



Support and advice from Stallard Kane

At the present time, we are aware that you will be looking for answers in relation to HR & Employment Law, but with so much information available we wanted to put together a brief overview of some of the key questions that we are being asked.

With the situation being so fluid, changes will happen and we will look to keep you informed. One of the best places to keep informed is via our dedicated 'Coronavirus' page, which is updated daily:

<https://www.stallardkaneassociates.com/coronavirus-advice/>

We have also produced some useful documents which are free to download from the above page, including:

- Coronavirus risk assessment
- Coronavirus policy advice
- Imposing period of furloughed working letter template
- Template wording for seeking agreement to furlough employees

In addition, you will be able to access some additional useful content including:

- Dos and don'ts for working from home
- Critical workers letter
- Key worker list
- Stay at home guidance
- Temporary relaxation of drivers hours information

Some of the most common questions our HR and Employment Law team are being asked at the moment are listed below:

1 What is the latest regarding the Coronavirus Job Retention Scheme (CJRS) Guidance and Furloughed Workers?

The government have released further guidance on the Job retention scheme initially announced last month by the Chancellor, explaining who can claim, what employees can claim for, how to work out the claim and how to claim.

The Coronavirus Job Retention Scheme has initially been set up for a 3 month period, with employers able to back date claims to the 1st March for employees who have been furloughed. The scheme has been set up to support businesses and employees who have adversely been affected by the COVID-19 outbreak.

2 Where can I access the CJRS?

The Government are setting up an online HMRC portal, which will allow for employers to reclaim up to 80% of their usual wage, with claims being capped at £2,500 per employee per month, plus the associated costs of Employer National Insurance contributions and minimum auto enrolment employer pension contributions.

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3 Who is the CJRS scheme open to?

The scheme is open to all employers who have created and started a PAYE scheme on or before 28th February 2020. The scheme is open to all businesses, charities, recruitment agencies and public authorities. Employers can claim for:

- Full time employees
- Part-time employees
- Employees on an agency contract
- Employees on zero hour contracts

The scheme also covers employees who were made redundant after 28th February 2020 on the condition that they are re-hired by the employer and placed as a furloughed worker. The scheme is only open to those employees employed before 28th February 2020.

4 If I furlough employees can they still work if needed?

Whilst furloughed, employees should remain at home and not be required to undertake any work for the employer. If an employee is still working, albeit on reduced hours or reduced pay, they will not be able to claim the subsidiary. Employees either need to be furloughed or at work. If employees are furloughed they need to be furloughed for at least a 3 week period. Employees can take part in volunteer work or training as long as this does not involve providing services which generate revenue for the employer. If employees are required to undertake training whilst furloughed, they must be paid at least National Minimum Wage for the time spent training.

By making an employee a 'furloughed worker' employers are making changes to the individual's contract of employment. If the company already has a temporary lay-off/ short-time working clause in place, they will not be required to seek the agreement of employees to furlough them. Instead the company should speak to the individuals, advise them on the decision that has been made, the reason why and what this will mean. This should then be confirmed in writing and a copy of the letter should be kept on file by the employer as this may be needed when claiming for the subsidiary.

(Don't forget, we have a complimentary template letter to impose furloughed working which can be found on our website.)

5 What if I don't have a temporary lay-off/short-time working clause in our contracts?

If the employer does not have the contractual right to temporarily lay off staff, then in order to furlough workers they should seek the express agreement of its workforce to do this. In this scenario it is advised that the company consult with all staff, again explaining the situation and what they are looking to do and the reason why and then write to employees seeking their permission to amend the contracts and to furlough the workforce, in order to protect the business and individuals' long term employment. If employees respond and give express agreement to the change, the company can then furlough staff.

(Don't forget, we have a complimentary template letter seeking the agreement of employees to furlough them which can be found on our website.)

6 Do I have to furlough all of our employees?

It may be the case that employers require to furlough some staff but not all. In such circumstances the employer can ask for volunteers in the first instance, or use an objective scoring criteria to decide which employees are to be furloughed and which employees will be required to continue to work.

7 What about any employees who are already on unpaid leave or sick?

Only employees who were placed on unpaid leave after the 28th February can be furloughed. Employees on sick leave or who are self-isolating should receive SSP but can be furloughed after this. Employees who are shielding in line with public health guidelines can be placed on furlough.

8 How much can be claimed?

Employers can claim up to 80% of an employee's usual wage or salary, up to a maximum of £2,500 per employee per month, plus the associated Employer National Insurance contributions and minimum auto enrolment employer contributions. Employers can top up this amount to 100% of the employees normal wage, but do not have to. Fees, commission and bonuses should not be included as part of this scheme.

For employees who wages vary from week to week employers can claim for the higher of the following:

- The same month's earning from the previous year
- Average monthly earnings from the 2019-20 tax year

If employees have been employed for less than a year, claims can be for the average monthly earnings since they started employment.

9 What do I need to make a claim?

Once you have been through the appropriate process to furlough workers you will need to provide the following:

- Your PAYE reference number
- The number of employees being furloughed
- The claim period (start and end date)
- Amount claimed
- Your bank account number and sort code
- Contact name
- Contact phone number

As an employer you will need to calculate the amount you are claiming.

NB: HMRC reserve the right to retrospectively audit all claims.

Claims can only be submitted once at least every 3 weeks and can be back dated until 1st March. Once you have submitted an eligible claim, the grant will be paid by BACS payment to your UK Bank account.

Full guidance can be found on the government's website.

10 Is Statutory Sick Pay still available for employees?

Your employees may be eligible for Statutory Sick Pay (SSP), which is £94.25 a week (increasing on 6th April to £95.85 a week) for up to 28 weeks. You can offer more if you have a company sick pay scheme (you cannot offer less). Company schemes are also called 'contractual' or 'occupational' sick pay and must be included in an employment contract.

You can pay SSP to an employee who is self-isolating for more than 4 days because of coronavirus (COVID-19) from the first day. Coronavirus related SSP starts from day 1 of sickness or self-isolation and this applies retrospectively for 13 March 2020.

If an employee is working from home but not self-isolating, SSP will not apply.

As an employer you will be able to recover SSP for up to 14 days, but this will only be for sickness absence relating to the Coronavirus.

11 What certification is required?

If an employee is self-isolating because they have the virus or someone in the household has symptoms or has the virus, SSP is payable covering a maximum of 14 days. The first 7 days of isolation/sickness are self-certificated, following 7 days virtual certificate from [NHS 111 online](#).

12 What happens to holiday allowance during the Coronavirus situation and can employees be asked to use it?

The Business Secretary, Alok Sharma announced amendments made to the Working Time Regulations 1998 in the form of The Working Time (Coronavirus) (Amendment) Regulations 2020. This means that employees who have been unable to take their statutory holiday entitlement (equivalent of 4 weeks holiday per year) due to the coronavirus outbreak, will be able to carry over any unused holiday entitlement over the next 2 holiday years.

In the UK, all employees are entitled to 28 days (pro rata if part time) or the equivalent of 5.6 weeks holiday per year. Usual practice is that if individuals fail to take their annual entitlement within a given holiday period, they would lose that holiday entitlement, with the exceptions being where an employee has been on maternity leave or long term sick. Employers are obliged to ensure that all employees take the statutory entitlement in one holiday year and failure to do so could result in fines against the company.

The changes under the new regulations mean that “where it is not reasonably practicable for a worker to take some, or all, of the holiday to which they are entitled due to the coronavirus, employees will be able to carry over up to four weeks unused holiday entitlement for the next two holiday years.” The regulations apply to individuals on hourly paid, zero hour and agency worker contracts.

The measures have been put in place to ensure that key workers were able to continue the fantastic jobs they are doing in helping the country battle against the coronavirus, without fear of losing out on their holiday entitlement. The measure will also have an impact on workers who have been furloughed due to the coronavirus outbreak, with the government confirming that employers should not look to pay employees in lieu of taking the required holidays.

13 What support is there available for businesses?

The Chancellor has set out a package of temporary, timely and targeted measures to support public services, people and businesses through this period of disruption caused by COVID-19.

This includes a package of measures to support businesses including:

- a Coronavirus Job Retention Scheme (CJRS)
- deferring VAT and Self-Assessment payments
- a Self-employment Income Support Scheme
- a Statutory Sick Pay relief package for small and medium sized businesses (SMEs)
- a 12-month business rates holiday for all retail, hospitality, leisure and nursery businesses in England
- small business grant funding of £10,000 for all business in receipt of small business rate relief or rural rate relief
- grant funding of £25,000 for retail, hospitality and leisure businesses with property with a rateable value between £15,000 and £51,000
- the Coronavirus Business Interruption Loan Scheme offering loans of up to £5 million for SMEs through the British Business Bank
- a new lending facility from the Bank of England to help support liquidity among larger firms, helping them bridge coronavirus disruption to their cash flows through loans
- the HMRC Time To Pay Scheme

You can find out more about these schemes on the Government's [website](#).

If you would like to talk to us in person, you can contact me on 07854 938 693 or email barry@skaltd.co.uk



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