

Flexible Furlough Scheme



The guidance to the Coronavirus Job Retention Scheme was updated on 12 June to include details on how the scheme will change from 1 July 2020.



Introduction

A Treasury Direction has since been issued on 26 June 2020 to confirm the law on the Flexible Furlough from 1 July – 31 October.

The major changes to the existing scheme with effect from 1 July 2020 are:

- Employers can bring furloughed employees back to work for any amount of time and any shift pattern, while still being able to claim the furlough grant for the hours the employee does not work.
- There will no longer be a minimum 3-week period for furlough.
- All claims put through the CJRS portal must start and end within the same calendar month. Employers can no longer put claims in that cover more than one payroll period.
- 31 July 2020 is the last date employers can submit claims for periods ending on or before 30 June 2020.
- Further changes to government and employer contributions will occur each month from August to October 2020.

This advisory note aims to assist employers in navigating what the new flexible furlough scheme means, how an employer should agree part time or shift patterns with employees, what employers can include when calculating wages, how to calculate wages, how to submit claims to the portal under the new rules and provides example step by step guides for calculating wages. For information on the original scheme which was introduced because of the Covid-19 pandemic, take a look at our Furlough Quick Guide.

Flexible Furlough

Who can use the scheme?

Under the original scheme, employees are not permitted to work whilst on furlough. As of 1 July 2020, under the flexible furlough scheme, employers can bring furloughed employees back to work on a part-time basis for any amount of time and any shift pattern, while still being able to claim the furlough grant for the hours the employee does not work. Flexible furlough is only available

for the hours the employee does not work. Flexible furlough is only available for employees who have previously been furloughed for at least 3 consecutive weeks taking place any time between 1 March and 30 June 2020. This means that employees must have been furloughed for the first time no later than 10 June 2020. The only exception to this rule is individuals who are returning to work from a period of family friendly leave.

How does it work?

Employees will be paid in full by the employer for the time worked and the employer will be able to continue to claim the grant from the government in respect of the time the employee is on furlough and not working, subject to the relevant caps.

Is a new written agreement required?

For a precedent furlough agreement which provides for flexible furlough, please get in touch.

Yes, a fresh written agreement will need to be entered into between the employer and employee if an employer wants an employee to be flexibly furloughed. The agreement should set out the employee's usual hours and wage, the hours per week the employee will be expected to work whilst on flexible furlough and the hours the employee will be on furlough.

Agreeing employee usual work hours and furlough hours

If employees work fixed hours, employers should use the usual hours stated in the employees' original contract of employment and amount of work available to determine how many hours the employer wants the employee to work per week.

For employees with variable hours, to determine the 'usual hours', employers will need to calculate this by using the higher of either the average number of hours worked in the tax year 2019-2020 or for the hours worked in the corresponding calendar period 2019-2020.

It is advisable to agree a period for which the flexible furlough arrangements will be in place and for this arrangement to be reviewed towards the end of the period.

The arrangements can be amended in accordance with the work available to allow the employer the best use of the scheme, however the employer should ensure it keeps note of the hours worked and hours on furlough for each claim period, or risk having to pay back the grant.

Businesses should be cautious not to use discriminatory criteria when selecting employees to use the flexible furlough scheme, remain on full time furlough or come back to work full time.

Calculating Wages

The wage, calculation for hours worked is based on pre-salary sacrifice wages unless otherwise agreed with the employee.

Before working out how much can be claimed from the CJRS, employers will need to work out employees' wages. This can be done by working out:

- the length of a claim period;
- what to include when calculating wages; and
- the employees' usual hours, part-time working hours and furloughed hours.

A step to step guidance can be found here – [Steps to calculate wages](#).

What about pension and national insurance payments?

Employees and employers will still pay the taxes and pension contributions they normally pay out of the wages through PAYE using the normal rules. Employers can continue to claim for these costs for the hours the employee was on furlough upto 31 July 2020. From 1 August 2020, employers have required to pay all employer national insurance contributions and pension contributions.

Do employers have to top up wages?

Employers can top up furloughed employees subsidised wage at their discretion but are not obligated to do so. For employers that are topping up, they should be careful to ensure they maintain a fair difference between 100% furloughed employees, flexible furloughed employees and any employees who are still working full time.

What about payments or benefits not described as salary or wages?

No part of the grant should be used to pay for the provision of benefits, or salary sacrifice schemes. The entirety of the grant received to cover an employee's subsidised furlough pay must be paid to them in the form of money (however, non-monetary benefits should still be maintained unless agreed otherwise with the furloughed employee).

Steps to calculate wages

Step 1: Identify the claim period.

Step 2: Determine if the employee is a fixed rate employee or a non-fixed rate employee for calculating pay purposes.

A fixed rate employee is someone whose employment contract provides that they are paid an annual salary for a certain number of hours a year in equal instalments (the salary period) and are not paid anything in addition.

For fixed-rate employees the reference salary is the rate as at the last pay period before 19 March 2020.

For non-fixed rate employees, the employer can claim the higher of the employee's earnings in the same month the previous year or the employee's average monthly earnings for the 2019/2020 tax year. It would appear that a salaried employee who earns contractual commission or bonuses during their normal working hours will be a variable pay employee, not a fixed-rate employee.

Step 3: Identify the employee's reference salary. The rules on what should be included are unchanged for the period from 1 July 2020.

Step 4: Calculate the employee's usual working hours for the claim period, the hours worked and the hours the employee has not worked in the claim period.

Step 5: Identify the cap on furlough pay for the claim period. Before 1 July 2020, the maximum wage amount an employer could claim under the scheme was £2,500 a month, or £576.92 a week. The calculations changed on 1 July, the calculations are changing, so this may not necessarily be the amount the employer can claim, but it is still needed to calculate how much an employee should be paid and the amount of grant that can be claimed towards their wages.

Step 6: Calculate 80% of the employee's reference salary, reduced proportionately for the length of the claim period.

Step 7: Determine whether the cap applies for the claim period or 80% of the employee's reference salary.

Step 8: Multiply the sum at step 7 by the number of furloughed hours, then divide by the number of usual hours (step 4). This will give the sum of the furlough pay that can be recovered from the CJRS.

Step 9: Work out the employer National Insurance Contributions on furlough pay.

Step 10: Calculate employer pension contributions that can be recovered from the CJRS.

EXAMPLE 1

An Employee has been furloughed continuously since 1 May 2020. The employee is a fixed rate employee, 40 hours a week with a salary of £2,000 per calendar monthly. From 1 July, the employee returns to work part-time and is furloughed for the rest of their usual hours.

- Step 1: claim period – 1 to 31 July
- Step 2: fixed-rate employee
- Step 3: reference salary - £2,000 per month
- Step 4: usual working hours for the claim period – 184 the hours worked – 80 the hours not worked – 104
- Step 5: cap for the claim period - £2,500
- Step 6: 80% of the employee's reference salary - £1,600
- Step 7: 80% of the employee's reference salary applies - £1,600
- Step 8: multiply sum at step 7 by number of furlough hours (104) = 166,400 then divide by the number of usual hours (184) = £904.35.

EXAMPLE 1: September

- Step 9: take figure from step 8 (£904.35) and divide by 80 and then multiply by 70 to get government furlough grant = £791.30
- Step 10: take figure from step 8 (£904.35) and divide by 80 and then multiply by 10 to get employer furlough contribution = £113.04

EXAMPLE 1: October

- Step 9: take figure from step 8 (£904.35) and divide by 80 and then multiply by 60 to get government furlough grant = £678.26
- Step 10: take figure from step 8 (£904.35) and divide by 80 and then multiply by 20 to get employer furlough contribution = £226.09

EXAMPLE 2

Using the same facts as above, but the employee is paid £5,000 per calendar month.

- Step 1: claim period – 1 to 31 July
- Step 2: fixed-rate employee
- Step 3: reference salary – £5,000 per month
- Step 4: usual working hours for the claim period – 184 the hours worked – 80 the hours not worked – 104
- Step 5: cap for the claim period – £2,500
- Step 6: 80% of the employee's reference salary – £4,000
- Step 7: furlough pay cap applies – £2,500
- Step 8: multiply sum at step 7 by number of furlough hours (104) = 260,000 then divide by the number of usual hours (184) = £1,413.04

EXAMPLE 2: September

- Step 9: take figure from step 8 (£1,413.04) and divide by 80 and then multiply by 70 to get government furlough grant = £1,236.41
- Step 10: take figure from step 8 (£1,413.04) and divide by 80 and then multiply by 10 to get employer furlough contribution = £176.63

EXAMPLE 2: October

- Step 9: take figure from step 8 (£1,413.04) and divide by 80 and then multiply by 60 to get government furlough grant = £1,059.78
- Step 10: take figure from step 8 (£1,413.04) and divide by 80 and then multiply by 20 to get employer furlough contribution = £353.26

Government vs Employer Contributions

The table below shows the government contribution, the required employer contribution and the amount the employee receives **where the employee is furloughed 100% of the time.**

		June	July	August	September	October
Government contributions	Includes wages	80% up to £2,500	80% up to £2,500	80% up to £2,500	70% up to £2,187.50	60% up to £1,875
	Includes NI and pension	YES	YES	NO	NO	NO
Employer contributions	Includes wages	NO	NO	NO	YES – 10% up to £312.50	YES – 20% up to £625
	Includes NI and pension	NO	NO	YES	YES	YES
Employee receives	80% up to £2,500 per month					

The table below provides example calculations for employees fully furloughed on part-time furlough based on fixed rate employee employment contract on £24,000 or £60,000 salary per year, working 40 hours a week over 5 days and minimum NI and pension contributions. Wage caps are proportional to the hours not worked.

Full-time furlough		July	August	September	October
£24,000	Government contribution	£1,600 furlough + £119.78 NI + £32.40 pension	£1,600 furlough	£1,400 furlough	£1,200 furlough
	Employer contribution	£0	£119.78 NI + £32.40 pension	£200 furlough + £119.78 NI + £32.40 pension	
Employee entitled to £1,600 each month £1,600 furlough					
£60,000	Government contribution	£2,500 furlough + £243.98 NI + £59.40 pension	£2,500 furlough	£2,187.50 furlough	£1,875 furlough
	Employer contribution	£0	£243.98 NI + £59.40 pension	£312.50 furlough + £243.98 NI + £59.40 pension	£625 furlough + £243.98 NI + £59.40 pension
Employee entitled to £2,500 each month					

Submitting Claims

The first-time employers will be able to make claims for days in July will be 1 July 2020.

TOP TIP: Employers should keep a record of the usual hours the employee works, the actual hours the flexible furloughed employee works, and the number of hours the employee is furloughed for each claim period. This will help keep track of what can be reclaimed through the CJRS portal, especially given the scheme rules change each coming month.

Employers should be certain of the details of employees on flexible furlough before submitting claims through the CJRS portal. If a claim is made in advance and an employee works more hours than stated on the application, the employer will be required to pay back some of the grant.

Claim periods starting on or after 1 July must start and end within the same calendar month. Claim periods must not overlap months.

The start date of the claim period is when the first employee was put on furlough. The employer should include all employees who were furloughed during the claim period in one claim, even if they were put on furlough at different times within the claim period or are paid at different times in the pay period.

FOR EXAMPLE: An employee has a 4-week pay period which falls 20 July to 16 August. The employer cannot claim for this as a single period so must make two separate claims:

- 20 to 31 July and
- 1 to 16 August

Where employees have been furloughed or flexibly furloughed continuously (or both), the claim periods must follow on from each other with no gaps in between the dates

There is no minimum period that an employee must be on furlough for during a claim period, however employers can only put four claims through the CJRS

in one month. This means that claims will be in respect of a minimum of 1-week periods unless the claim is for the first few days or the last few days in a month.

The number of employees claimed for in a single claim period starting from 1 July cannot exceed the maximum number of employees the employer claimed for under any claim ending by 30 June 2020.

Date	Change Implemented
1 July 2020	The first date employers can begin to make claims for days in July, no claims can be made for periods in July before this point.
31 July 2020	The last date that employers can submit claims for periods ending on or before 30 June, even if employees furloughed in June continue to be furloughed full time in July.
1 August 2020	Employers will not receive the grant for employer national insurance contributions and employer pension contributions on furlough pay.
1 September 2020	The government will pay 70% of employees' pay, capped at £2,187.50. Employers will be required to pay 10% of employees' pay, capped at £312.50.
1 October 2020	The government will pay 60% of employees' pay, capped at £1,875. Employers will be required to pay 20% of employees' pay, capped at £625.

Further Considerations

Does an employer have to bring an employee on furlough back to work?

The scheme is intended to avoid redundancies by alleviating the pressure on employers to continue paying wages and avoid redundancies. However, if the financial conditions of an employer have not improved sufficiently for employees to return to work part-time or full-time at the end of furlough, the employer can make redundancies, subject to the usual rules on redundancy.

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Disclaimer: This note does not contain a full statement of the law and it does not constitute legal advice. Please contact us if you have any questions about the information set out above.

Fraudulent Claims

The scheme was designed to help employers retain employees whose operations have been severely affected by coronavirus. The government guidance makes it clear that HMRC will check claims made through the CJRS portal and any claims which are deemed dishonest, inaccurate or found to be fraudulent will be withheld or requested to be repaid in full to HMRC.

Record Keeping

An employer must keep all copies of the furlough agreements for five years. Further the government provides that an employer should keep a copy of all records for six years, including:

- The amount claimed and claim period for each employee.
- The claim reference number for employers' records.
- The calculations used, in case HMRC need more information about the claim.
 - For employees who are flexibly furloughed:
 - The usual hours worked, including any calculations required; and
 - The actual hours worked.

Significant Dates

The timetable for changes to the scheme is set out below. Wage caps are proportional to the hours an employee is furloughed. For example, if an employee is entitled to 60% of the £2,500 cap if they are placed on furlough for 60% of their usual hours.