



April 2020 Update

Welcome to this month's update - where we discuss the latest legislation and guidance.

In this month's edition, we report on:

- Coronavirus Job Retention Scheme
 - Coronavirus: Government Package for Self-Employed
 - Holiday Roll over – just announced
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Coronavirus Job Retention Scheme

The Government has published further details on the Coronavirus Job Retention Scheme (known as the Furlough Scheme).

Currently it is unclear whether HMRC intends to rely solely on this guidance, or whether there will be actual legislation.

These are the key points, announced as of the 27th March:

- the scheme is available to all UK employers that had a PAYE scheme in place on 28 February 2020
- any organisation with employees can apply, including recruitment agencies, charities and public authorities; however, the government does not expect public sector employers to use it so long as central government continues funding wage costs in the normal way. With agency employees, the scheme is available only for agency employees who are not working.

- employers can reclaim up to 80% of wage costs up to a cap of £2,500 per month, plus (not including) the associated employer NICs and minimum auto enrolment pension contributions on that wage. Bonuses, Fees and commissions are not included.
- an employer can choose to top up to 100%, but is not obligated to (subject to employment law and renegotiating any contractual entitlements)
- for employees whose pay varies, the employer can claim for the higher of (i) the same month's earning from the previous year (eg earnings from March 2019); or (ii) average monthly earnings in the 2019-20 tax year
- individuals are only entitled to the minimum wage for the hours they work. So, if they are furloughed and do not work, and 80% of their normal earnings would take them below the minimum wage, based on their normal working hours, they only receive 80% as they are not working. However, they are entitled to be paid NMW for any time spent training.
- For an employee to be eligible, they must have been on the payroll on 28 February 2020. If they were hired later, they are not eligible. Anybody who was on the payroll on 28 Feb and has since been made redundant can be rehired and put on the scheme.
- Furlough leave must be taken as a minimum of blocks of three weeks to be eligible for funding
- There is nothing in the guidance which prohibits rotating furlough leave amongst employees, provided that each employee is off for a period of at least three weeks
- The employee must not be working at all. If they work for even an hour (presumably during their entire three-week furlough period), they will not be eligible. However, they can undertake training and do volunteer work, provided they do not provide services to or make any money for their employer. It is still not clear on the position if they work for a second employer.
- When agreeing changes in hours (and acceptance of 80% pay), assuming the contract does not already allow for that, normal employment law applies. The employer must mitigate discriminating when deciding who to offer furlough too. My view is that prioritising vulnerable workers is unlikely to be discrimination, as prioritising the over 70s (which could be direct age discrimination against those under 70) and those with an underlying medical condition is most certainly justifiable.
- Employees who are self-isolating, or on sick pay cannot be furloughed, but can be furloughed afterwards. Employees who are shielding can be placed on furlough.
- Employees on maternity (or similar) leave can continue to draw SMP (or similar) payments. The guidance does not prevent women on maternity leave agreeing to return to work early and then being furloughed or electing to change to shared parental leave and then being furloughed.
- Employers may only claim once every three weeks, ie they cannot get weekly reimbursement. Claims can be backdated to 1 March 2020.

The Government will issue further guidance on the mechanics of claiming the payment in due course. They expect the scheme will be up and running by the end of April.

Employers: We can provide a Furlough Agreement for just £40 in the next 7 days of the date of this email update.

Contact us: We can help with advice on the Coronavirus Job Retention Scheme

Coronavirus: Government Package for the Self-Employed

Rishi Sunak, the Chancellor, has recently outlined details of the rescue package for self-employed individuals.

Here are the key points:

- a new self-employed income support scheme will pay self-employed people a taxable grant worth 80% of their average monthly income, capped at £2,500 per month
- income will be calculated by taking the monthly average over the last three years
- self-employed people can claim these grants and continue to do business (so it's not the same as furlough leave, where employees are required to remain at home)
- Currently the scheme is only available to anyone with trading profits of up to £50k (this covers 95% of self-employed people). Self-employed people who earn more will not qualify.
- The scheme is only open to those who make the most of income from self-employment; if you are employed but have a 'side job' which is self-employed, you will not be eligible.
- the scheme is only those who have submitted a tax return for 2019 (this is to minimise fraud). However, those who did not submit their tax return by the due date of 31 January 2020, and have not yet submitted one, can still submit a tax return for 2019 for a further four weeks from the date of the announcement.
- There are no steps to take. HMRC will contact eligible self-employed people directly and a grant will be deposited straight into their bank account after inviting them to fill out an online form.
- The self-employed income support scheme will be open to people across UK for a minimum of 3 months. However, the scheme is unlikely to be up and running before the end of June, so it will not help with immediate cash flow issues.

Employers: this is good news for self-employed workers, although if they are directors and take a small income with dividends it may not be so helpful.

Contact us: we can assist with any questions on self-employed support and/or furlough leave.

Holiday Rollover – Just announced

The Government has announced it is allowing workers to carry up to four weeks of annual leave over (not 5.6 weeks) into the next two leave years.

The (as yet unpublished) forthcoming The Working Time (Coronavirus) (Amendment) Regulations 2020, amend regulation 13 of the Working Time Regulations to allow workers to carry over EU holiday into the next two leave years, where it is not reasonably practicable for them to take some, or all, of the holiday they are entitled to due to coronavirus. Note regulation 13 only deals with the EU four weeks' leave. The balance of 1.6 weeks' statutory leave will not be affected (although it can be carried over for up to a year by agreement under existing law).

The change is aimed at allowing businesses under particular pressure from the impacts of COVID-19 the ability to flexibly manage their workforce, while protecting workers' right to paid holiday.

Employers: we can assist with guidance on managing your workforce at this time.

Contact us: if you need more details advice or guidance for employees

For more information or assistance Email: enquiries@employmentlawsupport.co.uk



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