

The Coronavirus Job Retention Scheme – Guidance for Businesses with Employees in the UK

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Employment and Employee Benefits

On Friday 20 March, the UK Government announced various support measures for UK businesses. One of these was the Coronavirus Job Retention Scheme (the “Scheme”), which it is hoped will reduce the risk that UK employers promptly dismiss employees in response to the Coronavirus outbreak. Further guidance was published on 26 March, providing some much needed detail on various aspects of the Scheme, which is expected to be operational by the end of April.

Any employer in the UK can access the Scheme for assistance with salary payments to those employees that would otherwise have been at risk of dismissal for redundancy and who are described for the purposes of the Scheme as “furloughed workers” (a new concept in English law). Some questions remain, but the key details of the Scheme are:

- It applies to all employees who were on payroll on 28 February 2020 on any type of contract, including full-time and part-time employees and employees on flexible or zero-hour contracts. Where workers are employed by an agency, and paid through that agency’s PAYE payroll, the agency will have access to the Scheme in relation to those workers.
- The Scheme does not apply to independent contractors or other self-employed individuals. This group will only benefit from Government-backed income support if they are deemed eligible by HM Revenue & Customs (“**HMRC**”) under the Self-Employment Income Support Scheme – see [here](#) for a recent blog post on this.
- The Government has confirmed that “*all UK employers with a PAYE scheme will be able to access*” support under the Scheme, so long as they have created and started a PAYE payroll scheme on or before 28 February 2020 and have a UK bank account. This includes charities, recruitment agencies and public authorities. As such, provided a business with employees in the UK meets these criteria, it ought to be able to access the Scheme. No doubt more profitable businesses will be considering the potential employee relations and public relations implications of doing so, however.
- Employers that decide to participate must formally designate relevant employees as “furloughed workers”, with their agreement, confirm the date on which furloughed status started and then submit details of their earnings via an HMRC portal, which is currently being set up.

- Employees designated as furloughed workers cannot undertake any work during the period that they are furloughed, thereby differentiating furlough from other measures that employers might take to reduce employment costs and avoid redundancies (see our [previous client alert](#) for more in this regard). This could change if the Scheme is subsequently extended and the Government feels that employers, having arranged staffing needs so as to keep key people working full-time on normal pay and everyone else on furlough pay, are being deterred from putting employees on reduced hours – particularly where this might be a more appropriate measure in order to avoid redundancies in the medium-to-long term.
- The Government will reimburse 80% of furloughed workers' wages up to £2,500 per calendar month, from as early as 1 March 2020 and for an initial period of three months. Employers are under no obligation to cover the additional 20% of wages or the amount exceeding £2,500 for higher earning employees, but can elect to do so without this affecting their ability to claim the amount that is reimbursable under the Scheme.
- Actual gross salary as at 28 February 2020 should be used to calculate the 80% amount for full-time and part-time employees. Any fees, commission and bonuses should not be included. Where an employee's pay varies, the approach depends on how long the employee has been employed: if employed for at least a year, the employer will be able to claim for the higher of the employee's earnings in the same month the previous year or the employee's average monthly earnings in the 2019/20 tax year; if for less than a year, the employer will be able to claim for an average of an employee's monthly earnings since he or she started work. In the case of an employee who only started in February 2020, the employer will be required to pro-rate the employee's earnings so far. The guidance also covers the application of the national minimum wage to furloughed employees.
- The wages of furloughed employees will be subject to income tax and National Insurance in the usual way. Employees will also pay pension contributions on qualifying earnings (unless they have chosen to opt-out or to cease saving into a workplace pension scheme). Employers will be liable to pay employer National Insurance contributions on wages paid, as well as pension contributions on qualifying earnings (unless an employee has opted out or has ceased saving into a workplace pension scheme), but will be able to recover the cost of these from HMRC as part of the Scheme, *in addition to* the wage reimbursement (which is capped at £2,500 per month). Further guidance will be provided on how employers should calculate their claims for these amounts in due course. No guidance has been provided (or promised) in relation to the apprenticeship levy so, as it stands, this is not reimbursable.
- The Government guidance confirms that the grant will be treated as taxable income in the hands of employer companies. Companies should therefore consider the implications of this—for example, there has been no guidance yet as to whether these payments will be treated as a “subsidised expenditure” for R&D tax credit purposes, which could mean that the SME payable tax credit cannot be claimed where the Scheme is utilized.
- The Scheme operates by way of reimbursement, so employers will need to make payments to employees and then claim the relevant amount back from HMRC once the online infrastructure is in place. The general view is that this is unlikely to be before the middle of April at the earliest. Employers needing short-term cash flow support will want

to consider making an application under the Coronavirus Business Interruption Loan Scheme.

Next Steps and Further Thoughts

Businesses wishing to benefit from the Scheme should now be identifying who the potential furloughed employees are and seeking their agreement to this temporary arrangement. The Government guidance expressly recommends that employers discuss furloughing with their staff and amend the employment contract by agreement but, in some cases, this might not be possible for purely logistical reasons.

Most employees are unlikely to object to being designated as furloughed workers in the current climate, particularly where the alternative is redundancy; however, as this amounts to a contractual change, employers should at the very least write to employees to confirm that they have been furloughed and obtain some form of consent to this, keeping a record of any communications with employees.

On a separate note, it is worth remembering that the Scheme is intended to provide short-term support to UK businesses, and does not therefore prevent employers from taking other measures in future, including making redundancies, if they deem this necessary. Some employers may (reasonably) take the view that, even after taking into account the overall level of Government support, their business (or part of it) is no longer viable with the current headcount, particularly if the Coronavirus outbreak has—or is expected to have—longer-term effects on their businesses.

However, employers should think carefully before implementing any redundancies in the current climate and whether it is reasonable to do so will, as ever, be heavily dependent on the facts. The Courts and Tribunals do not usually scrutinize an employer's underlying business reasons for redundancies but, in view of the Government support available to avoid such dismissals (which could well be extended beyond three months), how redundancies are implemented and the "fairness" element may be more closely examined in future. In addition, any compensation awarded for unfair dismissal is likely to be higher than usual where the employment market has collapsed and prospects for mitigating loss are considerably worsened as a result.

If you have any questions concerning the material discussed in this client alert, please contact the following members of our Employment and Employee Benefits practice:

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