**Furlough scheme portal to open on 20 April.**

**HMRC has confirmed that employers will be able to submit claims under the Coronavirus Job Retention Scheme (JRS) from next week.**

HMRC is expecting phone demand to be beyond its capacity to offer a normal service. Therefore, the service is designed to be self-serve with guidance in place.

CJRS: key points

* The scheme is due to go live on 20 April with first payments being made 10 days later
* Future claims will be paid within four to six days
* The online CJRS service is now undergoing beta testing with a group of selected employers
* Applicants will access the system using their current government gateway login
* Following the initial backdated claims, claims can be made no more than 14 days before payrolls are run but will be accepted for the different pay periods

Under the Coronavirus Job Retention Scheme (JRS), all employers in the UK will be able to access support to continue paying part of employees’ salaries who would otherwise have been laid off during the ongoing crisis.

Furloughed workers are employees whose employers cannot cover staff costs due to coronavirus, and as such they have been asked to stop working but have not been made redundant.

Such employers are now able to access support to continue paying part of their staff’s wages, in order to avoid redundancies and so they can retain their teams.

To avoid fraud, there are expected to be cross-checks between the applications for grants against PAYE records for each employer.

The submission will be through a new online portal. HMRC has announced that the scheme is going live the week beginning 20 April.

Businesses, and agents that are authorised to act on behalf of clients for PAYE matters, will be able to claim. However, file-only agents, including payroll bureaus, will not be able access the service due to data protection reasons.

To make a claim, employers will need the following information:

* employer PAYE reference number
* number of employees
* employees' names, national insurance numbers and payroll/works numbers
* your self- assessment, corporation tax unique taxpayer reference or company registration number
* the claim period and amount claimed – please refer to our examples below
* employer's bank account number and sort code
* contact details.

HMRC retains the right to audit all aspects of the claim.

**How the scheme works**

* The employer should have created and started a PAYE payroll scheme on or before 19 March 2020, be enrolled for PAYE online and have a UK bank account.
* You can only claim for furloughed employees who were on your PAYE payroll on or before 19 March 2020 and who were notified to HMRC on an RTI submission on or before 19 March 2020.
* Employees who were employed as of 28 February 2020 and on payroll (ie notified to HMRC on an RTI submission on or before 28 February) and were made redundant or stopped working for the employer after that and prior to 19 March 2020, can also qualify for the scheme if the employer re-employs them and puts them on furlough.
* There is a minimum three-week furlough period.
* The employer should discuss the situation with affected employees and, following agreement, notify them in writing that they have become ‘furloughed workers’. The employer should keep this record for five years.
* The employer can claim a grant of the lower of 80% of an employee’s regular salary or £2,500 per month, plus the associated employer NI contributions (NIC) and minimum automatic enrolment employer pension contributions on paying those wages.
* The employer could choose to fund the difference between this payment and the employee’s salary but does not have to.
* The employees remain on the payroll deducting tax and national insurance under the pay as you earn (PAYE) system.
* The furloughed workers should not undertake work for their employer while they are furloughed.
* If an employee is working, but on reduced hours or for reduced pay, they will not be eligible for this scheme; you will have to continue paying the employee through your payroll and pay their salary subject to the terms of the employment contract you agreed.
* If an employee’s salary is reduced as a result of these changes, the employee may be eligible for support through the welfare system, including universal credit.
* If an employee is on sick leave or self-isolating as a result of coronavirus, they will be able to get statutory sick pay.
* Employees who are currently off sick and are eligible to be furloughed should no longer receive sick pay and would be classified as furloughed.
* The scheme is available to all employees including sole director/shareholder companies. However, only the regular salary element paid via payroll will be eligible for the scheme – dividends are not included.
* A sole director of a limited company can be an employee for the purposes of the furlough, provided there is an employment relationship between the company and the individual. They may also need to evidence any distinction between the director’s role as an officeholder and that of the employee. Where furloughed directors need to carry out particular duties to fulfil the statutory obligations they owe to their company, they may do so provided they do no more than would reasonably be judged necessary for that purpose: for instance, they should not do work of a kind that they would carry out in normal circumstances to generate commercial revenue or provide services to or on behalf of their company. This also applies to salaried individuals who are directors of their own personal service company (PSC).

The basis for establishing the director’s employment status would be dependent on facts such as:

* whether there is a genuine contract of employment between the director and the limited company
* whether a ‘statement of written particulars’ has been issued, providing a distinction between officeholder duties and those of an employee
* what the obligations of each party are in pursuance of the contract
* where one or more individual directors’ furlough is so decided by the board, this should be formally adopted as a decision of the company, noted in the company records and communicated in writing to the director(s) concerned.

The JRS will run for at least three months from 1 March 2020 but will be extended if necessary.

Where you are taking decisions that are not yet in legislation, research, seek guidance and document the approach taken. There will inevitably be a number of ‘reasonable excuse claims’.

**Furloughed Employees and Employment Law**

*Is an employer required to fund the difference between the grant received and full salary?*

No, but the scheme is being designed with underlying reference to employment law.

The general principle for employees (not for casuals or agency workers) is that an employer cannot reduce unilaterally an employee's pay without their consent unless the employer has provided for reduced payment in the contract of employment (which is relatively rare).

Thus, if an employer unilaterally imposes a pay cut on an employee that constitutes a breach of contract, that would entitle an employee to leave and claim constructive dismissal (less likely in the current circumstances) or remain with the employer under protest and make a claim for back wages on the basis of unlawful deduction.

The key message is to talk to the employees and probably the most sensible course of action is to make any changes to the employment contract in writing.

*Is it mandatory for an employee to accept furlough?*

An employee does not have to accept furlough if offered, but the employer could then make the employee redundant instead, using the usual employment law procedure.

*Can the employer decide which employees should be furloughed?*

Identifying which workers to furlough will largely be a business decision, but employers should ensure they follow a fair, well-documented process. If sufficient numbers of staff are involved, it may be necessary to engage collective consultation processes to procure agreement to changes to terms of employment. Employers are advised to treat such processes in the same way as redundancies to minimise the risk of tribunal claims.

*Are furloughed employees treated as being made redundant?*

No. This period is considered as continuous employment; they retain their seniority and all other continuous employment rights.

*Can a furloughed employee take on another job with a different employer?*

Because a furloughed employee remains on the payroll, they are treated as an employee, so they are subject to the terms of the contract of employment.

Most contracts would prevent an employee working for another firm while employed by their current employer. If an employee wants to take another job while furloughed, they will need to seek consent from their current employer. However, those employees who have more than one employment allowed under the terms of their employment contract can continue to work for another employer while being on furlough with one employer. If all employers put such an employee on furlough, they would be entitled to claim 80% of each employment under the JRS.

**Examples of Monthly Claims**

Example 1 (using 2019/20 rates)

Full-time or part-time employee on the payroll as at 28 February 2020 earning basic salary of £3,500 per month gross. Use February payroll figure to claim up to 80% of gross pay, capped to £2,500, from 1 March 2020.

JRS claim (80% of £3,500) = £2,800 (A)

JRS cap = £2,500 (B)

Maximum claim gross pay (lower of A or B) = £2,500

Plus: employer’s NIC 13.8%x (2,500-719) =£245.78

Plus: employer’s minimum auto-enrolment contributions 3% x (2500-512) = £59.64 (3% of qualifying earnings)

Total JRS claim = £2,805.42

The employer can choose (but is not obliged) to fund the difference in salary of £1,000 per month not reimbursed through JRS and pay any additional employer’s NIC and auto-enrolment contributions.

Example 1A (using 2020/21 rates)

Full-time or part-time employee on the payroll as at 28 February 2020 earning basic salary of £3,500 per month gross. Use February payroll figure to claim up to 80% of gross pay, capped to £2,500, from 1 March 2020.

JRS claim (80% of £3,500) = £2,800 (A)

JRS cap = £2,500 (B)

Maximum claim gross pay (lower of A or B) = £2,500

Plus: employer’s NIC 13.8%x (£2,500-£732) = £243.98

Plus: employer’s minimum auto-enrolment contributions 3% x (£2,500-£520) = £59.40 (3% of qualifying earnings)

Total JRS claim = £2,803.38

The employer can choose (but is not obliged) to fund the difference in salary of £1,000 per month not reimbursed through JRS and pay any additional employer’s NIC and auto-enrolment contributions.

Example 2 (using 2019/20 rates)

Full-time or part-time employee on the payroll as at 28 February 2020 earning basic salary of £2,000 per month gross. Use February payroll figure to claim up to 80% of gross pay, capped to £2,500, from 1 March 2020.

JRS claim (80% of £2,000) = £1,600 (A)

JRS cap = £2,500 (B)

Maximum claim gross pay (lower of A or B) = £1,600

Plus: employer’s NIC 13.8%x (£1,600-£719) = £121.58

Plus: employer’s minimum auto-enrolment contributions 3% x (£1,600-£512) = £32.64

Total JRS claim = £1,754.22

The employer can choose (but is not obliged) to fund the difference in salary of £400 per month not reimbursed through JRS and pay any additional employers’ NIC and auto-enrolment contributions.

Example 2A (using 2020/21 rates)

Full-time or part-time employee on the payroll as at 28 February 2020 earning basic salary of £2,000 per month gross. Use February payroll figure to claim up to 80% of gross pay, capped to £2,500, from 1 March 2020.

JRS claim (80% of £2,000) = £1,600 (A)

JRS cap = £2,500 (B)

Maximum claim gross pay (lower of A or B) = £1,600

Plus: employer’s NIC 13.8%x (£1,600-£732) = £119.78

Plus: employer’s minimum auto-enrolment contributions 3% x (£1,600-£520) = £32.40

Total JRS claim = £1,752.18

The employer can choose (but is not obliged) to fund the difference in salary of £400 per month not reimbursed through JRS and pay any additional employers’ NIC and auto-enrolment contributions.

Example 3 (using 2019/20 rates)

Employee on zero-hour contract employed since January 2019; monthly gross pay for March 2019 was £1,800; average gross pay for period April 2019 to February 2020 is £1,950. Use the higher of March 2019 pay (£1,800) and average earnings for 2019/20 to date (£1,950), to claim up to 80% of gross pay, capped to £2,500, from 1 March 2020.

JRS claim (80% of £1,950) = £1,560 (A)

JRS cap = £2,500 (B)

Maximum claim gross pay (lower of A or B) = £1,560

Plus: employer’s NIC 13.8%x (£1,560-£719) = £116.06

Plus: employer’s minimum auto-enrolment contributions 3% x (£1,560-£512) = £31.44

Total JRS claim = £1,707.50

Example 3A (using 2020/21 rates)

Employee on zero-hour contract employed since January 2019; monthly gross pay for March 2019 was £1,800; average gross pay for period April 2019 to February 2020 is £1,950. Use the higher of March 2019 pay (£1,800) and average earnings for 2019/20 to date (£1,950), to claim up to 80% of gross pay, capped to £2,500, from 1 March 2020.

JRS claim (80% of £1,950) = £1,560 (A)

JRS cap = £2,500 (B)

Maximum claim gross pay (lower of A or B) = £1,560

Plus: employer’s NIC 13.8%x (£1,560-£732) = £114.26

Plus: employer’s minimum auto-enrolment contributions 3% x (£1,560-£520) = £31.20

Total JRS claim = £1,705.46