

Furlough update

16 June 2020

BACKHOUSE
JONES

Flexible Furlough Scheme Update

The information below is based on current guidance produced by the UK Government and from various announcements, as such the information may be subject to change and is valid as at **15 June 2020**.

From 1 July 2020, the Coronavirus Job Retention Scheme (CJRS) is changing to allow for “flexible furlough”.

On 12 June 2020 the UK Government publicised the changes to the CJRS by amending previous guidance notes and circulating fresh guidance. A general policy paper giving a summary of the changes can be accessed below:

https://www.gov.uk/government/publication/s/changes-to-the-coronavirus-job-retention-scheme/changes-to-the-coronavirus-job-retention-scheme?mc_cid=0b1a0e042a&mc_eid=563c654905

Key questions

Which employees can you claim for?

You will be able to claim for any employees you have furloughed if you:

- have furloughed that employee for at least 3 consecutive weeks between 1 March and 30 June 2020.

Note that any employee placed on furlough prior to 1 July will still need to complete a 3-week period before they can be flexibly furloughed.

That means the first time you must have placed someone on furlough was 10 June 2020.

There are exemptions for those employees returning from family related leave, such as maternity or paternity leave; it is possible for those employees to be placed on furlough for the first time after the 10 June deadline, provided the employer has previously furloughed other employees.

How will the Flexible Furlough Scheme work?

Whilst previously the furlough scheme prevented employees who were furloughed from carrying out any work for the Company, flexible furlough allows employees to start working for the Company for some of the week and to remain furloughed for the rest. However, note that you are not obliged to furlough flexibly; you can continue to furlough your employees on a full-time basis if you wish.

You and the employee can decide the hours of work and the hours of furlough.

You will need to confirm the hours of work in writing with them (or reach collective agreement with the recognised Trade Union(s)) by way of a new furlough agreement; this will need to be updated if the hours of work change.

You must pay the employee in full for any hours worked and can claim under the CJRS for the balance of the employee’s usual hours which have not been worked.

The flexible furlough can last any amount of time – there is no longer a requirement for a minimum 3-week period – however the minimum claim you can make is for one week (see the Claim Period below).

Holidays will continue to accrue as normal and can be taken during furlough or flexible furlough.

Examples of working patterns:

- Employee A could work on Monday and Tuesday and be furloughed on Wednesday, Thursday and Friday (i.e. 40% of their normal working hours);
- Employee B could work on a two-week shift pattern working Monday and Friday in week one, and Tuesday, Wednesday and Thursday on week two (i.e. 40% of their working hours in week one, and 60% of their working hours in week two), with the remaining hours being furlough leave;
- Employee C could work half a day (mornings) on Monday to Friday (i.e. 50% of their normal working hours), with the Mon-Fri afternoons being furlough leave; or
- Employee D works 31 hours per week, you agree they will work 21 hours split over the week and be furloughed for 10 hours.

The Claim Period

Claims under the CJRS for periods of furlough starting before 1 July 2020 must end on or before 30 June 2020. Even where an employee was furloughed in June and continues to be furloughed full-time in July. An employer will need to submit separate claims to cover the days in June and the days in July.

Claims for periods ending on or before 30 June 2020 must be made by 31 July 2020. This means employers will need to be sharp in getting their claims in for employees whose furlough period ends on 30 June 2020.

Claim periods (for periods starting on or after 1 July) must start and end within the same calendar month and last for a minimum of 7 days, unless you're claiming for the first few days or the last few days in a month.

An employer can only claim for a period of fewer than 7 days if the period in question includes either the first or last day of the calendar month, and they have already claimed for the period ending immediately before it.

Employers can only make one claim for any period and so must remember to include all furloughed (or flexibly furloughed) employees in one claim.

The number of employees you can claim for in any claim period starting from 1 July cannot exceed the maximum number of employees you claimed for under any claim ending by 30 June 2020. For example, if you previously submitted 3 claims between 1 March and 30 June 2020, in which the total number of employees furloughed in each respective claim was 30, 20 and 50 employees, then the maximum number of employees that you can furlough in any single claim starting on or after 1 July would be 50.



You will find a set of diagrams further explaining how the previous CJRS interacts

with the new CJRS permitting flexible furlough from 1 July 2020 in the below link:

<https://www.gov.uk/guidance/steps-to-take-before-calculating-your-claim-using-the-coronavirus-job-retention-scheme>

Calculating furlough hours and pay

The updated guidance sets out very complex rules for calculating the amount of grant which may be claimed in these circumstances.

In very simple terms, if you decide to place employees on Flexible Furlough you will claim a pro-rated amount of 80% of the salary, based on the proportion of hours not worked out of the employee's normal working hours (their "usual" hours).

You'll need to work out your employee's usual hours and record the actual hours they work as well as their furloughed hours for each claim period.

There are 2 ways to calculate an employee's usual hours, depending on whether they have fixed or variable hours/pay:

- For those with fixed hours/pay, you take the number of hours worked in the pay period before 19 March 2020.
- For those with variable hours/pay, you take the higher of (a) the average number of hours worked in the tax year 2019 to 2020 or (b) the corresponding calendar period in the tax year 2019 to 2020.

The majority of employees in the transport sector will have variable hours/pay. You should use the variable hours calculation if either:

- your employee is not contracted to a fixed number of hours

- your employee's pay depends on the number of hours they work
- When you calculate the usual hours, you should include:
 - any hours of leave for which the employee was paid their full contracted rate (such as annual leave).
 - any hours worked as 'overtime', but only if the pay for those hours was not discretionary. Payments for overtime worked are non-discretionary when you are contractually obliged to pay the employee at a set and defined rate for the overtime that they have worked.

To work out the 'usual hours'

The calculations are complicated and require you to take account of non-working days.

Start with the number of hours worked (including paid leave) in the tax year 2019 to 2020 before the employee was furloughed, or the end of the tax year if earlier.

Divide by the number of calendar days the employee was employed by you in the tax year 2019 to 2020, up until the day before they were furloughed, or the end of the tax year if earlier.

Multiply by the number of calendar days in the pay period (or partial pay period) you are claiming for.

Round up to the next whole number if the outcome isn't a whole number.

Worked example for flexible furlough:

Q Ltd's employee has been furloughed continuously since 1 May 2020. The employee

is paid calendar monthly. From 1 July, the employee returns to work part-time for Q Ltd and is furloughed for the rest of their usual hours. Q Ltd makes a flexible furlough claim for 1 July to 31 July.

Q Ltd has calculated that the employee's usual hours from 1 July to 31 July are 164. The employee actually works 80 hours, and is therefore furloughed for the remaining 84 usual hours. Q Ltd has calculated that 80% of the employee's usual wages is £1,800. The maximum wage amount is £2,500 as the claim is for a full month.

Q Ltd calculates the minimum furlough pay:

- Start with £1,800 - this is the lesser of 80% of the employee's usual wages (£1,800) and the maximum wage amount (£2,500)
- Multiply by 84 - this is the employee's furloughed hours
- Divide by 164 - this is the employee's usual hours

Q Ltd must pay the employee £921.95 for the time they are on furlough. Q Ltd can choose to pay the employee more than this for the time they are furloughed, but does not have to.

The guidance sets out a full worked example which you can view here:

<https://www.gov.uk/government/publication/s/find-examples-to-help-you-work-out-80-of-your-employees-wages/example-of-a-full-calculation-for-an-employee-who-is-flexibly-furloughed>

They have also updated the CJRS Calculator here:

<https://www.tax.service.gov.uk/job-retention-scheme->

calculator/?_ga=2.234592153.609740547.1591998295-983822980.1582809501

Records

The record keeping requirements are broadly the same as before, just updated to reflect flexible working. Therefore, you should keep, for 6 years, records of:

- The amount claimed and the claim period for each employee;
- The claim reference number;
- Your calculation of the figures claimed;
- Usual working hours;
- Actual working hours for employees flexibly furloughed.



Getting it wrong

Most certainly, the most challenging part of the new flexible furlough scheme will be calculating the correct amount to be claimed.

When claiming for employees who are flexibly furloughed, you should not claim until you are sure of the exact hours they will work during the claim period because otherwise, you may have to pay some of the grant back to HMRC.

Perhaps in recognition of the challenge, HMRC has introduced a mechanism for reporting any

errors, in respect of either an over-claim or an under-claim. The general principle is that an employer's next claim under the scheme will be adjusted to take into account any mistakes.

Whether using full furlough or flexible furlough, you need to be careful that the claims you make are correct. HMRC will check claims and payments may be withheld or need to be paid back if the claim is found to be (a) fraudulent or (b) based on incorrect information. The Finance Bill is due to be amended w/c 15 June to enable HMRC to pursue employers who break the CJRS rules.

Useful Resources

Checking if you can claim:

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

Checking which employees you can put on furlough:

<https://www.gov.uk/guidance/check-which-employees-you-can-put-on-furlough-to-use-the-coronavirus-job-retention-scheme>

Steps to take before calculating CJRS claim:

<https://www.gov.uk/guidance/steps-to-take-before-calculating-your-claim-using-the-coronavirus-job-retention-scheme>

Calculate how much you should claim:

<https://www.gov.uk/guidance/calculate-how-much-you-can-claim-using-the-coronavirus-job-retention-scheme>

Claim through the online portal:

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

Part-time furlough worked example:

<https://www.gov.uk/government/publications/find-examples-to-help-you-work-out-80-of-your-employees-wages/example-of-a-full-calculation-for-an-employee-who-is-flexibly-furloughed>

Longer list of worked examples:

https://www.gov.uk/government/publications/find-examples-to-help-you-work-out-80-of-your-employees-wages?utm_source=b473fe86-d0d2-4a06-ba3e-2ebd8272ce07&utm_medium=email&utm_campaign=govuk-notifications&utm_content=immediate

THIS IS GENERIC INFORMATION ONLY AND NOT LEGAL OR MEDICAL ADVICE. LEGAL ADVICE SHOULD BE SOUGHT FOR SPECIFIC ISSUES. PLEASE CONTACT OUR EMPLOYMENT AND COMMERCIAL LITIGATION TEAM ON 01254 828300

BACK

BACKHOUSE
JONES

backhousejones.co.uk

The North

Backhouse Jones
The Printworks
Hey Road
Clitheroe, Lancashire
BB7 9WD

The South

Backhouse Jones
22 Greencoat Place
London
SW1P 1PR