

Coronavirus Job Retention (Furlough) Scheme Q&A

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This Q&A is published by Charity Finance Group to help charities better understand how the ‘furlough’ scheme operates. It is based on Government guidance for [employers](#) and [employees](#), which should be referred to for the full regulations. The information below is a) intended as guidance only (we strongly recommend consulting an employment solicitor) and b) for employers, unless where specifically stated.

QUESTION	GUIDANCE
What can be claimed?	<p>Employers need to make a claim for wage costs through this scheme.</p> <p>You will receive a grant from HMRC to cover the lower of 80% of an employee’s regular wage or £2,500 per month, plus the associated Employer National Insurance Contributions and minimum automatic enrolment employer pension contributions on that subsidised wage. Fees, commission and bonuses should not be included.</p> <p>At a minimum, employers must pay their employee the lower of 80% of their regular wage or £2,500 per month. An employer can also choose to top up an employee’s salary beyond this but is not obliged to under this scheme.</p> <p>More guidance will be issued on how employers should calculate their claims for Employer National Insurance Contributions and minimum automatic enrolment employer pension contributions, before the scheme becomes live.</p>

<p>How will the scheme be administered and when will the grant be paid?</p>	<p>To claim, you will need:</p> <ul style="list-style-type: none"> • your ePAYE reference number • the number of employees being furloughed • the claim period (start and end date) • amount claimed (per the minimum length of furloughing of three weeks) • your bank account number and sort code • your contact name • your phone number <p>You will need to calculate the amount you are claiming. HMRC will retain the right to retrospectively audit all aspects of your claim.</p> <p>The online service you'll use to claim is not available yet. It is expected to be available by the end of April 2020.</p> <p>You can only submit one claim at least every three weeks, which is the minimum length for which an employee can be furloughed. Claims can be backdated until 1 March, if applicable.</p>
<p>Are furlough payments subject to NI/PAYE?</p>	<p>While on furlough, the employee's wage will be subject to usual income tax and other deductions.</p>

	<p>All employers remain liable for associated Employer National Insurance Contributions and minimum automatic enrolment employer pension contributions on behalf of their furloughed employees.</p> <p>You can claim a grant from HMRC to cover wages for a furloughed employee, equal to the lower of 80% of an employee's regular salary or £2,500 per month, plus the associated Employer National Insurance Contributions and minimum automatic enrolment employer pension contributions on paying those wages.</p>
<p>What are the legal implications of furloughing in respect of employment law?</p>	<p>Employers should discuss with their staff and make any changes to the employment contract by agreement. When employers are making decisions in relation to the process, including deciding to whom to offer the furlough, equality and discrimination laws will apply in the usual way.</p> <p>To be eligible for the subsidy, employers should write to their employee confirming that they have been furloughed and keep a record of this communication.</p> <p>Employers should discuss with their staff and make any changes to the employment contract by agreement. Employers may need to seek legal advice on the process. If sufficient numbers of staff are involved, it may be necessary to engage collective consultation processes to procure agreement to changes to terms of employment</p> <p><i>From the employee guidance: If you do not want to go on furlough</i></p>

	<p>If your employer asks you to go on furlough and you refuse, you may be at risk of redundancy or termination of employment, depending on the circumstances of your employer. However, this must be in line with normal redundancy rules and protections.</p>
<p>Are staff able to work elsewhere when furloughed?</p>	<p>If your employee has more than one employer, they can be furloughed for each job. Each job is separate, and the cap applies to each employer individually</p> <p><i>The guidance doesn't say about whether employees are able to work to work elsewhere. Firstly, this may be governed by the contract of employment. Secondly, to protect the charity, the agreement with furloughed staff may need to make it clear that if they do get another job and the charity doesn't get the grant, then the charity will not make furlough payments. The details are likely to be specific to the charity's circumstance so consider taking legal advice.</i></p>
<p>What salary/wage is the furlough rate of 80% applied to?</p>	<p>Full-time and part-time employees</p> <p>For full-time and part-time salaried employees, the employee's actual salary before tax, as of 28 February should be used to calculate the 80%. Fees, commission and bonuses should not be included.</p> <p>Employees whose pay varies</p> <p>If the employee has been employed (or engaged by an employment business) for a full 12 months prior to the claim, you can claim for the higher of either:</p> <ul style="list-style-type: none"> • the same month's earning from the previous year • average monthly earnings from the 2019-20 tax year

	<p>If the employee has been employed for less than a year, you can claim for an average of their monthly earnings since they started work.</p> <p>If the employee only started in February 2020, use a pro-rata for their earnings so far to claim.</p> <p>Once you've worked out how much of an employee's salary you can claim for, you must then work out the amount of Employer National Insurance Contributions and minimum automatic enrolment employer pension contributions you are entitled to claim.</p>
People with frequent overtime?	See above
Staff on zero hours?	<p>Furloughed employees must have been on your PAYE payroll on 28 February 2020, and can be on any type of contract, including:</p> <ul style="list-style-type: none"> • full-time employees • part-time employees • employees on agency contracts • employees on flexible or zero-hour contracts <p>Employees that have been furloughed have the same rights as they did previously. That includes Statutory Sick Pay (SSP) entitlement, maternity rights, other parental rights, rights against unfair dismissal and to redundancy payments.</p>
Staff on statutory sick pay (SSP)	Employees on sick leave or self-isolating should get Statutory Sick Pay (SSP), but can be furloughed after this.

	<p>Employees who are shielding, in line with public health guidance, can be placed on furlough.</p>
<p>What are the implications in respect of maternity?</p>	<p>Individuals who are on, or plan to take, maternity leave must take at least two weeks off work (four weeks if they work in a factory or workshop) immediately following the birth of their baby. This is a health and safety requirement. In practice, most women start their maternity leave before they give birth.</p> <p>If your employee is eligible for Statutory Maternity Pay (SMP) or Maternity Allowance, the normal rules apply, and they are entitled to claim up to 39 weeks of statutory pay or allowance.</p> <p>Employees who qualify for SMP, will still be eligible for 90% of their average weekly earnings in the first six weeks, followed by 33 weeks of pay paid at 90% of their average weekly earnings or the statutory flat rate (whichever is lower). The statutory flat rate will rise from £148.68 a week to £151.20 a week on 5 April 2020.</p> <p>If you offer enhanced (earnings-related) contractual pay to women on maternity leave, this is included as wage costs that you can claim through the scheme.</p> <p>The same principles apply where your employee qualifies for contractual adoption, paternity or shared parental pay.</p>
<p>Can an employee be part furloughed and</p>	<p>To be eligible for the subsidy, when on furlough, an employee cannot undertake work for, or on behalf of, the organisation. This includes providing services or generating revenue.</p>

<p>be paid for reduced hours?</p>	<p>If an employee is working, but on reduced hours, or for reduced pay, they will not be eligible for this scheme and you will have to continue paying the employee through your payroll and pay their salary subject to the terms of the employment contract you agreed.</p> <p>A furloughed employee can take part in volunteer work or training, as long as it does not provide services to or generate revenue for, or on behalf of your organisation.</p> <p>However, if workers are required to, for example, complete online training courses whilst they are furloughed, then they must be paid at least the National Living Wage (NLW)/National Minimum Wage (NMW) for the time spent training, even if this is more than the 80% of their wage that will be subsidised.</p>
<p>If a member of staff has already been let go, can you re-employ and furlough?</p>	<p>The scheme also covers employees who were made redundant since 28 February 2020, if they are rehired by their employer.</p> <p><i>From the employee guidance:</i> If you were made redundant after 28 February</p> <p>Your employer can agree to re-employ you, and place you on furlough instead. They'll still be able to claim a grant to cover 80% of your monthly earnings, up to a monthly cap of £2,500.</p>
<p>Eligibility of staff: employees on unpaid leave</p>	<p>Employees on unpaid leave cannot be furloughed, unless they were placed on unpaid leave after 28 February.</p>

Eligibility of staff: new recruits	Employees hired after 28 February 2020 cannot be furloughed or claimed for in accordance with this scheme.
Can we make up the 20% difference in salary?	You can choose to top up the employee's salary, but you do not have to.
Are you expected to pay the furloughed amount until the grant is received? Or, can you furlough staff in anticipation of the grant being paid, and not pay them until the grant is received?	<p>Once HMRC has received your claim and you are eligible for the grant, they will pay it via BACS payment to a UK bank account.</p> <p>You should make your claim in accordance with actual payroll amounts at the point at which you run your payroll or in advance of an imminent payroll.</p> <p>You must pay the employee all the grant you receive for their gross pay, no fees can be charged from the money that is granted. You can choose to top up the employee's salary, but you do not have to.</p> <p><i>The guidance is not clear but there is probably an expectation that staff get paid in time. In any event, if the charity is worried about having enough cash, they should take advice in respect of being a going concern.</i></p>

<p>Can you furlough, re-employ, then furlough again?</p>	<p><i>From the employee guidance:</i> If your employer chooses to place you on furlough, you will need to remain on furlough for a minimum of three weeks. However, your employer can place you on furlough more than once, and one period can follow straight after an existing furlough period, while the scheme is open.</p>
<p>What happens when staff are close to the National Minimum Wage (NMW)? Do salaries/wages need to be topped up to comply with NMW regulations?</p>	<p>Individuals are only entitled to the National Living Wage (NLW)/National Minimum Wage (NMW) for the hours they are working.</p> <p>Therefore, furloughed workers, who are not working, must be paid the lower of 80% of their salary, or £2,500 even if, based on their usual working hours, this would be below NLW/NMW.</p> <p>However, if workers are required to for example, complete online training courses whilst they are furloughed, then they must be paid at least the National Living Wage (NLW)/National Minimum Wage (NMW) for the time spent training, even if this is more than the 80% of their wage that will be subsidised.</p>
<p>If you receive public money, can you furlough staff?</p>	<p>Where employers receive public funding for staff costs, and that funding is continuing, we expect employers to use that money to continue to pay staff in the usual fashion – and correspondingly not furlough them. This also applies to non-public sector employers who receive public funding for staff costs.</p> <p>Organisations who are receiving public funding specifically to provide services necessary to respond to COVID-19 are not expected to furlough staff.</p>

	<p>In a small number of cases, for example where organisations are not primarily funded by the government and whose staff cannot be redeployed to assist with the coronavirus response, the scheme may be appropriate for some staff.</p> <p><i>Update from DCMS: “The Department for Charity Media & Sport has been liaising closely with the Treasury and they have confirmed that all UK-wide employers with a PAYE scheme are eligible for the Coronavirus Job Retention Scheme, this includes the public sector and charities. Employees can be on any type of contract, including zero-hour or temporary. If the funding for an organisation comes from a number of sources a judgement needs to be made on what that funding is for. If public sector funding explicitly covers staffing costs, then the money still exists to pay for staff and there is no need to furlough. If it does not cover staffing costs the organisation can furlough. Responsibility for that decision lies with the Accounting Officer of the organisation who pays the public funds so that they are clear there is no duplication.”</i></p> <p><i>The question of whether lottery funding is public funding is yet to be clarified.</i></p>
<p>Will the Government look to exempt organisations such as charities from payment of the Apprenticeship Levy?</p>	<p><i>There has been no announcement or guidance on this so current regulations still apply</i></p>