

COVID-19

***Operator
Employment Support***

Updated: 27 March 2020



COVID-19 – Operator Employment Support

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Please note that the situation in respect of COVID-19 (“Coronavirus”) is a fluid one and one that is both rapidly and constantly changing. The information below is based on current guidance produced by government from various announcements as such the information may be subject to change and is **valid as at 27 March 2020**.

Note: this note does not constitute legal advice and operators are advised to seek specific advice in relation to their business

The government has just published further details of the Coronavirus Job Retention Scheme (the ‘Furlough’ Scheme). It remains unclear whether HMRC intends to rely on this guidance only, or whether there will be actual legislation and therefore this update is a practical summary of the latest notes note.

The full guidance is available by visiting:

<https://www.gov.uk/guidance/claim-for-wage-costs-through-the-coronavirus-job-retention-scheme>

A link to our previous Operator Employment support note is here:

<https://www.backhousejones.co.uk/wp-content/uploads/2020/03/COVID-19-EMPLOYMENT-OPERATOR-GUIDE-.pdf>

Key Points

Eligibility

1. The scheme is open to all UK employers that had a PAYE scheme in place on 28 February 2020.
2. 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.

3. Agency employees - the scheme is only available for agency employees who are not working.
4. The furloughed 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.
5. The furlough leave must be taken in minimum blocks of three weeks to be eligible for funding
6. 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.
7. The employee must not be working at all. If they work for even an hour (presumably during their entire three week furlough period), they are not eligible. However, furloughed employees are able to undertake training and do volunteer work, provided they do not provide services to or make any money for their employer.
8. Employees on sick pay or self-isolating cannot be furloughed, but can be furloughed afterwards. Employees who are shielding can be placed on furlough.
9. Employees on maternity (or similar) leave can continue to draw SMP (or similar) payments. The guidance does not appear to prevent 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.

What can be paid/reclaimed?

10. 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 wage. Fees, commissions and bonuses are **not** included.
11. Employers can choose to top up to 100%, but do not have to (subject to employment laws and renegotiating any contractual entitlements with employees)
12. For employees whose pay varies, the employer can claim for the higher of (i) the same month's earning from the previous year (eg earnings from March 2019); or (ii) the average monthly earnings in the 2019-20 tax year.
13. Employees are only entitled to the minimum wage for the hours they work. For example, 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 National Minimum Wage for any time spent training.
14. Employers can only claim once every three weeks, i.e. they cannot get weekly reimbursement. Claims can be backdated to 1 March 2020.
15. Normal employment law applies when agreeing changes in hours (and acceptance of 80% pay), assuming the contract does not already allow for that. Employers must be careful not to discriminate in deciding who to offer furlough too. Our view is that prioritising vulnerable workers is unlikely to be discrimination, as prioritising the over 70s (direct age discrimination against those under 70) should be justifiable and those who do not suffer from serious health conditions are not a protected class however there is no specific legislation which confirms this point. Employers should take legal advice.

The government have indicated that they will issue further guidance on the mechanics of claiming the payment in due course. As mentioned in our previous update, it is expected the scheme will be up and running by the end of April.

We will continue to share further information and clarity as it becomes available. In the meantime, if you have specific cases in which you require legal advice, we actively encourage you to contact Backhouse Jones at 01254 828 300 or via our website at <https://www.backhousejones.co.uk>.

Disclaimer: This note is not intended to constitute legal advice and operators should seek specific advice which will be provided based on their particular circumstances.

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