



CORONA JOB RETENTION SCHEME

Whilst 'furlough' is fast becoming a common term, all conditions associated with the job retention scheme have yet to be announced.

Despite HMRC publishing its third revision to the Scheme and putting us a step closer to a complete set of guidelines, clarity in all areas of the scheme remain unknown. Below is what we do know, again however and not dissimilar to our last briefing, some aspects provided herein is based on interpretation only and what we believe to be the right approach. We are still in a rapidly moving situation and therefore we recommend that you seek specific advice when you need it, this can be accessed via your employment law support team.

Can I switch an employee between sick pay and furlough and vice versa?

Yes, but only for genuine sickness and it should not be used to 'top up' an employees SSP payment. If you have an employee who is 'shielding' in accordance with government guidelines, they can be placed on furlough and not sickness absence.

The TUPE question!

Clarification has been provided in respect of the employees of a previous business transferred after 28th February 2020 if business succession rules apply to the change in ownership. The short answer is you can place these employees on furlough.

What exactly is the reclaimable NI and pension elements based on?

The furlough salary, not normal salary.

Can I transfer my furloughed employee to an associated company to work and earn a salary?

We know know that furloughed employees can work with an alternative employer (contract permitting), but employees cannot work for organisations that are linked to their employer.

We engaged in a payroll consolidation scheme after 28th February, can we place our employees on furlough?

Yes!

Can we use some of the reclaimed grant to pay fees, or administration charges?

No, no part of the reclaimed grant can be siphoned off to fund benefits; the entire grant must be paid to the employee.

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Annual Leave and Furlough is the aspect that remains an uncertainty, but here is our best guess.....

Can an employee be on furlough and annual leave at the same time?

At the moment, guidance for both employers and employees is silent on how the CJRS interacts with annual leave / holiday pay, however many argue that an employee can only be on one form of leave at a time – ACAS suggest that it is either furlough leave or annual leave.

Until this question is answered no fair assessment can be made as to whether or not employers reclaiming under the CJRS for furlough leave can claim money from HMRC for those of their employees who are taking holiday leave while furloughed.

Can employers require employees to take their holiday leave during furlough?

Yes, but bear in mind that you must give twice the number of days' notice that you want the employee to take as holiday. So, for example, you need to give two weeks' notice to require an employee to take one week's annual leave.

Is holiday pay when on furlough based on 80% or 100%? And does it include commission and bonuses?

We say that statutory holiday pay needs to be based 100% of salary. The matter of including commissions and whatever constitutes 'normal remuneration' is not so straightforward as the job retention scheme does not include anything that is not a contractual monetary entitlement. Additional leave in excess of 28 days per year can however be paid at 80%

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