

5 Jan 2021

Coronavirus (COVID-19): furlough guide

This guide outlines the key facts you need to know about furlough leave and the revised scheme applicable from 1 July onwards

As part of its response to the COVID-19 pandemic the government has introduced the [Coronavirus Job Retention Scheme](#). This allows all UK employers with employees on a PAYE scheme to designate some or all employees as 'furloughed workers'. Employers can access to Government support to continue paying part of these furloughed employees' salaries and potentially protect the employees from redundancy. The first phase of the scheme finished at the end of June. A second flexible furlough phase operated between June and October. The scheme was extended into a third phase from November until the end of March 2021, with another extension to 30 April 2021.

This guide outlines the key facts about furloughed workers and details the extensions of the scheme (announced on [12 May](#), [31 October](#), [5 November](#), [17 December](#)). The current 80% government contribution will continue until the April 2021 end date, rather than being reduced at the end of January as was originally suggested.

We will continue to update this guide to reflect the new guidance which emerges from the Government. In the meantime employers should regularly check the [Government website](#) for the latest information.

What is furlough?

The word 'furlough' generally means temporary leave of absence from work. This can be due to economic conditions affecting one company, or matters affecting the whole country. The expression had previously not carried any meaning in UK employment law but was temporarily introduced in response to the unprecedented situation presented by the COVID-19 pandemic. This does not mean that the fundamentals of employment law have changed, simply that this scheme adds to them.

Furlough leave temporarily provided employers with an option to keep employees on the payroll without them working at all. Under the more flexible second and third phase extensions to the furlough scheme (from July to October, and then to end of April 2021)

employees may either cease working completely or work reduced hours. As the furloughed staff are kept on the payroll, this is different to being laid off without pay or being made redundant. The ability to furlough employees was designed to support employers who are severely affected by coronavirus.

The scheme and some other measures provide employers with other options when reviewing the circumstances of their business, and may be an alternative to implementing redundancies or lay offs without pay. Each employer will need to review options carefully (alongside legal advice) to pursue the best option for them.

Postponed ending of the scheme

The Coronavirus Job Retention Scheme was originally scheduled to finish at the end of June. It was then extended until the end of October and then until the end of the year, and then again until end of March 2021, and most recently until 30 April 2021. A different Job Support Scheme (JSS) was due to start on 1 November, but this has been postponed indefinitely. We are awaiting further guidance as to whether the JSS will be modified and start in May 2021 or, as seems more likely, it will be cancelled.

It is critical for employers to understand the relevant dates and the fine detail. The key dates are outlined below.

Extended furlough scheme

The extended furlough scheme will operate as the previous one, so for hours not worked by the employee, the government will pay 80% of wages up to a cap of £2,500. The government announced in December 2020 that the 80% government contribution will remain at that level for the remaining months of the scheme.

The grants must be paid to the employee in full; due to the short notice and need to update the furlough system employees may need to be paid partially in arrears for part of November.

The grant is claimed for the hours that employees are not working, calculated in proportion to their usual hours worked in a claim period as under the previous furlough scheme.

Extended furlough scheme grant

Furloughed employees can get 80% of their usual pay for hours not worked during the extension, up to a maximum of £2,500. This is like the furlough scheme back in August so employers will only need to fund the employer NICs and pension costs unless the government adjust the scheme again.

Employers claim for a minimum period of seven consecutive calendar days and need to work out the hours worked and compare this to the usual hours an employee would work

in that claim period. Employers pay for any worked hours as normal and pay the tax and NICs due on both worked and unworked hours.

Employers can top up employee wages above the scheme grant at their own cost if they choose to, but they do not have to.

Records for previous phases of the scheme

Employers must keep a careful record to show that the employees were furloughed and employed in compliance with the cut off dates, for example the closure to new entrants for the June to October phase of the scheme (although there was a limited exception to the summer cut-off date for those returning from periods of statutory parental leave - see below).

For the latest furlough claims employees must be on an employer's PAYE payroll before midnight on 30 October 2020.

Parental leave

Special rules apply to aspects of the interaction between furlough and statutory maternity, paternity, adoption, shared parental, and parental bereavement leave.

Employees on the PAYE payroll on or before 19 March 2020 can be furloughed if they started the maternity (or other) leave before 10 June 2020 and returned from that leave after that date, even if furloughing them for the first time. This applied until 31 October 2020 subject to a maximum number of employees linked to previous claims.

For claims on or after 1 November 2020 employees returning from maternity, shared parental, adoption, paternity or parental bereavement leave are subject to the normal scheme rules. Employees can end their maternity leave early to be furloughed but will need to give employers at least 8 weeks' notice of their return to work. Normally this notice period can be shortened by agreement, but the guidance suggests that this may not be the case in the context of furlough.

Further [Government guidance](#) on the extended furlough schemes outlines which employees employers can use the scheme for, and how to work out what you can claim. You can also refer to our [furlough FAQs](#) for more information.

Flexible furlough

From 1 July 2020 the furlough scheme became more flexible and this applies during the latest extension to the scheme as well. Under the extended scheme employees can continue to receive 80% of their salary, subject to the cap, but employers will need to share the burden of paying NI and pension contributions from August 2020 onwards. As

under the original scheme, employers can top up the wages above the grant for fully furloughed staff if it is feasible for them to do so. Employees might be working part-time under the flexible scheme. The capped figures on the furlough pay will apply in proportion to the hours not worked.

Timeline for the flexible scheme

The following six stages apply:

June 2020

From 10 June the furlough scheme is effectively closed for employees who had not been previously furloughed. Until June 30 employers could claim for 80% of furloughed employees current salary, up to £2,500 but the employee must not work for the employer. Employer National Insurance Contributions and certain pension contributions could be claimed too. Employers were not required to contribute anything towards furloughed employees' salaries for June.

July 2020

The new flexible scheme applied only for previously furloughed employees. These people could return to work part time, but employers can still claim the grant for normal hours not worked. Any amount of working time and any shift pattern can be agreed with the previously furloughed staff. Until 31 July employers could still claim for 80% of the furloughed employees' current salary, up to £2,500 as well as employer National Insurance Contributions and pension contributions. Employers must pay employees for the hours they work.

August 2020

From 1 August, employers had to pay employee's National Insurance Contributions and pension contributions, and can no longer claim a grant for these. Until 31 August the government paid 80% of furloughed employees wages up to a cap of £2,500 for hours not worked. Employers had to pay employees for the hours worked. Employers funding of employers' NICs and pension contributions applied to both the hours not worked and hours worked if any.

September 2020

From 1 to 30 September the government paid 70% of furloughed employees wages up to a cap of £2,187.50 for hours not worked. Employers paid 10% of wages to make up 80% total up to a cap of £2,500 plus employers' total NICs and pension contributions.

October 2020

From 1 October until the end of the scheme on 31 October the government will pay 60% of wages up to a cap of £1,875 for the hours the employee does not work. Employers will pay 20% of wages to make up the 80% total up to a cap of £2,500 plus employers' total NICs and pension contributions.

November 2020 to April 2021

Under the latest extension to furlough, the government pay 80% of furloughed employees wages up to a cap of £2,500 for hours not worked. Any employees who were employed on 30 October 2020 will be eligible as long as the employer made a PAYE RTI submission for them between the 20 March 2020 and 30 October 2020, unless they re-employed the employee after 23 September 2020. Employees on the payroll on 23 September 2020 who have since been made redundant can be re-employed and put onto the furlough scheme. Revised furlough agreements must have been in place by the end of Friday 13 November 2020. The relevant percentage will be reviewed in January 2021. Employers pay employees for any hours worked. Employers funding of employers' NICs and pension contributions applies to both the hours not worked and hours worked if any.

Which employers are eligible?

Any employer (of any size) is eligible for the furlough scheme. This includes:

- businesses
- charities
- recruitment agencies (if the agency workers are paid through PAYE).

To be eligible the employer must have a PAYE payroll scheme and have a UK bank account. For an employee to be eligible under the further furlough extension (from November to April 2021) a Real Time Information (RTI) submission to HMRC for them must have been made between 20 March 2020 and before midnight on 30 October 2020. Neither the employer nor the employee needs to have used the furlough scheme previously.

If employers have not concluded furlough agreements promptly following the government announcement furlough can be backdated to 1 November 2020, but to do this the retrospective furlough agreement must have been in place by the end of Friday 13 November 2020. The employee must genuinely having been furloughed during this time because employees working all of their usual hours cannot be furloughed retrospectively.

Where a company is in administration, the administrator can access the [Coronavirus Job Retention Scheme](#).

More information is available on the [government website](#). The situation is evolving rapidly

and any future regulations and guidance should be checked frequently.

Public sector

The government did not anticipate much public sector use of the scheme because many public sector employees are continuing to work throughout the coronavirus outbreak.

The government have said, as previously, that it does not expect publicly funded organisations to use the scheme. Partially public funded organisations may be eligible if their private revenue is disrupted.

Non-public sector employers who receive public funding for staff costs are expected to continue to pay staff and not to place them on furlough. However, the furlough scheme may apply to some staff who could not be redeployed to assist with the coronavirus response. [Special guidance](#) has been issued for contingent workers in the public sector and contractors with public sector engagements in scope of IR35 off-payroll working rules.

Which employees are eligible?

The employees that could agree to being furloughed were those working for employers whose businesses have been severely affected by coronavirus.

Other types of employees are included as long as they're paid via PAYE including:

- office holders (including company directors)
- salaried members of Limited Liability Partnerships
- agency workers (including those employed by umbrella companies)
- limb (b) workers (dependent contractors)
- contingent workers in the public sector
- contractors with public sector engagements in scope of IR35 off-payroll working rules.

The furloughed employees must have been on the employer's PAYE payroll on or before midnight on 30 October 2020, including:

- full-time employees
- part-time employees
- agency employees on agency contracts (provided they are not working at all)
- zero-hour contract workers (provided that they are employees albeit on flexible contracts).

(Past problems arose for employees who were not on the employer's payroll on the previous dates of 19 March 2020 or who were not furloughed on or before 10 June - see

our [FAQs on placing new employees on furlough.](#))

There are also complexities for employees who have been:

- shielding due to being clinically extremely vulnerable
- on sabbatical or unpaid leave
- recently made redundant or laid-off
- are pregnant or on maternity leave or adoption/paternity/shared parental leave pay
- caring for children
- migrant workers.

See our [FAQs](#) for more information on these specific situations.

Employees who have been on sick leave between the relevant qualifying dates could be placed on furlough leave after the period of sick leave has ended if there is no work for them to do. If an employee becomes ill during furlough, the employer can choose whether to move the employee onto SSP or pay them at their furloughed rate. Employees who are clinically highly vulnerable can also be placed on furlough or sick leave. This also applies to those who live with someone who is clinically highly vulnerable or who have caring responsibilities resulting from coronavirus. The CJRS is not designed for short-term sickness absence but employees who are off sick can be furloughed although the employer does not have to do this.

Redundancy

The intention of furlough is that employees will be able to return to work afterwards. However, some employers will be unable to take all the furloughed employees back when the scheme ends and will consider redundancies. There are a number of redundancy aspects to consider:

Redundancy during furlough: Employees can still be made redundant during furlough, but no part of the furlough grant can go towards paying redundancy pay. Previous government guidance confirms that employers can continue to claim the furlough grant for a furloughed employee who is serving statutory or contractual notice.

Redundancy process: The redundancy process is likely to be unfair if the employer did not at least consider re-furloughing employees as potential alternatives at the planning stage. It is thought that employers can commence a redundancy procedure including furloughed employees and still claim the furlough grant. However, HMRC may question rapid redundancies as the whole purpose of the furlough scheme was to allow employers to continue to trade and retain staff. Tribunal cases are starting to emerge where employees bring unfair dismissal claims because furlough was not considered as an alternative to redundancy.

Employees already redundant: The late furlough extension from October 2020 means

some redundancies implemented at the end of October may have been unnecessary or could have been postponed. Employees on the payroll on 23 September 2020 who were then redundant or stopped working for the employer can be re-employed and furloughed. This includes employees on fixed-term contracts who can also be re-employed and claimed for. Employers do not have to re-hire employees but there is at least a moral obligation to consider this. The cost for employers is the employer NICs, pension contributions and holiday pay. An agreement would be needed over any redundancy payments already made.

Redundancy pay and notice: The [rules on calculating statutory redundancy and notice payments](#) have been amended to ensure the employee's normal full rate of pay rather than reduced furlough pay is used as a basis for working out redundancy payments.

Employees can still be made redundant during furlough, but no part of the furlough grant can go towards paying redundancy pay itself. Previous government guidance suggested that employers could continue to claim the furlough grant for a furloughed employee who was serving statutory (or possibly contractual) notice. However, the most recent guidance on 13 November updates the position. Now it appears that:

- For notice days before 1 December 2020 a furlough claim may be made towards statutory notice pay. There is no guidance on contractual notice.
- For notice days on or after 1 December 2020 an employer cannot make a furlough claim if the employee was serving contractual or statutory notice. This includes people under notice of redundancy or if they have resigned.

Therefore for claim periods starting on or after 1 December 2020 employers will have to budget for redundancy payments when implementing redundancies but should budget for full notice payments too. Employers may prefer to implement redundancies before 1 December given that the furlough grant will be disappplied during notice periods.

Due to the evolving nature of the guidance employers should keep copies of furlough agreements and written evidence to show that their operations have been negatively affected by coronavirus and that redundancies are unavoidable. Furlough agreements on the most recent version of the scheme must have been in place by the end of Friday 13 November 2020. Further information on record keeping requirements is summarised below. HMRC may ask to see furlough agreements.

Employees who work elsewhere

Employees with two or more employers can be furloughed for each job separately but the £2,500 cap applies to each employer individually. This means that an employee with two jobs can have 80% of their salary reimbursed with a cap of £5,000, or more, if the employers both top the salary up above the grant level.

As far as the grant scheme is concerned employees can be furloughed from one job and receive their 80% furlough payment, then work for another employer during the hours they would normally be working for the employer who has furloughed them. The legal position can differ because receiving the grant and having another job may be permissible under the furlough scheme, but the employer may still have the normal ability to restrict employees from working elsewhere.

Working elsewhere

Furloughed employees can work for their employer part time under the second and third most recent phase of the scheme; staff will be paid normally by the employer (who must not claim furlough pay for the hours staff work). This includes the November extension to the scheme. If furloughed employees work for another employer during the hours they would normally be working for the employer who has furloughed them payments by HMRC will be paid even if the employee picks up other work. The employee will receive the furlough payments from the first employer and their normal wages from the new employer. Employees were only prevented from doing any work but only for the same employer that has furloughed them up until the end of June.

Contractual restrictions on working elsewhere

The scheme may pay a grant for the furloughed employee, but this is a different legal issue to the relationship between the employer and employee. In many employment contracts there is either an express or implied term that the employee should loyally and faithfully work for that employer and not work elsewhere.

It could technically be breach of contract with the employer if employees pick up work elsewhere. Similarly, it could be a breach of contract, including a breach of mutual trust and confidence, if the employer unreasonably refuses consent, especially if the employer only allows furlough on 80% pay.

Example

For example, two full-time employees have contracts with similar express restrictions on working elsewhere. The contracts say the employees must faithfully serve the employer and are prohibited from taking up additional work or directly or indirectly engaging in any competing business.

Employee A earns about £2,000 a month as an assistant for a film location company which has temporarily closed. He is furloughed on 80% of pay, receiving approximately £1,600. To supplement the furlough pay he takes a temp job as a supermarket delivery driver earning a further £2,000 per month (in addition to the furlough payment). The original employer should evaluate this and as there is no business threat can agree to the employee's proposed second job.

Employee B earns £6,000 per month as a business developer for a financial services company. She is furloughed on the maximum £2,500 payment but the employer does not top this up. Employee B is concerned that she will not meet all her outgoings and takes a temp development job with a similar company earning £4,000 per month. The employer is concerned as there is a threat to its business by working for a competitor. If the employer refuses consent to the employee's proposed second job Employee B can seek another role or may try to refuse to agree to being furloughed given the pay cut, especially if some other colleagues have not been furloughed and are receiving their full salaries. The employer then has a choice to pay the full salary, or reverse the furlough decision, or perhaps commence a redundancy process.

Ultimately what happens may be a question of negotiation between the employer and employee. Employees do have to agree to being furloughed, unless there are lay off provisions in their contract, so an informed employee may say they only agree to being furloughed and taking a pay cut if the employer agrees to them working elsewhere during their normal working hours. Employers should agree with the employee the nature and length of any other work that may be done, ideally in writing. Employers may ask employees to agree new or reconfirmed restrictions on working elsewhere, especially if for a competitor. The employer may agree to furloughed employees working in limited sectors, for example, food, health and social care or other essential services. Special rules also govern volunteering.

Business owners and partners

Owners of small businesses who pay themselves a PAYE salary are covered under the furlough scheme. The scheme does not apply to dividend payments so director-shareholders who are paid partly or mainly in dividends will only be covered to the extent that they receive PAYE earnings.

The [Coronavirus Self-employment Income Support Scheme](#) provides a similar sort of support to those not eligible under the job retention scheme. This means self-employed directors with taxable profits below a £50,000 annual threshold whose business has been adversely affected by coronavirus can apply for support under the self-employment scheme. The scheme has also been extended beyond June.

First Grant: between 13 May and 13 July 2020 eligible self-employed people can claim a taxable grant of 80% of average monthly profits for a total 3-month period capped at £7,500 in total.

Second Grant: From 17 August eligible self-employed people can claim a taxable grant of 70% of their average monthly trading profits, paid out in a single instalment, again covering 3 months' worth of profit, capped at £6,570 in total. Claims for this second round of grants have a deadline of 19 October.

Third Grant: covers November 2020 to January 2021 at 80% of trading profits, capped at a total of £7,500. This is an increase from the previously announced 55% to 80% of average profits, to reflect the November national lockdown in England.

Fourth Grant: covers January 2021 to April 2021. The precise level has not been announced.

Any individual does not need to have claimed the earlier grants in order to be eligible for the later grants, as long as they meet the qualifying criteria.

Salaried partners who are paid through the PAYE payroll are eligible under the furlough scheme. Partner owners and LLP members who are treated as self-employed (and not paid through the PAYE payroll) will not be covered. Like directors, self-employed partners with taxable profits below the annual threshold may be eligible to apply for support under the self-employment scheme.

From July 2020 there are modified conditions for parents who took time off to care for their children within the first 12 months of the birth or adoption of the child in 2018-19. If trading profits dipped in this time due to parenting, these parents can use their earlier 2017-18 (or 2016-17 and 2017-18) self-assessment returns as the basis of eligibility for the self-employed scheme.

How to agree which employees are furloughed

Employees must have been consulted and agree to be furloughed.

Changing the status of employees always is subject to existing employment law so it's important to bear this in mind. Depending on the employment contract wording there may be an ability to lay-off workers to impose a furlough period.

Unless there were unusually comprehensive lay off provisions in the existing contract the employers will have needed to agree furlough with the employee that they are going to become furloughed because no work or less work is available. Employers will also need to check their furlough agreements comply with the details of the extended furlough scheme and agree ongoing terms with employees unless the original furlough agreement covers the extended period. The extent of any work to be undertaken and payment terms should have been agreed. Most employees will have agreed to furlough if the alternative is dismissal by reason of redundancy (with the possibility of a delayed redundancy payment or only a notice payment for employees who have worked for less than two years).

For furlough under the current phase of the scheme employers can backdate furlough to 1 November 2020 provided the retrospective agreement is in place by the end of Friday 13 November 2020. The employee must have actually been working less than their usual

hours, if they have been working full time the furlough cannot be backdated.

In some cases, the unions may have joined in a collective consultation process to agree the furlough change. As normal employment laws apply when furloughing employees, equality and discrimination laws mean employers will need to be aware of certain risks, for example, choosing a disproportionate amount of men, women, disabled or older staff which could lead to discrimination claims later.

In a minority of cases negotiation may have been required, as for some employers some staff may be needed and others not. Employees may be resentful that they are having to work as they are classed as being essential whilst others remain furloughed on 80% of salary. Others may be resentful that they are classed as dispensable whilst others are working and receiving their full package.

It may help to select employees for furlough using a process like redundancy selection (for example, using objective criteria, such as a scores matrix based on skills, productivity, previous appraisals etc). Discuss all of the available options with employees and stay up to date with the latest on the [Government website](#).

If employees do not agree to be furloughed then employers can dismiss them by reason of redundancy (if the redundancy definitions are met and a proper process is followed).

Applications to the scheme

The ability to furlough employees under the Coronavirus Job Retention Scheme has been operational since 20 April. Employers can apply on the Gov.uk website and use the [step by step guidance](#) to help them make their claim.

For the further extension to the scheme the process is similar but there is a shorter claim window. Claims relating to November 2020 must be made by 14 December 2020. Claims relating to December should be submitted by 14 January and subsequent claims by day 14 of the following month. Employers who are disorganised may miss the deadline to reclaim the grant. There is no gap in eligibility for support between the previous furlough end date of 31 October and the extension.

The extended scheme operates with many similarities to the previous scheme for example employers must report and claim for a minimum period of 7 consecutive calendar days. Employers also:

- report actual hours worked; and
- the usual hours an employee would be expected to work in a claim period.

There will be a short gap when the furlough scheme and system are updated so employers will need to claim in arrears for the period from 1 November 2020 to 11

November 2020. But can claim in advance from Wednesday 11 November 2020. There will be no gap in grants available between the previously announced end of furlough on 31 October 2020 and the extension on 1 November 2020.

The relevant dates are:

- 30 November 2020: time limit for date for claims up to and including 31 October.
- 14 December 2020: deadline for claims for November 2020.

After that each monthly claim should be submitted by day 14 of the next month. For hours worked, employees will be paid by their employer subject to their employment contract and employers will be responsible for paying the tax and NICs due on those amounts. Agents authorised to do PAYE online for employers can claim on their behalf.

Once employers have reached an agreement with employees about being furloughed, they should have written to the affected employees confirming that they have been furloughed and should keep a record of this for five years. Records of how many hours their employees work and the number of hours they are furloughed should be retained for six years.

Employers access the scheme through an online portal, providing details of the affected furloughed employees and accurate information about their earnings and any other information required (such as the employee's NI number). Guidance on [how to calculate employees' wages](#) and [step by step guidance on making a claim](#) are available on the Government website.

Employers should have taken the following steps prior to making a claim:

- Designed a furlough process and agreed a furlough policy. This should involve employees (or union representatives) to aid agreement to any changes.
- The policy should be reviewed and updated in line with the Government extensions to the scheme on an ongoing basis.
- Decided which employees are affected perhaps using criteria similar to redundancy selection.
- Decided whether to pay 80% of salary or to supplement it. You can use the [Gov.uk guidance](#) on calculating 80% salary to help make your decision.
- Decided on the length of the claim period, what to include when calculating wages and employees' usual hours and furloughed hours.
- During the extended phase of the scheme employers must supplement the salary,

for example with employer NI and pension contributions in August and November.

- During the extended phase of the scheme employers should have agreed flexible working hours or patterns and keep these agreements and records (see below).
- Selected who will be flexibly furloughed, avoiding all forms of discrimination, especially sex, age and disability.
- Planned for what will happen when the furlough scheme ends.

Written agreements

Employers should have gained the employees' written consent to furlough, even if contractual provisions already cover lay off; express agreement is advisable especially as HMRC may ask to see the paperwork.

Flexible furlough and full-time furlough arrangements are both available during the extension from November onwards. Employers must agree any revised working arrangements with furloughed employees who can be on any type of contract. To be eligible for the grant, employers must confirm in writing with the employee that they have been furloughed or flexibly furloughed.

Employees cannot undertake any work for their employer during furloughed hours. Furlough agreements can last any amount of time, but unless otherwise specified, the period claimed for must be for a minimum claim period of 7 consecutive calendar days.

Furlough agreements made up to and including the 13 November 2020 can have retrospective effect from 1 November 2020.

Employers should have stopped employees from working before the end of June, and agreed any terms relating to part-time work from July 2020 onwards, confirming this in writing. The number of employees an employer can claim for between July and October must not exceed the maximum number claimed for previously under the original scheme but this restriction does not appear to apply in November.

Record keeping

Employers must keep a written record of the furlough agreement for five years. The employee does not have to provide a written response.

Other record keeping requirements mean as well as furlough agreements employers must keep records of the following for six years:

- the amount claimed for each employee

- length of claim period for each employee
- the claim reference number
- calculations (in case HMRC need more information about the claim)
- usual hours worked, including any calculations for flexibly furloughed employees
- actual hours worked for flexibly furloughed employees.

Employers should keep evidence to show that their operations have been negatively affected by coronavirus and the effect this has on their workforce, such as evidence to show lack of work available, show that each furloughed worker has no work, or that the employee was furloughed for another reason arising from coronavirus (for example they live with a person who is shielding or cannot work due to childcare commitments).

Other steps

Other necessary steps to prepare to make a claim include:

- Checking communication details with employees to update them, perhaps with a list of answers to key questions such as what happens to discretionary payments, volunteering, part-time working, working elsewhere etc.
- Calculate the amounts they are claiming from HMRC, using the [Gov.uk guidance](#). To work out what amounts they are claiming employers will have to work out the total amount being paid to furloughed employees, as well as employer NI and minimum automatic enrolment employer pension contributions for all employees.

For previously furloughed employees the same calculations apply. For newly furloughed employees in November, there is a different reference period to use in the calculation. To make a claim, employers must apply with the following information:

- number of employees being furloughed
- claim period (start and end date of furlough period)
- full amount being claimed
- calculations (in case HMRC need more information about the claim)
- usual and actual hours worked (for flexibly furloughed employees)
- full name and NI number of each furloughed employee
- employer PAYE scheme reference number
- the claim number, employer's Corporation Tax Unique Taxpayer reference, Self Assessment Unique Taxpayer reference or Company Registration Number (as appropriate)
- employer's UK bank details
- employer's registered name and address.

Employers with more than 100 employees will need to upload this information in one of

the following formats; XLS, XLSX, CSV, ODP.

Employers will need a Government Gateway ID and password and an active PAYE enrolment to access the system to make a claim.

Applications needs to be made in one session as there is no save and return option so employers should ensure they have all of the necessary information before they start to make a claim. There is guidance under the flexible extension to the scheme about errors made when claiming, which includes notifying HMRC if there has been an overpayment so that a reduction can be made in a subsequent claim amount.

After following the steps to make a claim online, employers should ensure they take a note of their claim reference number (as there won't be a confirmation email). Employers should inform furloughed employees that you have made a claim but make clear to them that they do not need to take any action; they will receive their pay as normal.

[Step by step guidance](#) on making a claim can be found on the government website.

Timing

Employers can claim in anticipation of an imminent payroll or at the point when they run their payroll or after payroll. Employers cannot make more than one claim during a claim period; you need to claim for all employees in each period at one time as it is not possible to make changes to a claim.

HMRC will retain the right to retrospectively investigate and audit employers' claims.

Once HMRC have the claim and agree the employer's eligibility a BACS payment will simply arrive directly into the bank account supplied in 6 working days after making an application; this means employers will need to submit a claim at least 6 working days in advance for the money to clear into their bank account. HMRC have advised employers not to contact them unless 10 days have gone by.

Claim periods

Employers make a collective claim for the group of furloughed employees under the scheme (not for individual employees) but most employers will probably need to make more than one claim throughout the entire period of furlough. Under the flexible scheme it is easiest to make claims monthly, but employers must report and claim for at least a minimum period of a week. The claim period must start and end within the same calendar month. Therefore, if pay periods span more than one month employers must calculate and submit separate claims covering the days that fall into each month. As the week is a minimum period, those claiming on monthly or fortnightly cycles can do so. Claim periods

cannot overlap.

Under the extended scheme employers will have to:

- calculate the claim for the hours employees do not work by reference to their usual hours worked in a claim period
- report hours worked
- report the usual hours an employee would be expected to work in a claim period.

Employers pay employees for worked hours in accordance with their employment contract and any subsequent agreements. Employers must pay the tax and NICs due on those amounts in the usual way. Further Government guidance on flexible furlough and how to calculate claims is available on the [Government website](#).

What happens during furlough?

Length of furlough

Under the flexible scheme and its extension it appears the minimum furlough period is one week. The minimum furlough period on the first phase of the scheme was three consecutive weeks.

Working

In the second phase of the scheme from July onwards employees are permitted to work for the employer on some days and the employer pays for hours worked. Employees will be paid by their employer as normal for working time subject to their employment contract; employers are responsible for paying the tax and NICs due for the hours worked (and for the hours not worked too). After furlough employees will usually return to their job afterwards, unless redundancies follow. People who were furloughed before the end of June must not have worked for the employer at all during the furlough periods that fell during that time.

Grant

Under the scheme furloughed workers will receive either 80% of their regular wage or £2,500 per month, whichever is lower. Employers can choose to top up the employee's salary above 80% but they are not obliged to.

Throughout the different phases of the furlough scheme the amounts that employers must contribute has varied:

- From 31 July employers will pay employees' NI and pension contributions, even for

the hours the employee does not work.

- Employers will continue to pay these contributions plus topping up the reduced government grant to 80% in September and October.
- From November the government will pay the 80% but the employer must still cover the employees' NI and pension contributions.

All of the monies paid by the government must be paid to the employee, plus any top up the employer is paying. Employers must not divert any part of the reclaimed grant, for example by deducting administration charges.

Calculations

Regular payments of wages, variable PAYE wages, fees, and compulsory payments including commission and bonuses, are included when working out the percentage salary figure.

However, current government guidance has confirmed that payments at the discretion of the employer such as discretionary bonuses and commission payments are excluded. Tips, tronc shares, and non-cash payments such as health insurance or use of a company vehicle should be excluded as well.

This means that the following payments are included when working out the 80% share:

- Regular wages
- Variable PAYE wages
- Fees
- Compulsory bonuses
- Compulsory commissions

While the following payments are excluded:

- Discretionary bonuses
- Discretionary commission
- Tips
- Tronc shares
- Non-cash payments such as health insurance
- Use of a company vehicle.

Employers who furlough employees could only claim for employers' national insurance payments and minimum pension contributions up until the end of July.

Regular salaried employees

For regular salaried employees who were already furloughed under the scheme applicable before the end of October 2020 employers should calculate any furlough

claims as they did previously. These calculations are based on actual salary before tax, as at 19 March 2020.

For regular salaried employees who were not previously furloughed or who were employed on or after 20 March 2020 the contractual hours used to work out claims should be based on the last pay period prior to 30 October 2020.

If an employee with regular hours took annual leave, sick leave or family related statutory leave at any time during the last pay period this leave is ignored when working out their usual hours.

If calculations produce a number that isn't a whole number then employers should round up to the next whole number.

Variable hours and pay

For employees with variable pay employers can claim the higher of either:

- the same month's earning from 2019; or
- average monthly earnings from the 2019-20 year.

Under the November phase of the scheme there is a slightly different approach for employees who were not previously furloughed or employed on or after 20 March 2020 on variable pay or hours. The usual hours are based on the average of the 2020/2021 tax year. This is the average hours worked between:

- the start date of the 2020 to 2021 tax year, (for example, 6 April 2020)
- the day before the furlough extension period begins.

For example, for employee whose pay varies and who was not previously furloughed the grant would be 80% of the average salary payable between the start date of their employment or 6 April 2020 (whichever is later) and the day before their furlough extension period starts.

In working out the usual hours, items such as annual leave and overtime are included.

The 80% (or 70% and 60% in September and October) grants available are reduced to reflect the proportion of usual hours that have been worked. The monthly cap is reduced proportionately as well. If the hours worked are unknown for example for piece rate workers employers should estimate the hours based on the average rate of work per hour.

For variable hours employees there are examples on the Government website of working out the average number of hours worked based on either the previous tax year or the

corresponding calendar period.

If an employee with variable pay has been employed for under a year employer can claim for an average of monthly earnings since they started work.

The furloughed employees are unlikely to receive £2,500 exactly. Employees who earn under £3,125 a month will receive less than £2,500. This is because for those earning £3,125 a month, 80% of salary would be £2,500:

- Employees who earn less than £3,125 a month normally, will get 80% of their salary for three months (or more) under the scheme.
- Employees earning in excess £3,125 a month will have the £2,500 cap applied. These employees will receive less than 80% of their salary for those three months (or more) unless the employer chooses to supplement it.
- The £2,500 a month figure was presumably chosen as it is broadly £30,000 a year which is the national median net salary.

For fully furloughed employees it is unnecessary to work our usual and furloughed hours.

Guidance on calculating payment amounts and calculation examples are now available on the [Gov.uk website](https://www.gov.uk). For more information see the FAQs on national insurance and pensions.

Employers will receive a grant to cover part of the salaries of any furloughed employees and do not have to pay this grant back. Employers must pay over the entire grant received to the furloughed employees, plus any top up payment they are choosing to pay.

Annual leave

If furloughed workers do not book any holiday time their statutory minimum holiday entitlement of 5.6 weeks per year will accrue while they are furloughed. The exact amount will vary depending on how much leave the employee has already taken before furlough. Employers can ask for employees to agree to any enhanced contractual (as opposed to statutory) holiday not to accrue during furlough.

Now furlough may last for as long as a year employees may accrue a large amount of holiday by now so employers may need to require them to take holiday during furlough. Employers can enforce this by giving employees twice as much notice as the length of the holiday it wants them to take (e.g. a fortnight's notice for a week's holiday).

Special provisions mean that workers can carry-over up to four weeks' holiday into the next two holiday years. When holiday is taken employees must be paid at their full rate for

their statutory minimum holiday (5.6 weeks). This means forcing employees to take holiday has a cost implication compared to furlough. Employers can agree a different rate of pay for contractual holiday over and above the 5.6 week entitlement.

The interrelationship between leave and furlough is legally complex and employee guidance confirmed that employers have to top up holiday pay to 100% for any employees who take annual leave during furlough. It is thought that employers can insist employees take holiday during the furlough, provided the appropriate notice is given. In this situation employers would then have to pay the holiday pay in full and could claim for the 80% grant towards this. More information is available in the [FAQs](#).

Training

Employees may be required to complete any job-related training while they are on furlough leave, if so they should be paid at least the National Minimum Wage rate. In most cases, the furlough payment of 80% of regular wages, up to the value of £2,500, will provide sufficient monies to cover training time.

Similarly, apprentices can be furloughed and if they continue to train during that time they should receive at least the National or Apprenticeship Minimum Wage or the National Living Wage as appropriate for all the time they spend training. This means employers may have to cover any shortfall between the amount claimed for their wages and the appropriate minimum wage for time spent training.

Communicating with staff who are furloughed

Communication with staff, especially during longer periods of furlough presents employers with some issues. Furloughed staff must not work for their employer during days which they are on furlough as this may jeopardise the employer's claims for the Government grant. On the other hand, an employer's duty of care for employees continues during furlough so employers must maintain non work-related contact with furloughed staff to discuss any relevant personal matters, especially their mental health and wellbeing, and to allow employees to ask any questions or raise concerns. Contact also helps maintain furloughed employees' loyalty and engagement so that they can return to work smoothly after the lockdown. Contact should be arranged ahead of time, so it is expected. Here are some key considerations:

- Furloughed staff should be given an HR contact, in case any HR-related questions or concerns arise (for example sickness, pregnancy).
- [Government guidance](#) does not address the use of work email, and so employers must use their discretion. Any work, including online team meetings, checking work related emails and forwarding them on, could count as work if this occurs in any furlough period. If organisations choose to communicate with furloughed

employees through existing email systems, the employer must ensure that employees do not log on to undertake any work at all on a furlough day.

- To ensure furloughed employees do not undertake any work in a period for which the furlough grant is claimed it may be easier to limit access to work emails, with a mechanism for incoming emails to be monitored and diverted. Employers can then switch to personal email for their own communications, checking that employers have up to date details (including current personal email and postal addresses) for each employee. This makes it harder for employees to work and creates clear a distinction between furloughed employees and those working.
- Some employees use work laptops, telephones and emails for personal matters so fully furloughed employees can still be allowed to use their devices, but employees must not send or respond to any work-related matters while furloughed.
- You should also advise employees on what to tell clients/customers. Keeping in touch with key customers or suppliers is permissible for fully furloughed employees if purely social but it could amount to work even if personal emails are used. This could jeopardise the furlough payment so employers must decide how they want to proceed.
- Employers should have established a communication plan for fully furloughed employees and should outline how often employees can expect to hear from the organisation. Employers can set different means of communication (besides email) including a specific temporary website section for keeping in touch newsletters and well-being communications. Employers should make it clear these communications are not related to the provision of services or generation of revenue. This could include employee assistance programme information to assist employees with health, mental, and emotional well-being. A dedicated furlough support site ensures furloughed staff don't feel forgotten and can access any furlough Q&As, guidelines and updates. Surveys may be another useful tool to deal with any issues and feedback.
- Purely social contact is acceptable so social platforms can help fully furloughed employees keep in touch. Telephone contact between team members is also permissible as long as no work is undertaken. A strong, positive corporate culture can keep employees connected without them undertaking actual work.
- Employers may wish to keep furloughed staff updated via their public social media platforms. This method should be carefully considered, as these communications may be seen by wider audiences and the overall effectiveness of these channels may be impacted.
- Furloughed directors and owner-managers can continue carrying out statutory duties but must not generate commercial revenue or provide services to their own business, or other businesses while on furlough.

Remember, breaching any of the above rules could jeopardise the employer's ability to claim the grant, although the flexible scheme permits a partial return to work for

furloughed staff there is a distinction between furlough and non-furlough periods.

For information on communication with employees for the purposes of collective and individual redundancy consultation see our [guide](#) on how the Coronavirus Job Retention Scheme impacts on redundancy procedures.

Returning to work

The furlough scheme applies on the flexible basis until the end of April 2021. Eligible employees can be moved in and out of furlough until then and you can refer to our [Returning to the workplace guide](#) for more information.

Other schemes

Employers should bear in mind the other assistance available. For example, business premises forced to close in England can obtain grants worth up to £3,000 per month under the [Local Restrictions Support Grant](#). There are also mortgage holiday provisions which will last at least until December. The self-employed income support grant also applies for the three months November to January 2021. However, the Job Retention Bonus for employees retained after furlough until the end of January has now been postponed, perhaps indefinitely.

For more information check our [FAQs on furlough](#) or our [webinar series](#) which has sessions on furlough.

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