be longer than a weeks' notice and could be shorter with agreement.

1.5 Can employees go in and out of furlough if circumstances require it?

Yes, the minimal time an employee can be furloughed for is 3 weeks. Therefore, you may place your staff on a 3-week rota, if you wish to. You must ensure that the last period of furlough (when the scheme ends) is at least 3 weeks, otherwise you will not be able to claim for the last period of furlough.

1.6 Can employees who are furloughed carry out volunteer work or training?

Yes, as long as the work does not provide services or generate revenue for the organisation.

1.7 Do employees continue to accrue holiday, sick pay etc if they have been furloughed?

Yes, as they will remain an employee and on PAYE, they should remain bound to all terms and conditions of their contract that include holidays, sick pay etc.

1.8 Can employees retain access to and utilise email accounts etc. to communicate with clients/customers and the rest of the team during furlough?

Employee that have been placed on furlough must not conduct any work, therefore they must not contact clients or customers. If your business still has work to be completed but your demand has vastly reduced, you may need to consider retaining certain key employees on full time or where required in line with their contract of employment on short-time working.

We would still encourage all businesses to keep in regular contact with their employees to keep them updated on the business and an estimated time they may be required to go back to work. We also encourage regular catch up calls or video calls to see how your employees are doing. This is good for morale and wellbeing and reminds your employees they are still employed and connected.

1.9 Can I implement furlough for my employees no matter what?

No, you must first review your employees' contract of employment to understand the terms and conditions that are in place. If you have no clause for furloughed or lay-off, you must obtain employee agreement before you can implement this.

1.10 What do our employees get paid during furlough and how will they receive the money?

Employers will continue to remain responsible for all employees' payments which will continue be paid through the normal payroll software/provider. Businesses will then be able to claim a grant from a HMRC though a new online portal that should be available in the next few weeks (before the end of

April). Employers can claim for the following monies to be re-paid to them through a grant per furloughed employee:

- 80% of a furloughed employees usual monthly wage or up to £2,500 per month; (whichever is lower)
- Associated employer National Insurance Contributions on the above; and
- The minimum automatic enrolment employer pension contributions (3%) on the above.

If employers wish for their employees to receive a higher wage while on furlough, they may choose to top up the salary but must pay this additional wage and associated costs (additional ENI and employers pension) themselves.

NOTE: If you currently provide above the minimum employer pension contributions, you will be required to continue to make these contributions and as such pay yourselves the difference between your normal contribution levels and those reimbursed by the government. Pension contributions may be altered as with all terms and conditions, if consult and agree with your staff a reduction in contributions for this furloughed period.

Employers may only access the HMRC online portal (once it is created) and submit a claim once every 3-week period.

1.11 On what basis do I calculate the 80%?

For full- and part-time salaried employees who work regular hours, employers should use their actual salary before tax, as of 28 February 2020. Fees, commission and bonuses should not be included.

For employees whose pay varies due to working different hours, employers may claim under the CJRS for the higher of either:

- The same month's earning from the previous year i.e. for March 2020, they may use the earnings from March 2019 as a guide; or
- Average monthly earnings from the tax year 2019-20.

If the employee has worked for less than a year, the employer can claim for an average of the employee's monthly earnings since they have started.

1.12 Is the 80% or £2,500 gross or net?

Gross. Wages of furloughed employees will be subject to tax and national insurance deductions as usual. Pension contributions will also be deducted.

1.13 Do the same rules apply for those employees who receive the National Living or National Minimum Wage?

The legislation around NLW and NMW states that individuals are only entitled to this for hours that they have worked. Therefore, furloughed workers who normally receive the NMW or NLW also receive the lower of 80% of their normal wage or £2,500 even if this would mean that they are below NLW and NMW levels.

1.14 Can my employees take holiday while on furlough?

Yes. Employees who have or would like to book holiday during this time must be paid in full. This will mean that the employer will need to top up any payments that they receive from the HMRC to ensure employees receive 100% of their pay.

This will allow employees to receive full pay for a period of time and use up holiday to ensure that employers don't have employees with excessive holidays to take once they require them to return to work.

1.15 If an employee is sick due to COVID-19 and they are furloughed do they get 80% or SSP?

Employees that are on sick leave or self-isolating must get SSP (or enhanced company Sick pay) but can be placed on furlough after this period. Please ensure you are not claiming both SSP and furlough for the same period, it must be one or the other.

1.16 I have employees that are on unpaid leave due to parental duties can I furlough them rather than ask them to take unpaid leave?

No, the CJRS is not available for employees that are on unpaid leave, unless they were placed on unpaid leave after 28th February 2020 and they have no work to undertake.

The CJRS is to try and avoid job losses during this difficult time and avoid business having to place employees on unpaid layoff or make redundancies. We would encourage all business to use the scheme as it is intended.

Should an employee have work available but is struggling with childcare, they may request emergency or parental leave which is normally unpaid, or they may request flexibility to allow them to juggle the responsibilities such as altered working hours etc.

Employers must ensure they are not discriminating against any employee in their discussion to furlough an employee or not. The HMRC retains the right to audit a business accessing this scheme.

1.17 Does Furlough apply to newly appointed workers, or candidates due to join shortly but who might not have been paid yet?

No, any employee that commenced employment after 28 February 2020 are not eligible for the scheme. For these new employees, if you have no work for them to undertake you may choose either:

- speak to them about a delay in their commencement date and encourage them to look into their eligibility for Universal Credit or Job Seekers Allowance.
- Commence employment and consult with them regarding placing them on lay-off <https://www.gov.uk/lay-offs-short-timeworking>

1.18 Can we implement furlough to employees that are working their notice?

The minimal time you can place an employee on furlough is 3 weeks, therefore if they have less than 3 weeks employment left, they are not eligible for the CJRS. If an employee has chosen to resign and

you have no work for them to carry out during the last few weeks, you may consider lay-off (subject to their terms and conditions or agreement) subject to lay-off guidance above.

1.19 Does furlough affect any statutory maternity rights, and can someone go from being furloughed straight onto maternity leave and vice versa?

Pregnant women are on the governments vulnerable list, therefore if possible, they should be asked to work from home and given strict advice on protecting themselves if they are required to attend work. If they are currently working (either at home or at work) and you wish to place them on furlough, you may do so. If they are due to take Maternity Leave during this time of furlough they must be transferred to Maternity Leave and Pay (within your current terms). If your terms and conditions pay above Statutory Maternity, you must continue to pay them at the enhanced rate however an enhanced wage cost for maternity leave can be claimed through CJRS.

Should an employee be due to return from Maternity Leave shortly, you can consult with them and place them on furlough status as detailed above. Due to the financial advantage for the individual of being furloughed as opposed to being in the final unpaid portion of maternity leave, employees may request to return from maternity leave early so they can be furloughed. This is allowed; however, the employee must give 8 weeks' notice to change or bring forward the date she is due to return.

Pregnant women must not be discriminated against and any employers must ensure they are being treated fairly.

The same principles apply where employees are on adoption, paternity or shared parental pay.

1.20 What is the difference between short-time working, lay-off and furloughed employees?

- a) Short-time working is where the number of hours or days of work in a week are reduced.
- b) Lay-off is where an employee is asked to not undertake any work and remain at home for one or more days. Depending on contractual clauses this may be unpaid or paid.
- c) Furloughed is a term used to access the CPRS for employees with no work available that would have been made redundant or laid off during the coronavirus.

The CJRS has been developed to encourage companies not to make staff redundant. The scheme is designed to protect both employees and employers like ourselves so that we are best placed to continue as normal when the COVID-19 crisis comes to an end.

In lay off, short-time working and furlough, employees remain employed by the business and will continue to be subject to all normal terms and conditions of employment, except full pay if defined in their contract or agreed.

1.21 What are the alternatives to furlough?

If the CJRS is not accessible for any of your employees but you have no or limited work for them to complete you may wish to consider short-time working or lay-off:

- Short-time working - where the number of hours or days of work in a week are reduced
- Lay-off - where an employee is asked to remain at home for one or more working days

There is no minimum or maximum time limit for a lay-off or period of short-time working however, an employee can apply for and claim redundancy if they have been on either measure for 4 consecutive weeks or 6 weeks in a 13 week period.

Pay during these periods depends on the existence and content of a contractual term in the employment contract. Employees are entitled to receive full pay during lay offs and short-time working unless the contractual clause allows for it to be unpaid. Employees who are unpaid during layoffs or receive less than half of their pay during short-time working and have over a months' service can claim a statutory guarantee payment of £29 per day for a maximum of 5 days in any 3 month period.

During lay off and short-time working, the employee remains employed and continues to accrue holiday and other benefits. Other contractual terms such as confidentiality and the inability to work with other companies also apply however, these can be relaxed.

1.22 How are the HMRC going to ensure businesses use money through the CJRS to pay furloughed workers?

The government have retained the right to audit all aspects of the scheme with scope to claw back any fraudulent or erroneous claims.

1.23 Employees can request to be made redundant when they are on layoffs and short-time working, does the same apply for Furloughed workers?

No, as the scheme is set up to ensure employees will continue to be employed and paid a percentage of their wage they are not entitled to claim redundancy or receive redundancy pay. In these circumstances, organisations will need to follow a normal redundancy process to ensure that they meet UK employment legislation

1.24 What happens if I still don't have work for my employees after the CJRS ends?

At the end of the CJRS, employers will need to review their own situation and evaluate if they have enough work to maintain their existing workforce. If there remains no, reduced or changed work, companies may then consider redundancies or further lay-off/short-time working. In these.

1.25 What happens if during the furloughed period the company goes into administration?

If during this period, the company unfortunately, is taken under the management of an administrator, the administrator will be able to access CJRS so that employees will continue to receive the payments.

2 New Staying at Home Rules (Lock-Down)

2.1 What is lockdown and what can we ask our employees to do during this time?

The measures that were implemented at midnight on 23 March 2020 state that everyone must:

- a) Stay at home except for very limited purposes
- b) Close non-essential shops and community spaces
- c) Stop all gatherings of more than two people in public

The 'Staying at home guide' should be sent to all your employees to ensure they comply.

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/874738/Full_guidance_on_staying_at_home_and_away_from_others.pdf

During this time, you can still ask your employees to go to work (unless your business is required to close) but this is only when work cannot be done at home. We would encourage you to be flexible with all employees that are required to travel to work and where possible implement flexible start and finish times to avoid travel on public transport during busy times) and ensure social distancing is enforced in the work place.

2.2 Is the Government asking all businesses to close if they can't work from home?

No, there is a list of shops and other establishments that are required to close that are listed in detail on the link below. All other business can stay open but should work from home unless it is impossible for them to do so.

<https://www.gov.uk/government/publications/further-businesses-and-premises-to-close/further-businesses-and-premises-to-close-guidance>

If employees are required to attend a workplace they should only do so while complying with social distancing and other guidelines provided by the government, i.e., handwashing etc.

2.3 Some of my employees are refusing to come into work even though they can't work from home, is this allowed?

Firstly, you should identify, if you have not done so already any vulnerable employees as they are more at risk from the virus. Special measures should be put into place for these employees if they are required to attend work and can't work from home. A risk assessment should be completed to review temporary measure you can put into place for these employees.

If your employees are displaying symptoms of COVID-19 and are as a result required to self-isolate, they must be instructed to do so for 7 days from the onset of symptoms. Employees may also be required to isolate as a household if a member of their home is displaying symptoms, in which case they must isolate for 14 days from when the first person becomes ill. (please refer to the Government explanatory diagram)

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/874011/Stay_at_home_guidance_diagram.pdf

If your employees are not within these categories (or other isolation categories due to travel) they are still required to attend work if they cannot work from home. All employers must be flexible and where possible allow employees to work at home during this difficult time, however if their job doesn't allow

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any type of home working and your business is not required to close through government guidelines your employees should be informed to attend work.

We encourage flexibility in start and finish times, and you must explain to your employees what you are doing to keep them safe at work by following social distancing guidelines and cleanliness. Currently everyone is feeling anxious and stress and therefore we encourage you to deal with such employees sympathetically. Talk to your employees about why they don't want to attend and see if you can provide alternative solutions. However, if they still do not attend you may need to inform them that they are required to attend, and any non-attendance would be classed as unauthorised unpaid leave and may be subject to disciplinary action.

3 General Questions

3.1 *My staff are all requesting to cancel holidays and I am worried they will all want to take them at the same time when I need them most, what do I do?*

We would encourage you to send a communication out to your staff to inform them that during this difficult time you require all employees to consider their holidays and ask them to book 25-50% of their holidays now for the remainder of the year. This will reduce the amount of bulk holiday requests later. We would encourage you to decline any holiday cancellation requests to also avoid bulk holiday requests.

While we may not be able to do what we wanted to this year, holidays are key to re-energising especially in this difficult time. Employees may be unable to go away; however, they may wish to take a long weekend just to relax in the house or garden or complete that long awaited DIY project. Stress and mental health is extremely important and holidays are key to managing this.

Please also be mindful that employees will need to receive full pay during any holidays, and this may place strain on companies that are already under financial difficulty, therefore please consider holidays in line with your finances as well.

3.2 *Can we force an employee to take annual leave?*

We would not encourage forcing employees to take holiday at this time as all companies need employees' support and forcing them may cause grievances and other upsets. We would therefore suggest that you use your best efforts to 'encourage' rather than 'enforce'. However, as a last resort, companies can force employees to take holiday on particular days. You cannot do this without notice which must be at least twice the duration of the leave, i.e. 1-week holiday would require 2-weeks written notice.

3.3 *If any of my employees are ill how long do, they stay at home, is it 7 or 14 days?*

If an employee shows symptoms of Covid-19 they must self-isolate for 7 days from the start of symptoms, any members of their household must then isolate for 14 days. They may obtain an isolation note (alternative to a GP Fit note) from NHS online 111 and provide that to you as proof of isolation.

If your employees inform you that someone in their home is showing signs of COVID-19 they must self-isolate for 14 days from the date the ill person showed symptoms.

The link below shows a great guide to self and home isolation.

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/874011/Stay_at_home_guidance_diagram.pdf

Update for 31 March

4. Coronavirus Job Retention Scheme (CJRS)

4.1 *If a Freelancer is on our PAYE can they be furloughed and access the scheme?*

The Government refers to 'employees' when describing the scheme's eligibility criteria so it can be difficult to understand if workers and freelancers (on PAYE) would be covered. However, we believe that the term 'employee' has been used for ease but does refer to any individuals that are engaged with a company on PAYE system.

While freelancers have not been specifically mentioned as suitable for the CJRS, the eligibility of the scheme is open to all types of contract on PAYE. So, if a freelancer is on the business PAYE system, they should be eligible.

4.2 *I have dismissed a few employees over the last few weeks, can I bring them back and place them on furlough?*

This is always a difficult decision to make but although you may wish to try and help these employees, as a business you must ensure you protect the business against future problems and claims.

The CJRS does allow you to rehire an employee that was terminated or made redundant in March 2020 due to COVID-19 or any other reason.

If you are considering re-hiring a redundant employee, please speak to your HR Consultant to discuss the specific situation; however, in general you must consider:

- ◆ What redundancy/PILON payment they have received?
- ◆ If length of service will continue?
- ◆ Will you be able to keep them employed after the scheme ends?
- ◆ How to process them?
- ◆ If they have already been processed as a leaver can you reinstate pension, etc?

4.3 *I have ex-employees asking to return and be placed on furlough, but I'm worried about the implications, do I have to offer them their job back?*

No, employers are not obliged to rehire any ex-employees just because they would have been eligible for furlough.

The CJRS is not designed for the re-employment of employees terminated either in probation or for other matters unrelated to COVID-19 who may then face termination again after the CJRS scheme has been closed. Employers that do this may open themselves up to unnecessary risk not only from HMRC declining the CJRS claim but from the employee they re-hired subsequently making an employment-related claim.

4.4 I have heard that a Director of a company can furlough themselves, is this true?

Directors of a business who are employed by the company and receive remuneration through the PAYE will be eligible for the CJRS. A Director status has not been specially confirmed as eligible for furlough, however with the information we have available we believe they will be able to place themselves on furlough.

Directors, however, must be aware that only the normal 'salary' that is processed via PAYE will be eligible for the CJRS and any remuneration that is made via dividends or allowances is not eligible in the calculation.

We also believe that Directors may be able to complete a very limited amount of work whilst furloughed in order to meet their statutory duties. This should be to complete essential business tasks only such as completing financial transactions, processing employees' wages and cannot be to generate work or revenue such as contacting clients etc.

4.5 Does the 3-week furlough period need to be continuous or can it be any 3 weeks not worked in March, April and May?

Any furlough period needs to be a continuous 3 weeks block. It is acceptable if you have some work available to place employees on a 3-week rota to make it fair for all. However, with any rota you must ensure that the last period of furlough at the end of the CJRC is at least 3 weeks or you would not be eligible to claim the CJRS for this last period.

4.6 Easter Bank Holiday is coming up, do furlough staff still get their Bank Holidays?

Yes, if an employee is on holiday or has a scheduled Bank Holiday while on furlough, they are entitled to still receive this holiday. Employers must ensure that any employee on holiday or a Bank Holiday is paid their full salary for that period of holiday.

Therefore, employers must schedule to pay employees full wage on the following date although this does not impact their furlough status:

- ◆ 10th April 2020
- ◆ 13th April 2020
- ◆ 8th May 2020
- ◆ 25th May 2020.

Update for 2nd April

5. The Working Time (Coronavirus) (Amendments) Regulations 2020

5.1 What is the Amendment?

The Working Time (Coronavirus) (Amendment) Regulation 2020 was announced on 26th March and came into effect straight away. The amendment states that where it was not reasonably practicable for a worker to take some, or all, of the leave to which they are entitled as a result of COVID-19, the worker is entitled to carry forward up to 4 weeks untaken leave into the next 2 leave years.

In basic terms if an employee is unable to take annual leave due to COVID-19 they can carry forward up to 4 weeks leave and take this over the next 2 years (i.e. 2021 and 2022 holiday years). Employees must still take at least 1.6 weeks (8 days for full time employees) in the current year.

5.2 Can the 4 weeks include Bank Holidays?

Yes, all workers are entitled to 5.6 weeks which is normally broken into 4 weeks and then 1.6 weeks which is normally associated with the 8 Bank Holidays, but it doesn't have to be.

If a worker can't take Bank Holidays due to COVID-19 they should be allowed to take the holidays later in the year if they wish, or it may be included within the 4 weeks they can carry over.

If a worker is furloughed on a bank holiday, see the next section for how to approach it.

5.3 If I have employees on furlough and I am going to struggle to pay holiday can I cancel all leave including the Bank Holidays?

For normal holidays, if you have accepted holidays you should talk to your staff and agree to cancel it and explain the reasons why you need to cancel. Most employers may cancel authorised holiday within their contracts and policies, but we would not suggest you do this without speaking to your employee first and getting their agreement.

If they have Bank Holidays that are due to be paid as detailed in question 4.6 but paying employees for these Bank Holidays would place the business in financial hardship, you may wish to consider cancelling these holidays and allow workers to take it at a later date. However, you must review your employees' contract of employment as you may need to consult with them first as detailed below:

- ◆ Employees that have their holiday entitlement separate to Bank Holidays will automatically get paid for Bank Holidays (i.e. 20 days holiday + 8 UK Bank Holidays) – you must pay these employees for their Bank Holidays as it is a contractual term.
- ◆ Employees that have their Bank Holidays included in their holiday entitlement (28 days holiday including Bank Holidays) need to book any Bank Holidays if they wish to have the day off – you would need to follow the normal guideline above for canceling approved holidays.

Employees that have holiday separate to Bank Holidays and are therefore automatically entitled to be paid for these days, must receive full pay for bank holidays. However, if you choose to you may wish to consult with your staff and ask them to consent to a temporary change in their contract to allow them to take the Bank Holidays in April and May later in the year (or carry them over). If employees agree to this, you then do not need to pay them for Bank Holidays.

5.4 An employee doesn't want to take any normal holiday and carry everything over the full 4 weeks, do I have to allow this?

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No. Employers are still effectively in control of employment matters and should not allow employees to dictate contractual conditions. Employees are still required to take as much holidays as possible throughout the year. As an employer it is important you look after the welfare of your staff and holidays are important to ensure they get enough rest and keep both mentally and physically fit.

If employees are not able to go on their holiday abroad as normal, they should still take time off to be with the family and relax.

We would encourage all employers to ensure that employees have at taken at least one week before June and more if possible. Business must also consider that if employees accrue a large amount of untaken holiday now and they then leave or are made redundant these holidays must be paid to them and may place the business under strain.

6 CJRS

6.1 *When will businesses receive payments for the CJRS?*

At the current time we do not know how long after a business has submitted a claim for the CJRS, payments will be received by HMRC. The current guidance states:

'HMRC are working urgently to set up a system to pay these grants. We expect the first grants to be paid within weeks, and we're aiming to get it done before the end of April.'

We would encourage all business to review their financial situation and if they are concerned regarding ongoing salary costs should review their options as detailed in the *'Support for Employers Guide'* which includes details of the Coronavirus Business Interruption Loan.

Payments to furloughed employees may be delayed until after the company has received their payment from HMRC as long as they have consulted with their staff, gained agreement for the change in pay date and written to confirm the contractual change.

The information contained in this guide is believed to be correct as at 03/04/20 but there may be errors or omissions for which the Streets organisation cannot be held responsible. Should you seek any further guidance please email your usual Streets contact or email info@streetsweb.co.uk or visit www.streetsweb.co.uk.