

UK – Furlough Scheme Updates

The online portal for the Coronavirus Job Retention Scheme (“CJRS”) opened this week and has already had a huge amount of traffic, with HMRC reporting that 67,000 claims were made within the first 30 minutes of going live. The UK Government continues to finesse the operation of the CJRS (Treasury Direction and Government guidance [here](#) and [here](#)). Some key changes/clarifications:

Extension

1. The CJRS has been extended by one month, to the end of June 2020, “to reflect continuing social distancing measures”.

Qualifying Employees

2. To qualify for furlough, an employee must (usually) have been on PAYE payroll on or before 19 March 2020. Previously, the cut-off was 28 February. However, the employer must also have made a notification to HMRC regarding that employee through the Real Time Information system by that date. Since submissions are usually made around the time the employee is paid, this may exclude some employees who started employment by 19 March but were not paid until later.

Agreeing Furlough

3. Conflicting Government guidance has caused confusion over whether an employee’s written consent is required in order to be furloughed. It is now clear that written consent is not required, so long as the employee has agreed to the variation of their terms and the furlough has been notified to them in writing. While it remains best practice to obtain an employee’s express written agreement (and this may be necessary to vary properly the employee’s contract of employment), an employer’s failure to do so should not prejudice a claim under the CJRS.

Related Capabilities

- Labor & Employment
- Labor & Employment Guides

Furlough and Sickness Absence

4. Employers are eligible to furlough employees who are off sick or shielding in line with Government guidance. However, a period of furlough leave cannot commence while the employee is receiving statutory sick pay.

Furlough and Annual Leave

5. Employees can take annual leave while furloughed but the updated guidance states that when a furloughed employee takes holiday, the employer should pay “their usual holiday pay in accordance with the Working Time Regulations”. As is often the case with holiday pay, working out the exact rate of holiday can be complex but it will essentially be based on full pay not furlough pay and **the employer will not be able to claim the excess over furlough in the grant, so will have to fund that itself.**

Pensions

6. The UK Pensions Regulator has issued guidance regarding the impact of furlough leave on employers’ auto-enrolment obligations (available [here](#)). Amongst other things, this notes that while employers can reduce their employer pension contribution rate to the statutory minimum (3% of qualifying earnings), this may require changes to the pension scheme’s governing documents. Although not covered in the guidance, in such circumstances, it may be that an increase of the employee contribution rate will be required in order to comply with automatic-enrolment obligations. Employers should check these points with their pension provider if applicable.

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