

CORONAVIRUS IN THE WORKPLACE

The Coronavirus Job Retention Scheme

What does furloughed mean?

Furlough essentially means a temporary leave of absence from work with those staff being retained on their employer's payroll. Staff should not be carrying out any services for their employer or generating revenue in any way during the period of furlough.

What assistance is provided under the JRS?

All employers can get 80% of their furloughed staff wages paid by the Government (up to a max payment of £2500 gross per staff member), with no obligation on employers to pay the extra 20% (or more if the employee is on £37,500 plus). It will apply to all staff who are paid through PAYE as it works through a HMRC portal. The UK government has confirmed the JRS will be available to furloughed staff until the end of May 2020. If the JRS is not extended beyond this period furloughed staff can return to their job or their employer may consider introducing periods of lay off, short time working or redundancies.

Who can benefit from the JRS?

Anyone who was on your payroll as of 28 February 2020 including part time staff, apprentices, zero hour workers and agency workers. HMRC have also clarified that firms can rehire and furlough those who left their job for a new job which then fell through due to Covid 19. This allows for those who were on the payroll of a company on 28 February, but subsequently left, to be put back on payroll and furloughed.

Employers must select furloughed staff fairly and particularly be mindful of their obligations to part time staff, those on fixed term contracts and agency workers. Additionally, employers must also ensure that they do not select staff for furlough based on discriminatory reasons, which may include a worker's disability, gender, sexual orientation, race, religion, or political belief.

What does an employer need to do?

Firstly an employer should agree the furlough designation with the affected staff member and then record the agreement in writing, retaining it for 5 years. In parallel an application to HMRC for support should be made through the on-line portal. Please note the portal is still in the process of being set up.

What can an employer claim back from HMRC under the Job Retention Scheme?

- Auto enrolment minimum pension contributions on 80% of each worker's wages
- Employer's National Insurance Contributions on 80% of each worker's wages
- 80% of each worker's gross monthly wages, capped at £2,500 per month per worker. Wages will include compulsory commission and past overtime but not discretionary bonuses and standard commission.

What does the JRS exclude?

If an employer pays a 20% top up (or more, should the staff member's monthly salary exceed £2,500) the JRS will not allow the employer to reclaim any pension contributions exceeding auto-enrolment minimum contributions on the 80% or to reclaim employer National Insurance Contributions on the 20%.

How do employers deal with annual leave requests during the covid-19 crisis?

Regulations have been amended in mainland UK to allow up to four weeks of annual leave entitlement to be carried over into the next 2 years, meaning employers no longer need to ensure their workers have taken their statutory entitlement in any one year. This means that staff will not lose out on annual leave entitlement because they have not used it due to Covid-19. Hopefully the folks on the hill can ensure that similar regulations are introduced in NI...

The Coronavirus Act 2020 in GB also introduces a new form of statutory unpaid leave, known as emergency volunteering leave (EVL). Employees will be able to take a maximum of four weeks' of EVL in any 16-week volunteering period. Employee terms and conditions will continue as normal through any EVL period and staff have a right to return to work on the same terms and conditions afterwards are subject to protection from detriment and dismissal for taking EVL.

What if my employees contract covid-19?

Employees are still eligible for Statutory Sick Pay (SSP) of up to £94.25, for up to 28 weeks. However SSP is now available to those staying at home to care for sick people in their household and from 13 March 2020 SSP is now available from day one of a worker's absence, rather than day four. Employers can reclaim the first 14 days of SSP from the government.

Access to Emergency Finance - Coronavirus Business Interruption Loan Scheme (CBILS)

The terms and practical requirements of CBILS should become clear over the next few days, with the major local banks now either accredited or close to accreditation. Most SMEs in Northern Ireland will meet the eligibility criteria set out by the British Business Bank (e.g. <£45m p/a turnover, >50% of turnover from trading activity) so access to support will largely be determined by the quality and accuracy of information you can collate and present to your lender.

It is probably safe to assume that rebanking will be extremely difficult in the current climate and within the timeframes needed to make the additional support meaningful, so the first port of call in the vast majority of cases will be your existing bank relationship manager. The support may ultimately come in the form of traditional lending, rather than via CBILS, but either way, to improve the chance of a "quick yes", a few key points to consider (with advice/assisting from your financial/legal teams where appropriate) are as follows:

1. **Cashflow** - prepare a realistic cashflow forecast, to allow your RM to properly assess the level of support needed and the likely period. Factor in VAT holidays, rates deferments, and measures in relation to wage costs.
2. **Creditors** - any reductions or additional time that can be obtained from trade creditors will be helpful.
3. **Other Lenders** - if your finance arrangements involve multiple lenders, then where your main bank is being asked to approve a break in capital/interest repayments, they will undoubtedly want to see that all other lenders are matching those terms.
4. **Directors/Shareholders/Partners** - the Bank may want to see that directors/shareholders/partners in the business are "sharing the pain", i.e. foregoing a portion of salaries or drawings, and pausing any planned dividends.
5. **Staff costs** - all available measures should be looked at to reduce staff costs during the period where cashflow is likely to be hit hardest, including temporary salary reductions, bonus deferrals, redundancies, "furloughing" (via the Job Retention Scheme – see below).

Self-Employment Income Support Scheme

The Self-employment Income Support Scheme (SEISS) will support eligible self-employed individuals who have lost income due to coronavirus (COVID-19). Similar to the JRS, the scheme will provide a grant worth 80% of their profits, with a cap of £2,500 per month and be open for an initial three months. To calculate the size of grant, profits across tax years 2016-17, 2017-18 and 2018-19 will be averaged.

In addition to the above, to be eligible you must:

- have profits of less than £50,000;
- have more than half of your total income come from self-employment;
- have submitted your Income Tax Self Assessment tax return for the tax year 2018-19 (those who have not yet done so will have until 23 April 2020 to do so);
- have traded in the tax year 2019-20;
- be trading when you apply, or would be except for COVID-19;
- intend to continue to trade in the tax year 2020-21;
- have lost trading/partnership trading profits due to COVID-19.

The guidance is currently being updated and applications are not yet open: HMRC will contact you if you are eligible and invite applications once the scheme is operational.

Other Support Available

- Rates relief
- Moratorium on taking proceedings for non-payment of rent
- VAT deferral
- Small business grants
- Deferral of self-assessment payment
- More general Universal Credit/new style Employment and Support Allowance

Should you require advice on any of the above please get in touch.



Jan Cunningham
Partner (Employment)

jan.cunningham@mmwlegal.com



Damian McParland
Partner (Media/Corporate)

damian.mcpaland@mmwlegal.com



John Finnegan
Partner (Banking)

john.finnegan@mmwlegal.com



Imperial House, 4 - 10 Donegall Square East, Belfast, BT1 5HD .

028 9020 0050