

## Employment – 20:20 vision

Providing clarity and insight on employment law matters

### Changes to the Job Support Scheme (JSS) – what employers need to know



The Chancellor has announced further amendments to the JSS, which will increase the government contribution to employers to help pay wages. Most importantly, employers will now be expected to pay 5% of salary for unworked hours rather than the 33% originally announced.

#### JSS Open and JSS Closed

What was originally the JSS announced on 24 September and then the Expanded JSS announced on 9 October 2020, are now referred to as JSS Open (“**JSS Open**”) and the JSS Closed (“**JSS Closed**”). Both schemes will be open from 1 November 2020 to 30 April 2021 and the government will review the terms of the schemes in January 2021. The JSS Closed remains materially the same as previously announced – see our alert [here](#).

#### JSS Open

The JSS Open increases support for employers whose businesses remain open but with reduced demand given Covid-19. It gives employers the option of keeping their employees in a job but on shorter hours.

#### Key points:

- Employees need to work a minimum of **20% of their hours** (rather than the 33% originally introduced) and they will be paid as normal by their employer for the time worked.
- Employees will also receive **66.67% of their normal pay for hours not worked**, subject to the caps outlined below. This is made up of:
  - an **employer contribution of 5%** of reference salary for unworked hours up to

a cap of £125 per month (reduced from the previous figure of 33% of reference salary), although employers have discretion to pay more than this if they wish; and

- an increased **government contribution of 61.67%** of reference salary for unworked hours, up to a maximum of £1,541.75 per month.
- The government grant does not cover National Insurance or pensions contributions. The Employer must pay such contributions on the full amount of the salary that the employee receives (including any amounts subsequently met by a government grant).

#### Eligibility

Eligibility requirements remain largely the same as previously announced.

#### Employers

- Large employers (those with 250 or more employees on 23 September 2020) will have to meet a financial impact test that demonstrates that their turnover has stayed level or is now lower than before experiencing difficulties from COVID-19.

- Employers must have agreed the temporary working arrangement for shorter hours in writing with employees (or the relevant union).
- Whilst fully publicly funded organisations are not expected to use the scheme, organisations who are not fully funded by public grants are eligible where their private revenues have been disrupted.

### Employees

- Employees must have been on employer's PAYE payroll on or before 23 September 2020. This means that a Real Time Information (RTI) submission notifying payment to that employee must have been made to HMRC on or before 23 September 2020.
- Staff on any type of contract are eligible – including those on variable or zero hours and agency workers.
- Employees can cycle on and off the scheme and do not need to have the same working pattern each month. The minimum period for a short time working arrangement is seven consecutive days.

### Temporary working agreements

Employers must:

- make sure that the temporary working agreement is consistent with employment, equality and discrimination laws;
- keep a written record of the agreement for 5 years;
- keep records of how many hours employees work and the number of usual hours they are not working; and
- make the agreement available to HMRC on request.

Please speak to us for assistance in implementing temporary working arrangements.

### Reference salary and usual hours

There are different calculations for working out an employee's usual hours depending on whether they work fixed or variable hours and calculations will follow a similar methodology as for the CJRS (furlough). Employees who have previously been furloughed will have their pre-furlough normal pay and/or hours used to calculate usual wages, not

the amount they were paid whilst on furlough. For further information on such calculations please see the guidance [here](#) or do get in touch with us if you have any queries.

### Claims and HMRC checks

- Employers will be able to claim online from 8 December 2020.
- Employers must have paid the full amount claimed for an employee's wages to the employee before each claim is made.
- The amount of any overpayment by the employer must be paid back to HMRC where a claim contains incorrect information.
- The full amount of any grant must be repaid if a claim is found to be fraudulent.
- Penalties of up to 100% of the amount overclaimed may be applied where appropriate.
- HMRC intend to publish the names of employers who have used the scheme and the public are encouraged to report fraud to HMRC if they have evidence to suggest an employer is abusing the scheme.
- Employees will be able to check if their employer has made a claim relating to them via their Personal Tax Account

### Other points to note

- Employers can continue to claim and receive the £1,000 Job Retention Bonus while claiming under any of the JSS schemes.
- Employers cannot claim for an employee who has been made redundant or is serving a contractual or statutory notice period during the claim period.
- The government will introduce parental pay legislation to avoid parents losing out on their entitlement to parental pay a result of being put on the schemes.

For worked examples of the Job Support Scheme, see the Government's published JSSO factsheet [here](#), and the accompanying policy paper [here](#).

We have a dedicated Covid-19 team of employment lawyers keeping up to date on the latest developments and who are available to answer any questions you may have. You can find more information [here](#).

If you require further information about anything covered in this alert, please contact Paul Reeves, Leanne Raven, Charlotte Varela or your usual Stephenson Harwood contact.

### Contact us



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