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Building Brilliant Businesses

COVID-19
FURLOUGHED WORKERS FAQs
23.03.20

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Summary.

All employers are eligible under the scheme and can contact HMRC for a grant to cover 80% of the wages of people who are not working but are furloughed and kept on payroll, rather than being laid off.

So where an employer would otherwise lay an employee off (seemingly permanently through redundancy or temporarily), they are being encouraged to keep them on payroll instead.

- Companies will need to designate affected employees as ‘furloughed workers,’ and notify employees of this change – changing the status of employees remains subject to existing employment law and will be subject to negotiation;
- Companies will submit information to HMRC about the employees that have been furloughed and their earnings through a new online portal (HMRC will set out further details on the information required).

The 80% of wages is capped at £2,500 per employee, the measure is backdated to 1st March, can include anyone dismissed or laid off after 28th February and will last for 3 months initially. Employers can top this sum up to 100% of earnings if they wish. The first grants are expected to be paid before the end of April.

Can I insist someone becomes a furloughed worker?

This is an entirely new status/category of employee and, whilst you may have a right to lay off under the contract, we suggest furlough status should be agreed between the parties and documented by letter.

In reality, if the alternative is an imposed pay cut, lay-off without pay or compulsory redundancy, employees are likely to agree (especially if the salary is topped up to 100%).

Is the contribution 80% of £2,500 or is the total £2,500 per employee?

The guidance states "HMRC will reimburse 80% of furloughed workers wage costs, up to a cap of £2,500 per month."

We assume it includes all costs paid through PAYE (so including pension contributions, for example) and our interpretation is it is capped at £2,500 per employee.

Do I have to top up the rest of the employee's pay?

That is a matter for negotiation between the parties; it would certainly remove any barriers to reaching agreement if we did guarantee 100% of pay. However, this could be costly in relation to employees in senior roles whose salary far exceeds the Government contribution of £2,500.

What is the employee's status while furloughed?

They remain an employee of the company and continue to accrue continuous service. Their terms and conditions remain in full force (save for terms relating to pay and benefits) and would still be entitled to contractual notice and statutory redundancy payments in the event that they were subsequently made redundant.

Can my employee carry out work elsewhere while furloughed?

We are not sure on whether the employee will lose their furloughed status if they work elsewhere - the guidance from gov.uk for employees does not explicitly comment on this, but it does say *"To qualify for this scheme, you should not undertake work for them while you are furloughed"*

At this stage, we expect it will therefore be for the employer to determine whether permission is granted for the employee to carry out other work, although the employee could be brought back off furloughed status at any time given they remain employed by you.

Can we rotate who is furloughed?

The gov.uk guidance requires you to "submit information to HMRC about the employees that have been furloughed and their earnings through a new online portal". The guidance for employees states "To qualify for this scheme, you should not undertake work for them while you are furloughed".

The guidance does suggest that a worker may lose their furloughed status if they carry out any work for you, and you may then not be able to submit to HMRC that your employee is furloughed.

Can we use this for employees who can't work from home and who are isolating to minimise risk to a vulnerable person, or who are looking after children?

The gov.uk guidance currently states *"all UK employers will be able to access support to continue paying part of their employees' salary for those employees that would otherwise have been laid off during this crisis"*

It is questionable as to whether an employer could argue that an employee would have been laid off if they could not work from home and could not therefore provide work to us. The alternative argument is that employees should be taking unpaid leave if they are unable to work, particularly if there is work available for the employee to perform.

Can I bring workers back who have been dismissed previously because of a lack of work?

Seemingly so - in a supplementary question to the Chancellor on 20th March 2020, it was confirmed that the scheme also applies to any employee dismissed after 28th February 2020 - if the employer agrees to bring them back.

Can a new starter be furloughed straight away?

There does not appear to be any qualification period in terms of service; an employer is simply expected to be able to show that there is now no work for the employee to carry out.

An employee resigned but his new offer of employment has been withdrawn. Can he come back and claim furlough status?

This would be at the employer's discretion; again, though, to qualify for this subsidy, an employer is expected to be able to show that there is now no work for the employee to carry out.