

EMPLOYMENT LAW UPDATE - CORONA VIRUS
16 APRIL 2020

[Corona virus lockdown - Government Support for Employers, Employees and the Self-Employed](#)

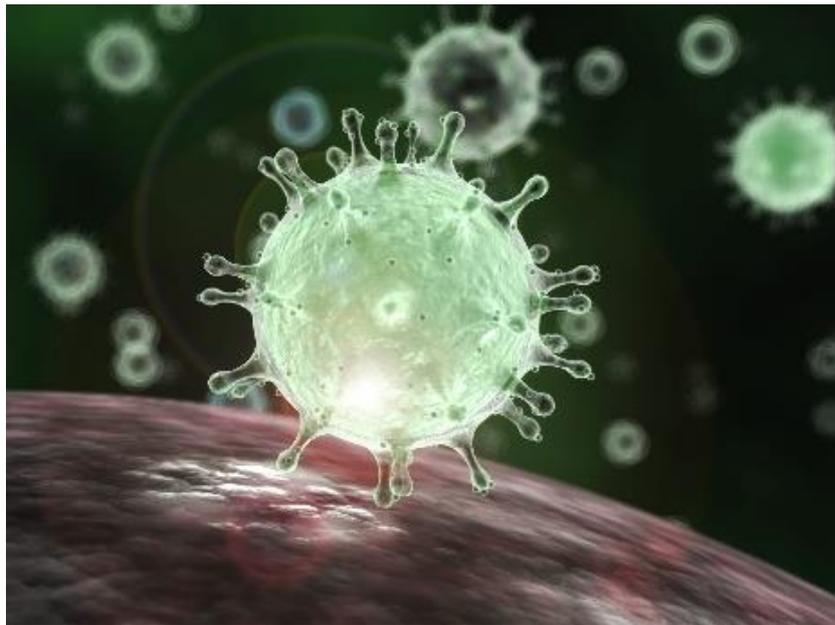
Contents:

Employers/Employees

- *Corona Job Retention Scheme (CJRS) – furlough leave*
- *Statutory Sick Pay*
- *Holiday Leave*

Self Employed

- *Government rescue package*



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Introduction

The government has recently announced financial support for employers/employees and self-employed individuals whose businesses are unable to operate during the coronavirus lockdown subject to certain conditions. This update sets out the main details of each scheme.

Employers/Employees

Corona Job Retention Scheme (CJRS) – furlough leave

The CJRS provides support to employers whose employees are unable to work because the business is unable to operate due to the coronavirus lockdown. For example, restaurants, retail and leisure which were closed by government order.

The CJRS enables employers to be reimbursed for 80% of employees' wages subject to a maximum cap of £2,500 per month (plus employers' national insurance and minimum auto-enrolment pension contribution) provided employees were employed before **19 March 2020** (previously 1 March but changed on 15 April 2020).

Employers can choose to pay the additional 20% of wages (which will not be reimbursed) but there is no obligation to do so

How do Employers apply?

To qualify, employers have to put employees on 'furlough leave', i.e leave of absence due to the (temporary) shutdown of the business. Employees cannot do any work for their employer while they are on furlough leave, so employees on reduced or shortened hours would not qualify.

Employees have to agree to furlough leave but, as the alternative could be redundancy, employees will most likely agree.

Under the CJRS, the furlough leave agreement must be in writing and also as the 20% wages reduction and absence leave is a variation to the employee's contract. The minimum period of furlough leave is 3 weeks and it is possible to rotate staff if some work is available.

Once the employees are on furlough leave then the employer pays their 80% wages in the normal payroll with the tax and NI deductions (on 80%) and then applies for reimbursement from the government through an online portal system due to be available by the end of April. The government has suggested that if employers cannot afford to pay the employees, they will be able to do so through the Government Loan Scheme.

The online portal is administered by HMRC using existing PAYE records. Claims can be backdated to 1 March provided employees were unable to work during this period.

Does it apply to all employees?

Yes, all employees are covered including full-time, part-time and zero hours workers provided they are on PAYE. Agency staff on PAYE can be furloughed by their agency. Employees who were made redundant in February 2020 and now before 19 March due to the corona virus can be reinstated and claims backdated to 1 March.

From the latest HMRC guidance, employees on sick leave can be furloughed and vice versa. However, this should not be abused by using furlough pay to top up small amounts of SSP for short term absences

Employees on maternity leave do not qualify but are still entitled to Statutory Maternity Pay.

What happens at the end of the three-month scheme?

Depending on the state of the business, employers can either retain the employees, putting them back on full wages or make them redundant. It is also possible to make employees redundant while on furlough leave. However, the furlough scheme is intended to avoid redundancies during the lockdown period and hopefully save jobs.

Can employees do any other work whilst on Furlough Leave?

Employees cannot do any paid work either for their employer or any other employer unless there is an existing agreement. They can do voluntary work (unpaid) and, if the employer requires them to do training during furlough leave, then they are entitled to be paid the national minimum/ living wage.

Statutory Sick Pay

For anyone suffering from Covid-19 or who are self-isolating or shielding others, SSP will be paid on the first day of absence rather than the fourth day. Small to medium sized employers will also be reimbursed for the full amount of SSP rather than having to pay it themselves. SSP is minimal - £95.85 per week from 6th April. There is, however, now the option to furlough staff instead, if appropriate.

SSP only applies to employees but self-employed people can also make a claim for universal credit or contributory employment and support allowance.

Holiday Leave

The Working Time Regulations have been amended to allow employees/ workers to carry over four weeks of holiday leave to the next two leave years if it was not reasonably practicable to use holiday leave due to the coronavirus pandemic.

Self-employed

The government rescue package for the self-employed (individuals and members of a partnership) comprises the following:

- A new self-employed income support scheme will pay self-employed people a taxable grant worth 80% of average monthly income, capped at £2,500 per month.

- Income will be calculated by taking the average of income over the last three years from HMRC records.
- Self-employed people can claim these grants and continue to work in their business (so it is not the same as furlough leave where employees are unable to work for their employer).
- The scheme is only open to those with trading profits of up to £50k and who make the majority of their income from self-employment.
- It only applies to those who have submitted a Tax Return for 2019 (this is to minimise fraud). However, those who have only just set up a business or who did not submit their Tax Return by 31.01.2020 can still submit a Tax Return for 2019 for a further four weeks from 26th March 2020.

How do Self-Employed people apply for this?

The scheme will not be up and running until the end of June. Unlike the CJRS no application is required. Instead, HMRC will contact eligible self-employed people directly inviting them to fill out an online form and, if approved, will then pay the grant direct into their bank account. Similar to the CJRS, the scheme will only be open for three months from 1st March to end of June but, as it will not be in operation until the end of June, it is not going to provide immediate support.

Other help for the self-employed

Tax payments due on 31st July 2020 can be put back to 31st January 2021 and VAT Returns can be deferred to 31st March 2021.

Comment

The government's financial support packages during the coronavirus lockdown and the speed with which they have been introduced is unprecedented but these are unprecedented times. It remains to be seen how the schemes will work in practice. Various legal issues have already been addressed in the government's latest guidance updates and doubtless, more will follow.

Website links

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

<https://www.gov.uk/guidance/claim-a-grant-through-the-coronavirus-covid-19-self-employment-income-support-scheme>

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