

EMPLOYMENT AND INDUSTRIAL RELATIONS

COVID-19: Practical Considerations: Furlough Leave in Northern Ireland

Latest update: 23 March 2020

The coronavirus situation is continually and rapidly evolving and we encourage you to keep up to date with guidance from the Government and Public Health Agency. These FAQs provide guidance on self-isolation, SSP, home working, temporary lay-off and short-time working. If you have a particular concern, specific advice should be obtained.

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This document is a general summary of developments and is not a complete or definitive statement of the law. Specific legal advice should be obtained where appropriate.

On Friday 20 March, it was announced that all pubs, clubs and restaurants were to close. This came after significant numbers of businesses had already decided to close their doors due to increased social distancing taking place. In response to the rapidly developing pandemic, the UK Chancellor announced a measures package in order to assist UK employers and employees. We have summarised the key measures below:

CORONAVIRUS JOB RETENTION SCHEME

The "Coronavirus Job Retention Scheme" allows employers to access support so that they can continue paying part of their employees' salaries for employees who would otherwise have been laid off and/or made redundant during the Covid-19 pandemic.

Who is eligible for the scheme?

In order to avail of the scheme, employers will need to classify employees as 'furloughed workers'. Essentially employees will be retained on their employer's payroll but will not receive any work.

The scheme will apply to all UK businesses including sole traders, LLPs, charities, partnerships and limited companies etc.

It will extend to workers who were on payroll as at 28 February 2020 but have since been let go. Employers will be able to apply on the worker's behalf, but

confirmation on the mechanics of this is awaited.

How do employers apply for the scheme?

Businesses will need to contact HMRC to apply for the reimbursement of 80% of 'furloughed workers' wage costs, up to a cap of £2,500 per month.

Employers can opt to fund the difference between the 80% government grant and the employee's salary, but they are not obliged to do so.

HMRC are currently working to set up a system for reimbursement that should be available by the end of April. Existing systems are not set up to facilitate payments to employers, but reimbursements may be backdated to 1st March 2020.

What are the key steps employers need to take?

Employers will need to:

1. Designate affected employees as 'furloughed workers' - this is not a concept currently recognised in law. It is simply terminology used by the UK Government for the purposes of this scheme.
2. Notify employees that they are to become 'furloughed workers'. If there are lay-off provisions in the employment contracts, employers will be able to notify employees of the change. If not, they will have to

seek agreement to change the status of the employees as 'furloughed workers'. It is likely that employees will agree to such changes given the alternatives i.e. (a) redundancy or (b) no pay.

3. Contact HMRC and submit required information about the employees that have been furloughed and their earnings through a new online portal (HMRC will set out further details on the information required in due course).

There is Employer and Employee Guidance available online about the Scheme – the Employee Guidance states that, in order to qualify for the scheme, employees should not undertake any work for their employer whilst on Furlough Leave.

It also refers to an employer being able to choose to top up their employees' wages to 100% but the Employers Guidance is silent on this. The significance of this appears to be that if the employer chooses to withhold 20% of wages it will need the employees' agreement before designating them as a "Furloughed Worker". Again, such agreement is unlikely to be withheld in the circumstances.

STATUTORY SICK PAY ("SSP") FOR ABSENCES RELATED TO COVID-19 WILL BE REIMBURSED

SSP paid to employees who are off due to Covid-19 related reasons, can be claimed back from the government for up to two weeks. This applies to employers with less than 250 employees as at 28 February 2020. This is provided for in the Coronavirus Bill which is currently being passed in the UK Parliament.

HELP FOR THE SELF-EMPLOYED

Self-employed workers can avail of universal credit at a rate equivalent to SSP, i.e. £94.25 per week. This is because the minimum income floor has been temporarily lifted for universal credit applications.

Self-assessment payments on account have also been deferred to January 2021.

The NI Minister for the Economy has written to the Treasury asking for greater protection for self-employed workers in NI. The UK Chancellor is coming under increased pressure to provide further support to self-employed workers.

CONFIRMATION OF 'KEY-WORKERS' IN NORTHERN IRELAND

On a separate note, the Department of Education has provided eagerly anticipated guidance in relation to who falls in to the 'key worker' category in Northern Ireland. However, the list is "not descriptive" but aims to broadly outline the industries and roles that would be defined as 'key workers'.

- Health and Social Care: This includes doctors, nurses, midwives, paramedics, social workers, home carers and staff required to maintain the health and social care sector.
- Education and childcare: This includes nursery and teaching staff, social workers and specialist education professionals who will remain active during the Covid-19 response.
- Public safety and national security: This includes civilians and officers in the police (including key contractors), Fire and Rescue Service, prison service and other national security roles.
- Transport: Those keeping air, water, road and rail transport modes operating

during the Covid-19 response.

- Utilities and Communication: This includes staff needed for oil, gas, electricity and water (including sewage) and primary industry supplies, to continue during the Covid-19 response, as well as key staff in telecommunications, post and delivery, services and waste disposal.
- Food and other necessary goods: Those involved in food production, processing, distribution and sale, as well as those essential to the provision of other key goods (e.g. hygiene, medical etc.).
- Key national and local government: this also includes administrative occupations essential to the effective delivery of the Covid-19 response.
- Other workers essential to delivering key public services.

BUSINESS INTERRUPTION LOAN

The aim of the business interruption loan is to enable small to medium sized businesses to access bank and lending facilities. In order to give lenders confidence in continuing to lend to small businesses, the Government has confirmed it will provide a guarantee of 80% on each loan, with the maximum loan is £5 million.

In order to be eligible for a business interruption loan, the business must be UK based and have a turnover of no more than 45 million per year.

DEFERRAL OF VAT PAYMENTS

The next VAT payments are due at the end of March 2020 but these have been deferred to the end of June 2020 in order to give businesses some breathing space.