

## Employment – 20:20 vision

Providing clarity and insight on employment law matters

### FAQs on the Coronavirus Job Retention Scheme



It may be a new year but COVID-19 is still at the forefront of the conversation. With the UK now in its third lockdown the government has updated its guidance<sup>1</sup> on the Coronavirus Job Retention Scheme (“**CJRS**”). In this alert we cover the recent changes to the CJRS and answer some frequently asked questions.

#### What are the main changes that have recently been made to the CJRS?

##### Furlough for caring responsibilities

- The government has updated the CJRS guidance to state that employers can (although they are not required to) furlough employees who have caring responsibilities including caring for children who are at home as a result of school and childcare facilities closing and caring for vulnerable individuals in their household.

*(Please note that if an employer wants to obtain evidence relating to the vulnerable status of an individual (e.g. a copy of an individual’s shielding letter) the employer will need to consider its data protection obligations. Please do get in touch with us for further information and specialist advice.)*

##### Publishing Employer claims

- From February, HMRC will publish information about employers who claim for periods starting on or after 1 December 2020. Employers may want to prepare for any press coverage or media attention they may receive in light of the list being published.

- The information to be published includes:
  - the name of the employer
  - an indication of the value of the claim within a banded range
  - the company number for companies and Limited Liability Partnerships (LLPs)
- HMRC will also improve the information available to furloughed employees by including details of claims made for them (for claim periods starting on or after 1 December 2020) in their Personal Tax Account on GOV.UK.
- HMRC will not publish details of employers if they can show that publicising these would result in a serious risk of violence or intimidation to certain relevant individuals, or any individual living with them. For more information see this [link](#).

#### Refresher on CJRS basics:

##### Which employees are eligible to be claimed for on the CJRS?

- Any employee who was employed on 30 October 2020, and for whom the employer made a PAYE RTI submission to HMRC between the 20 March 2020 and 30 October 2020, notifying a payment of earnings for that employee. This may differ where an employer made employees redundant or the employees stopped working for the employer on or after 23 September 2020 but were subsequently re-employed.
- Employers do not need to have previously claimed for an employee before 30 October 2020.

<sup>1</sup> At the time of writing the most recent material updates were on 13 Jan 2021.

### What can Employers claim for under the CJRS?

- 80% of an employee's usual salary for hours not worked up to a cap of £2,500 per month. There is no obligation to top up, it is at the employer's discretion.
- Employers cannot claim pension or national insurance contributions as part of a CJRS claim.

### What steps need to be taken to furlough employees?

- Employers must agree in writing the furlough arrangements and keep a written record of this agreement for five years.
- When deciding who to furlough employers need to be mindful of equality and discrimination law.
- Employers can furlough employees on a full time or flexible basis:
  - **Full furlough** - employees cannot undertake any work for the employer while furloughed full time.
  - **Flexible furlough** - employees can work for the employer for any amount of time and any work pattern but they cannot do any work for the employer during hours that they are furloughed.

### When is the scheme running until?

- The CJRS is currently planned to run until 30 April 2021.

### Redundancy and furlough:

#### Can employees remain on furlough during redundancy consultation?

- The guidance does not state whether collective or individual redundancy consultations can be carried out during furlough. However, our view is that it is permissible given that consultation is not providing services to or generating revenue for, or on behalf of, an employer's business.
- The current CJRS guidance confirms that, whilst on furlough, employee representatives may undertake duties and activities for the purpose of individual or collective representation and that this will not be considered work.

#### Can employees remain on furlough during their notice period?

- From 1 December 2020, employers can no longer claim under the CJRS for any day an employee is serving notice. Employees must be paid their full normal pay while they're on statutory notice, not their reduced furlough rate.

### Can employers use any CJRS sums to pay redundancy payments?

- No.

### Holidays and furlough:

#### How does furlough affect annual leave and holiday pay?

- Guidance provides that employees should only be furloughed because the employer's operations have been affected by coronavirus, not just because the employee is on annual leave.
- Furloughed employees continue to accrue leave as per their employment contract and can take annual leave whilst on furlough.
- The law requires holiday pay to be paid at the employee's normal rate of pay or, where the rate of pay varies, calculated on the basis of the average pay received by the employee in the last 52 working weeks.
- Therefore, if an employee takes annual leave whilst furloughed or flexibly furloughed, then employers will be required to top up to 100% of normal pay.

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



#### Paul Reeves

Head of employment, partner

T: +44 20 7809 2916

Email: [Paul](#)



#### Leanne Raven

Professional support lawyer

T: +44 20 7809 2560

Email: [Leanne](#)



#### Charlotte Varela

Paralegal

T: +44 20 7809 2340

Email: [Charlotte](#)