

Job Retention Scheme (“JRS”)

WHAT IS IT?

The JRS will enable employers to lay staff off, but to keep paying them 80% of their wages whilst not working, capped at £2,500 per month. A grant will be paid to the employer by HMRC to cover these reduced wages, in addition to having all related employer’s NIC and basic auto enrolment pension contributions reimbursed. The measures are aimed at helping businesses survive so their employees have jobs to come back to after the COVID-19 crisis is over, as well as helping to protect employees’ income in the shorter term.

WHO CAN APPLY FOR THE JRS?

All UK employers, regardless of size or sector, including businesses, charities, recruitment agencies and public authorities are able to claim, provided they had a payroll set up on 28 February 2020 and have a UK bank account. It is then available to all employees on your payroll on 28 February; any starters after this date will not qualify.

It is open to full and part time staff, agency contracts and employees on flexible or zero hour contracts.

The scheme will initially run for 3 months from 1 March, but may be extended, and the minimum period an employee may be furloughed for is 3 weeks. After this time, the employee may either return to work and be furloughed again at a later date, or will have the furlough period extended for a further three weeks, provided the scheme is still running.

The scheme also covers employees who were made redundant since 28 February, if they are rehired by their employer. Whilst the grant can be backdated to 1 March, it can only be claimed for periods where the employee no longer worked for the business.

It is not expected that employers receiving public funding will furlough staff.

WHEN CAN WE APPLY?

HMRC are currently building the system where claims will be submitted and this is expected to be ready by the end of April. In the meantime, payroll is processed in the usual manner, subject to the revised payment details below. There will therefore be a short term funding gap before the grant income is received and so businesses are urged to consider alternative funding sources until then.

WHAT DO WE DO?

The employer should carefully select workers to be furloughed and, unless their employment contract provides for reduced hours, must agree with the employee that they will be furloughed. In reality, it may be a stark choice between accepting this, and facing the possibility of redundancy. We recommend that you get any agreement in writing and you should keep records of your furlough selection process, keeping in mind that equality and discrimination laws apply in the usual way. Seek legal advice if uncertain of the process, as a variation of the employment contract will be needed.

Your furloughed employees will remain employed throughout but are not able to do any work for you whilst off (i.e. providing services or generating income), although they could perhaps do volunteer or other unpaid work to help the community. The scheme is not open to anyone who continues to work for you, even if their hours or pay have been reduced.

A claim will then be made by submitting a list of furloughed employees to the new online platform, once built, together with details of the amount being claimed for the relevant period, being the amounts being paid under the scheme rules for that period. A maximum of one claim every three weeks may be made, being the minimum furlough period permitted. HMRC may audit this at a later date.

In the meantime, the payroll is operated as normal, but with the gross wages being reduced to the lower of 80% of the normal gross pay and £2,500 per month. This reduced pay is charged to NIC and PAYE in the usual manner and becomes the new wages cost that is then reimbursed by HMRC.

If an employee is sick or on maternity leave ("ML"), they should continue to get Statutory Sick Pay or Statutory Maternity Pay before then being furloughed. If you pay enhanced pay to women on ML, this can be included in the wage costs that you recover under the JRS, subject to the scheme limits. The same applies for enhanced contractual adoption, paternity or share parental leave pay.

IS THE GRANT INCOME TAXABLE?

Yes, the grant income will be taxable in the same way as the wage costs will be deductible and so the two will effectively be tax neutral.

WHAT IS THE NORMAL GROSS PAY?

The claim will depend on whether the employees are

- full or part time workers; or
- if they are on variable hours contracts.

This may be difficult to conclude where, for example, part time workers regularly work additional hours, and the contract should be carefully reviewed as the pay period under consideration is different for each type of worker. Whilst the guidance is silent on whether overtime is included, it specifically excludes payments for bonuses, commission and fees.

The claim is the lower of 80% of normal gross pay, capped at £2,500 per month. The employer can choose to top the payment up, but does not have to.

- **Full or part time workers:** the claim is based on their actual salary as at 28 February 2020. This does not therefore take into account where hours might already have been impacted by COVID-19, although if their working hours were fixed, pay should have remained the same, regardless of whether or not there was any work to do.
- **Variable hour workers:** the claim is based on the higher of the pay for the same period in 2019, or the average pay of their monthly earnings for the last 12 months, or since they started working for you, if later. You may therefore need to compare the two to see which might benefit the employee more, but does take into account variations in pay over a greater period.

This then gives you what you can pay and claim 80% against, and you work out the employer's NIC and pension contributions on this. This only applies to wages payable in respect of the furlough period – not for any period of services provided by the employee. Whilst you can choose to pay any shortfall in wages, most employers are expected to pay the grant amount only.

As you are only reimbursed for minimum automatic auto enrolment contributions, you will not be able to recover any additional amounts, such as those paid under salary sacrifice arrangements which are paid as additional employer contributions. However, an employee may want to cease paying these during the furlough period.

CAN I PAY LESS THAN THE GRANT AMOUNT TO MY EMPLOYEES?

No, you have to pay at least the grant amount to your furloughed employees. In practice, they will generally be taking less than a 20% pay cut after taking into account all taxes and NIC deductions, although higher earners may suffer more.

NATIONAL MINIMUM/LIVING WAGES ("NM/LW")

The NM/LW does not apply to the furlough period as your furloughed employees are not working during this time. However, if the employee is required to do online studying, this time should be paid at at least the NM/LW rates for the time spent training.

WHAT DO I PAY MY EMPLOYEES AND HOW MUCH WILL I BE ABLE TO CLAIM BACK?

Example 1

Dave is a full time architect on a salary of £40K per annum, as at 28 February 2020. Many contracts have been cancelled and so his employer wants to furlough him for the foreseeable future, and pay only the maximum permitted under the FRS, including Dave's normal pension amounts which are the basic entitlement under auto enrolment.

His normal monthly pay is £3,333, and so his employer will be able to pay him at a reduced rate of £2,500 per month, and claim this back, plus related employer NIC and basic pension amounts, as follows:

£2,804.44 is the maximum that can be reclaimed per month in 2019/20. If Dave had opted out of the pension, the maximum claim would be £2,745.78. The employer has to pay the full £2,500 to Dave and Dave is not able to work during the furlough period. Dave has to agree to the furlough before any payments may be made to him, which are then reclaimed under the grant scheme.

Normal gross monthly salary	3,333.00
Revised pay at lower of 80% and £2500	
Gross	2,500.00
Less: Personal allowance	(1,042.00)
Taxable	1,458.00
Tax at BRB 20%	291.60
Ees NIC	213.72
Ees net pension	79.55
Net pay	1,915.13
% reduction in net pay for employee	21.8%
Revised net cost to employer	
Gross	2,500.00
Ers NIC - calculated on new lower gross	245.00
Ers pension - calculated on new lower gross	59.66
Gross salary cost per month	2,805.44
Grant from HMRC	2,805.44

Example 2

Sarah is on a zero hours contract and works in a pub. The pub closed on 1 March and she has been laid off since. Her employer is able to bring her back and backdate any pay entitlement under the JRS. Sarah does not pay any pension. Sarah's pay in February 2019 was £1,500. In the 12 months to the end of February 2020, her average pay was £1,667 per month. Her employer is able to opt for the higher amount, and can pay Sarah 80% under the JRS and claim this back as follows:

Normal gross monthly salary	1,667.00
Revised pay at lower of 80% and £2500	
Gross	1,333.60
Less: Personal allowance	(1,042.00)
Taxable	291.60
Tax at BRB 20%	58.32
Ees NIC	73.75
Net pay	1,201.53
% reduction in net pay for employee	16%
Revised net cost to employer	
Gross	1,333.60
Ers NIC - calculated on new lower gross	84.81
Gross salary cost per month	1,418.41
Grant from HMRC	1,418.41

WHAT HAPPENS WHEN THE SCHEME ENDS?

You will have to decide whether to take your employees back into work, or whether you need to consider redundancies. If redundancies are to be made, remember to follow the correct redundancy process. Continuous employment terms continue throughout the furlough period and any payments made during the furlough period do not count towards any redundancy package.

WHAT RIGHTS DO MY EMPLOYEES HAVE DURING A PERIOD OF FURLOUGH?

They will continue to accrue all normal rights such as continual service for entitlement to SSP and redundancy payments.

An employee may be furloughed by more than one employer, if they have multiple jobs, and the limits apply to each employment, although are expected to be limited where the employers are connected.

I AM A DIRECTOR/SHAREHOLDER OF MY OWN COMPANY – CAN I CLAIM UNDER THE JRS?

As an employee, you could claim, however you would not be able to do any work during your period of furlough which might provide a service to your company or generate income. As you also own the business and presumably would want to do your best to carry on trying to earn revenue for your company, it is difficult to see how, in practice, you would be able to make a claim.

If you do claim however, it will be limited to your salary amount paid, and would not take into account any dividends you had received from your company. Given many company owners only pay themselves minimal salaries of £8,632 (2019/20), topped up by dividends, the maximum claim is only likely to be £575 per month if you simply stopped working. If you do claim, it will be interesting to see if this increases the risk of a challenge under the IR35 rules.

Any director duties, such as completing annual returns or approving accounts, are not 'working' for these purposes and so you will still be able to administer your company whilst on furlough.

ABUSE

HMRC are already anticipating that the scheme will be open to abuse and so audits will be carried out at a later date to check that:

- The employees existed;
- The employer did intend to carry on trading as soon as possible after the furlough period;
- The employees did not work during the furlough period;
- The limits have been correctly followed.

The scheme cannot be used to by businesses that have ceased or will cease but already have no intention of starting back up again.

HOW CAN WE HELP?

The legislation has not yet been published, although more detail on the scheme was issued on 26 March, which the above advice is based on. We are here to help you through this process, whether it's just to have someone to talk it through with, or having our experienced payroll team help with your revised payrolls and eventual claims, once the portal is up and running.

Some of the issues will invariably be of an employment law nature and legal advice should be sought where necessary.

Please do call us if you would like help in understanding the current position.



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