

## Coronavirus Job Retention Scheme – Update

We now have some more details of the Coronavirus Job Retention Scheme published by the government last night. At present we don't know whether this is just guidance or whether there will be actual legislation.

The key points are as follows:

- the scheme is open to all UK employers that had a PAYE scheme in place on 28 February 2020
- any organisation with employees can apply, including charities, recruitment agencies and public authorities; however, the government does not expect public sector employers to use it as long as central government continues funding wage costs in the normal way. With agency employees, the scheme is only available for agency employees who are not working.
- employers can reclaim up to 80% of wage costs up to a cap of £2,500 per month, plus (not including) the associated employer NICs and minimum auto-enrolment pension contributions on that subsidised wage. Fees, commissions and bonuses are not included.
- an employer can choose to top up to 100%, but does not have to (subject to employment law and renegotiating any contractual entitlements)
- For employees whose pay varies, HMRC guidance advises the following:

"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 earnings from the previous year; or
- average monthly earnings for the year.

"If the employee has been employed for less than a year, 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.

- individuals are only entitled to the minimum wage for the hours they work. So if they are furloughed and do not work, and 80% of their normal earnings would take them below the minimum wage based on their normal working hours, they still only receive 80% as they are not working. However, they are entitled to be paid NMW for any time spent training.
- to be eligible, the employee must have been on the payroll on 28 February 2020. If they were hired later, they are not eligible. Anybody who was on the payroll on 28 Feb and has since been made redundant can be rehired and put on the scheme
- furlough leave must be taken in minimum blocks of three weeks to be eligible for funding
- there is nothing in the guidance which prohibits rotating furlough leave amongst employees, provided each employee is off for a period of at least three weeks
- the employee must not be working at all. If they work for even an hour, they are not eligible. However, they are able to undertake training and do volunteer work, provided they do not provide services to or make any money for their employer.



- when agreeing changes in hours (and acceptance of 80% pay), assuming the contract does not already allow for that, normal employment law applies. The employer must be careful not to discriminate in deciding who to offer furlough too.
- employees receiving sick pay or who are self-isolating cannot be furloughed, but can be furloughed afterwards. Employees who are shielding can be placed on furlough.
- employees on maternity (or similar) leave can continue to draw SMP (or similar) payments. The guidance does not prohibit women on maternity leave agreeing to return to work early and then being furloughed, or electing to change to shared parental leave and then being furloughed.
- employers can only claim once every three weeks, ie they cannot get weekly reimbursement. Claims can be backdated to 1 March 2020.

#### Illustration 1

X Ltd employs Mr A at an annual salary of £24,000, so £2,000 per month. Mr A has opted out of auto enrolment.

Each month, Mr A currently receives net pay of £1,655 which is after deducting PAYE of £191 and employees NIC of £154. On this salary, the employer pays employers' NIC of £177.

The available grant for the employer is the lower of

(a) 80% of £2,000, and

(b) £2,500

Plus employers' NIC on this amount

So X Ltd claims a grant of £1,600 plus £141.60 (80% of £177) = £1,741.60.

The net amount of cash required by X Ltd to furlough Mr A based on maintaining the existing salary is £2,000 + £177 - £1,741.60 = £435.40 per month.

It is a matter for employment law whether the employer is actually required to pay this top up. Employees and employers can agree to a different arrangement during the furlough as long as the employee provides consent.

#### Illustration 2

X Ltd employs Mr B at an annual salary of £42,000, so £3,500 per month. Mr B has opted out of auto enrolment.

Each month, Mr B currently receives net pay of £2,675 which is after deducting PAYE of £492 and employees NIC of £333. On this salary, the employer pays employers' NIC of £383.

The available grant for the employer is the lower of

(c) 80% of £3,500 = £2,800, and

(d) £2,500

Plus employers' NIC, £245, on this amount

So X Ltd claims a grant of £2,500 plus £245 = £2,745.

The net amount of cash required by X Ltd to furlough Mr A based on maintaining the existing salary is £3,500 + £383 - £2,745 = £1,138 per month.

It is again a matter for employment law whether the employer is actually required to pay this top up. Employees and employers can agreed to a different arrangement during their furlough as long as the employee provides consent.

The government will issue further guidance on the mechanics of claiming the payment in due course. It says it expects the scheme will be up and running by the end of April.

Full government guidance on the Coronavirus Job Retention Scheme can be found [here](#).