

# JPC

## WHAT IS FULOUGH LEAVE?

### AND WHAT IS THE GOVERNMENT'S "CORONAVIRUS JOB RETENTION SCHEME" ALL ABOUT?

This is a new type of leave, never used before and has been introduced in response to the coronavirus crisis in order to try to save jobs under the Government's "Coronavirus Job Retention Scheme".

On 26<sup>th</sup> March 2020 the Government issued its guidance on how the scheme will operate, details of which can be found at <https://www.gov.uk/guidance/claim-for-wage-costs-through-the-coronavirus-job-retention-scheme>. The scheme is open to all UK employers that had a PAYE system in place on 28<sup>th</sup> February 2020 and a UK bank account. It applies to all employees on PAYE, including those on full time, part time or zero hours contracts.

The main features of furlough leave are:

- HMRC will reimburse 80% of wage costs (up to a maximum of £2,500 per month) plus (not including) the associated employer National Insurance Contributions and minimum auto-enrolment pension contributions on that wage. Fees, commissions and bonuses are not included;
- The employer can choose to top up the 80% to 100% but they are not obliged to do so. However, this is subject to employment law and renegotiating any existing contractual entitlements;
- For full time or part time employees who have a fixed salary, their actual salary, before tax, as at 28 February 2020 should be used to calculate the 80%;
- If the employee's pay varies, the employer can claim for the higher of either the same month's earning from the previous year (eg earnings from March 2019) or the average monthly earnings in the 2019-20 tax year;
- The National Minimum Wage (NMW) will not apply to employees on furlough leave as they will not be working. However, if they are expected to undertake any work related online training then their employer will need to ensure that they are paid at least the NMW for that time;
- Furlough leave must be taken in minimum blocks of three weeks;
- Furlough leave can be rotated between employees if required so long as the blocks of leave are for a minimum of three weeks;

- Employees who are already being paid sick pay or are self-isolating cannot be furloughed but can be furloughed once they are able to 'return to work';
- Employees who are shielding can be placed on furlough leave;
- Holiday entitlement will continue to accrue during furlough leave;
- The employee is taxed as normal through PAYE but payroll systems may need to be updated in order to operate the scheme;
- Payments can only be made once every three weeks to employers and will be backdated to 1<sup>st</sup> March 2020. This should be available from April 2020 but will be subject to the HMRC portal being up and running which is expected may not be until the end of April, when inevitably there will be teething problems. Further guidance on the mechanics of the system is currently being prepared;
- If an employee has already been made redundant but was on the payroll on 28<sup>th</sup> February 2020, they can be rehired and placed on furlough leave;
- The scheme will initially run from 1<sup>st</sup> March 2020 for 3 months, but may be extended; and
- Employees are not permitted to do any work if on furlough leave.

As the scheme will take some time to set up, employers will need to be in a position to pay their employees on furlough leave in March and April until such time as the scheme is running and they can apply for the reimbursement available. This may therefore not be the immediate help for businesses struggling with cash flow issues that they need and they may still also need to apply for a Coronavirus Business Interruption Loan.

To place employees on furlough leave you will need to take the following steps:

- Decide which employees to designate as furloughed employees; ask for volunteers or if necessary, undertake a selection process;
- Notify those employees of the intended change;
- Agree the change with the furloughed employees;
- Confirm the employees' new status in writing;
- Submit information to HMRC about the employees that have been furloughed and their earnings through the new online portal;
- Ensure that the employees do not carry out any further work while they are furloughed; and
- Consider how you will deal with and potentially incentivize employees who are unhappy at not being selected for furlough leave and are still required to work.

As explained above, it is important that you record this change to your employees' terms and conditions as their employment will continue during this time, with all the associated employment rights that go with that including accruing annual leave. The agreement should make it clear when the period of furlough leave starts, what pay the

employee will receive, when and how furlough leave will come to an end (although this might be difficult in the circumstances and therefore a review period should be set instead) and confirm that their employment continues and therefore they are not permitted to work for anyone else or for themselves.

### **Need Help?**

If you have any questions about how to safeguard your workforce and your business in light of the risk from coronavirus, the options available for your business or how to implement furlough leave, please contact Julie Edmonds, Head of Employment, by email ([jedmonds@jpclaw.co.uk](mailto:jedmonds@jpclaw.co.uk)); telephone (0207 644 7286) or contact her on LinkedIn <https://www.linkedin.com/in/julie-edmonds-7a608346/>