

LGA WORKFORCE UPDATE

Job Retention Scheme (Furloughing)



The Government has published further information on its Job Retention Scheme <https://www.gov.uk/guidance/claim-for-wage-costs-through-the-coronavirus-job-retention-scheme>. There may be further information made available so please always check this link for the latest guidance.

HMRC has also produced a checker for employees <https://www.gov.uk/guidance/check-if-you-could-be-covered-by-the-coronavirus-job-retention-scheme> which allows people to see if they may be eligible for this scheme.

The guidance refers to central government provisions to continue to pay contingent workers https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/877221/PPN02_20-Contingent-Workers-Impacted-by-Covid-19-2.pdf Local Authorities may do likewise but no explicit funding has been identified for this.

Further information on furloughing and other related questions can be found on the LGA website: <https://www.local.gov.uk/covid-19-employment-law-faqs>.

The Scheme

The Job Retention Scheme provides that employers can furlough (temporarily lay-off) employees and apply for a grant that covers 80% of their usual monthly wage costs, up to £2,500 per month, plus the associated Employer National Insurance contributions and minimum automatic enrolment employer pension contributions (3% on earnings above £520 per month) on that wage.

The scheme is not available to access yet, Government aims to be able to receive applications by the end of April. Coverage will be backdated to the 1 March 2020 but is restricted to those on the payroll on 28 February 2020.

Eligibility

Employees

The scheme is available for any employees employed as at 28 February: those paid through PAYE with UK bank accounts on that date. It can include casuals, zero hours staff and apprentices so long as they are paid through PAYE.

The scheme is voluntary and employers will need the agreement of employees in order to furlough them.

Employers

“Any entity with a UK payroll can apply, including businesses, charities, recruitment agencies and public authorities.”

Local Authorities can use the scheme. However, it should be noted that public sector organisations are not expected to use it except in certain specific situations: *“In a small number of cases, for example where organisations are not primarily funded by the government and whose staff cannot be redeployed to assist with the coronavirus response, the scheme may be appropriate for some staff.”*

Organisations receiving public money to assist with the response to COVID-19 are not expected to furlough staff.

The Government conveyed the following view to the LGA:

“The Government has given local authorities £1.6bn of additional funding to support them in responding to the Covid-19 pandemic. This funding is un-ringfenced and is intended to help local authorities address any pressures they are facing in response the Covid-19 pandemic, across all service areas.

Where employers receive public grant funding for staff costs, and that funding is continuing, we expect employers to use that money to continue to pay staff in the usual fashion – and correspondingly not furlough them. This also applies to non-public sector employers who receive public grant funding for staff costs.

Where staff are not able to carry out their usual work, all employers in the public sector should make every effort to redeploy employees to assist with the Government’s response. This could include redeployment within the current organisation, or to other areas of the public sector.

In exceptional cases where Local Authorities need to close venues and furlough staff, it may be appropriate for them to claim funding through the Coronavirus Job Retention Scheme.

The Government will always work with local authorities that are experiencing financial difficulties.”

LGA View

Councils (and schools) are not expected to furlough their directly employed workforce, this includes casuals, zero hours staff and apprentices all of whom should continue to be paid as normal (see the LGA’s Employment Law FAQs for information on how to define ‘normal pay’).

In the first instance staff whose work is no longer possible should be considered for redeployment, if that is not possible, some employees will remain on normal pay during this period even if there is no work they can do.

However, where authorities have more ‘arms-length’ organisations or arrangements funded without public money (eg tourism or leisure companies); where staff are not redeployable to support the COVID-19 response or other roles affected by staff shortages during this period; and where the alternative would be redundancy or lay off – then furloughing may be the best available option.

In schools, where roles are parent funded, on separate PAYE numbers and are not redeployable and where the alternative would be lay off or redundancy, then again furloughing may be the best available option.

This is not an exhaustive list but key questions to consider include:

- Does the organisation employing these staff receive public money for staff costs and is that money continuing? If so, they should continue as normal and not furlough.
- Is furloughing demonstrably the best option for employer and employee ie. is the alternative lay off or redundancy? If so, then it may be appropriate to consider the job retention scheme.
- Is there any duplication of public money? Furloughing should not be used to secure funds from HMRC that are forthcoming from other public sources.
- Are the staff potentially in scope definitely not redeployable and will their services remain unrequired? Furloughed staff cannot provide any services for or on behalf of the employer and are often contractually prohibited from working for another employer (although authorities may want to exercise their discretion to allow a furloughed employee to work elsewhere while furloughed, especially if that work would be in an essential service). The minimum period of furloughing is 3 weeks although employees can be furloughed multiple times if they return to work but each furloughed period must be for at least 3 weeks

Where furloughing is pursued, the LGA encourages employers to 'top up' employees' wages by the 20% not reclaimable through the scheme.

Details of the Scheme

Colleagues are encouraged to read the full details of the scheme through the link above. Some key points are highlighted here.

Employees That Can't Be Furloughed

- Those without a PAYE number on 28 February
- New started since 28 February
- Those working on reduced pay or reduced hours
- Those on unpaid leave at 28 February
- Those receiving Statutory Sick Pay
- Employees made redundant or who stopped working on or after 28 February (though they could be re-employed and then furloughed)

Employees That Can Be Considered

- Those who are shielding (and are unable to work from home)
- Those who need to stay at home with someone who is shielding (and are unable to work from home)
- Employees unable to work due to having caring responsibilities
- If an employee has more than one job they can be furloughed in any or all jobs
- Those with fixed term contracts that are 'live', renewed or extended
- Those on maternity, adoption, paternity or shared parental leave

- In particular situations, office holders (including company directors), salaried members of Limited Liability Partnerships (LLPs), agency workers (including those employed by umbrella companies), limb (b) workers who are paid through PAYE
- Employees engaging in training, however, if this training provides a service to or generates income for the employer they are excluded. If the employer requests that an employee undertakes training while furloughed they must ensure at least the national minimum wage is being paid.

Furlough Selection

- Equality and discrimination rules apply to furlough selection as do other facets of employment law
- Furloughing involves changing employees' contracts and should be agreed with them, and with recognised trade unions where appropriate
- If an individual refuses, they cannot be required to accept furloughing (though this may lead to lay off or redundancy)

Financial Benefit

The scheme enables employers to claim for 80% of the employee's gross salary as of 28 February and the mandatory minimum pension contributions of 3% on salary over £520 per month

The Employer must continue to pay employer national insurance and the remaining pension contributions – current employer contributions to the LGPS are, on average, 20% of all pensionable salary

Other Considerations

Some employees may prefer to be made redundant than be furloughed and redundancy could trigger notable up front costs to the employer

Discrimination and equality laws apply and employers should not only be very careful when considering who to approach / not approach for furloughing, but also when deciding on any policy regarding 'topping up' the 20%

Legal advice is advisable when undertaking a furloughing process particularly if numbers are such that collective consultation would have been triggered had redundancies been proposed

While furloughed, employees retain all their employment rights and relevant collective agreements remain applicable

Individuals furloughed by other organisations can be employed by local authorities if their employment contract does not prevent that, their furloughed status will be logged on the starter checklist <https://www.gov.uk/government/publications/payee-starter-checklist>

How to Claim

Individuals must be notified in writing that they are being furloughed

When the scheme opens employers will have to provide:

- ePAYE reference number
- the number of employees being furloughed
- the claim period (start and end date)

- amount claimed (per the minimum length of furloughing of 3 consecutive weeks)
- bank account number and sort code
- contact name and phone number

HMRC will retain the right to retrospectively audit all aspects of the claim and this may include considering relevant public funds available to the employer.