

End of the Line - UK COVID-19 Furlough Scheme Update: Checklist for Employers

The UK Government has published a key update to the Coronavirus Job Retention Scheme as it starts to wind down.

This checklist looks at the changes that employers need to consider when preparing to resume business activities with a partial or full return to work. It should be read alongside our article, [End of the Line: UK COVID-19 Furlough Scheme Update](#).

REDUCTIONS IN THE GRANT UNDER THE FURLOUGH SCHEME

- Take account of the reduction and then cessation of the Furlough Scheme when deciding whether to continue to furlough staff or to return to active employment and/or restructure the business.
- The Government previously announced that the salient features of the Furlough Scheme will continue unchanged until **31 July 2020**. The Government will continue to pay 80% of an individual's wages up to a maximum cap of £2,500 per month, together with national insurance costs and mandatory pension contributions on that salary.
- The first change is that, from **1 August 2020**, the Government will no longer make any contribution to an employer's NIC's and pension contributions.
- From **1 September 2020**, the Government will, in addition to the changes introduced in August, reduce the amount of the Furlough Scheme grant. This will move to paying 70% of the employee's wages up to a maximum of £2,187.50 per month. In addition however, the employer must also pay a minimum of 10% of an employee's salary (up to £312.50), as well as the employer's NIC's and pension contributions. Employers will no longer be able to furlough staff on the basis that the only money received by the individual will be the Furlough Scheme grant, and, in addition to paying the employer's NIC's and pension contributions on the wages covered by the Furlough Scheme, the employer must now pay 10% of the employee's normal salary during September.
- In October, the employer must contribute 20% of the employee's salary (i.e., up to £625), and the Government grant goes down to 60% of the normal salary (i.e., up to a maximum of £1,875 per employee).
- The Scheme then ends on **31 October 2020**.

TIMESCALES AND TIME LIMITS

- Employers will not be able to put individuals onto the Furlough Scheme from 30 June 2020 onward if they have not previously been furloughed. Moreover, in order to furlough any employee after 1 July 2020, that employee must have been furloughed for a minimum of three weeks by 30 June 2020 (i.e., **10 June 2020**).
- It is not entirely clear whether employers who have been rotating employees on and off furlough, for three-week periods or longer, will be able to keep doing that after 30 June 2020. However, the indications are that this is still permissible, based on the Chancellor's speech, as well as the amended iterations of the various Guidance Notes, together with a reply sent from the HMRC helpline to a question on this topic.
- Remember that **31 July 2020** is the last date on which an employer is able to make a furlough claim for any furlough leave for periods prior to 30 June 2020.
- Beware that, from 1 July 2020 onward, claims made through the portal for furloughed employees under the Coronavirus Job Retention Scheme cannot cover a period of more than one month. Up until now, employers have been able to put in a Furlough Scheme claim that covered more than one payroll period.
- An employer cannot furlough any greater number of employees than have been furloughed previously. There is no stated date from which this limitation will apply, although it would seem likely that this change will apply from 1 July 2020. It is also not clear how this cap will be calculated. Employers need to review the likely impact of such a cap if they are intending to continue using the Furlough Scheme after 1 July 2020.
- Details on how to implement and claim for employees who are furloughed flexibly is promised on **12 June 2020**.

FLEXIBLE FURLOUGHING

- Consider whether an employer wishes to make use of flexible furloughing from 1 July 2020. This may be for any period of the normal working week, but the employer will be solely responsible for salary payments in respect of the periods in which an employee is working directly for you. Flexible working can be done on a week-by-week basis for the purposes of the furlough claim.
- It is still possible to submit a claim for a monthly payroll period, but the working pattern needs to be a weekly working pattern.
- Remember that the scope for agreeing flexible working (part furlough, part work) only applies to employees who have previously been furloughed before 10 June 2020.

PRACTICAL ISSUES

- Decide whether to obtain consent from employees who are being flexibly furloughed either as a prudent step for claiming under the Furlough Scheme or because it amounts to a contractual change for employees. The Government fact sheet indicates that the revised working arrangements must be agreed with the employee and that agreement is confirmed in writing.
- Consider what constitutes an employee's "normal working hours" for the purposes of claiming under the Furlough Scheme from 1 July 2020 onward if you plan to make use of a partial return to work.
- If the employer adopts a flexible working approach, then the employer must notify employees in writing that they should not be working more than a certain number of hours, or should be attending work on only a set number of days per week, or some other limitation.
- Consider the rate at which an employee will be paid under a flexible working arrangement. Will it be the contractual rate of pay (whatever it is agreed to be), or will it be based on some other calculation? Either way, that is a matter of contractual agreement, and it would be necessary for there to be a written document signed by the employee. It is possible that the furlough rate and the working rate may be different rates of pay, so employers must liaise with payroll in good time.
- When the further guidance is published on 12 June 2020, review the costs and benefits of flexible furloughing as it is currently unclear how worked periods will affect an employer's ability to reclaim money under the scheme (e.g., will an employer with an employee on full pay who is working one day a week still be able to claim 80% of wages, or will the recoverable amount drop by 1/5th to reflect the period of active work?).

KEEP PLANNING

- Consider what the likely size and focus of the business will be by the end of 2020.
- Consider now whether to implement changes, during the existence of the Furlough Scheme, if the reality is that job cuts are going to have to be made (see our note on [collective consultations](#) and a [checklist we've also produced for UK employers](#)).
- Employers should review their existing furlough documentation to take account of the changes to the scheme after 1 July. Some furlough documentation may assume an end to the Scheme on 1 July (as that was an earlier expiry date).
- Identify the pool of employees who are capable of being furloughed for the remainder of the Scheme and whether they are permanently on furlough or being rotated on and off furlough.
- If an employer adopts a flexible furlough approach, then:
 - Analyse the sort of work to be done part-time and the reasons for requiring such work to be done;
 - Consider the payroll mechanics if the furlough rate for the job is different from the normal pay rate and so part work and part furlough attracts two different rates of pay;
 - Look at how time worked will be monitored or limited to ensure that an employee neither oversteps the mark nor is working less than required. Be very clear about what hours of work or days of work are expected and what should be counted as a furlough period;
- Consider the location from which employees will be working. If the business is to open and employees will be attending work for part of their time, then ensure that the business is able to open in a way that is in compliance with its health and safety obligations; and
- Establish who is keen to return to work on a flexible basis and who would have to be required and/or instructed to attend work through consultation or a staff survey. Use this to identify any hot spots where individuals are unlikely to return voluntarily, but that area may be critical to reopening the business generally.
- Be mindful of the possibility of a further lockdown, and build in a contingency plan if this eventuates. Make sure that furlough letters that are issued now are drafted in a way that allow them either to be terminated on short notice or potentially extended (perhaps subject to consultation or some other safeguards to reassure employees) if it becomes apparent that the current return to work is not going to be sustainable.

KEY CONTACTS

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