

## Coronavirus Job Retention Scheme Update – Flexible Furlough

From 1 July employers can bring furloughed employees back to work for any amount of time and any work pattern, while still being able to claim the grant for the hours not worked. From this date, only employees that you have successfully claimed a previous grant for will be eligible for more grants under the scheme. This means they must have previously been furloughed for at least 3 consecutive weeks taking place any time between 1 March and 30 June 2020.

For July, the level of grant remains at 80% of wages up to a cap of £2,500 for the hours the employee is on furlough, as well as employer National Insurance Contributions (ER NICs) and pension contributions for the hours the employee is on furlough. Employers will have to pay employees for the hours they actually work.

- For August, the government will pay 80% of wages up to a cap of £2,500 per month for the hours an employee is on furlough but the **employer** will pay ER NICs and pension contributions for the hours the employee is on furlough.
- For September, the government will pay 70% of wages up to a cap of £2,187.50 per month for the hours the employee is on furlough. Employers will pay ER NICs and pension contributions and top up employees' wages to ensure they receive 80% of their wages up to a cap of £2,500, for time they are furloughed.
- For October, the government will pay 60% of wages up to a cap of £1,875 per month for the hours the employee is on furlough. Employers will pay ER NICs and pension contributions and top up employees' wages to ensure they receive 80% of their wages up to a cap of £2,500, for time they are furloughed.

From 1 July, agreed flexible furlough agreements can last any amount of time – the three week minimum furlough rule no longer applies. Employees can enter into a flexible furlough agreement more than once. You will need to ensure that your employment contracts are in place to cover these changes with the new flexible furlough system.

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**BUT, where a previously furloughed employee starts a NEW furlough period before 1 July, this furlough period must be for a minimum of 3 consecutive weeks. This is the case regardless of whether the 3 consecutive week minimum period ends before or after 1 July.**

For example, a previously furloughed employee can start a new furlough period on 22 June which would have to continue for at least 3 consecutive weeks ending on or after 12 July. After this the employee can then be flexibly furloughed for any period. **However, after 1 July, employers cannot make claims that cross calendar months, so the employer will need to make a separate claim for the period up to 30 June.**

Although after 1<sup>st</sup> July flexible furlough agreements can last any amount of time, unless otherwise specified the period that you claim for must be for a minimum claim period of 7 calendar days.

The rule still applies that during any **furlough period** you cannot ask your employee to do any work for you. They can:

- take part in training
- volunteer for another employer or organisation
- work for another employer (if contractually allowed)

HMRC have pointed out that Grants cannot be used to substitute redundancy payments.

## Holiday Pay

Furloughed employees continue to accrue leave as per their employment contract. The employer and employee can agree to vary holiday entitlement as part of the furlough agreement, however almost all workers are entitled to 5.6 weeks of statutory paid annual leave each year which they cannot go below. Employees can take holiday whilst on furlough. Working Time Regulations require 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 previous 52 working weeks. Therefore, if a furloughed employee takes holiday, the employer should pay their usual holiday pay in accordance with the Working Time Regulations.

## What to Claim

Claim periods starting on or after 1 July must **start and end within the same calendar month** and must last at least 7 days unless you're claiming for the first few days or the last few days in a month. You can only claim for a period of fewer than 7 days if the period you are claiming for includes either the first or last day of the calendar month, and you have already claimed for the period ending immediately before it.

You can only make one claim for any period so you must include all your furloughed or flexibly furloughed employees in one claim even if you pay them at different times. If you make more than one claim, your subsequent claim cannot overlap with any other claim that you make.

You can claim before, during or after you process your payroll; you can usually make your claim up to 14 days before your claim period end date and do not have to wait until the end of a claim period to make your next claim.

When claiming for employees who are flexibly furloughed you should not claim until you are sure of the exact number of hours they will have worked during the claim period. This means that you should claim when you have certainty about the number of hours your employees are working during the claim period. If you claim in advance and your employee works for more hours than you have told us about, then you will have to pay some of the grant back to HMRC. If you make an error in your claim, you can notify errors on your next claim.

### **Flexible Furlough Pay Calculations**

For more information on how to calculate what you can claim check out -  
<https://www.gov.uk/guidance/calculate-how-much-you-can-claim-using-the-coronavirus-job-retention-scheme>