



BRIEFING NOTE

CORONAVIRUS JOB RETENTION SCHEME

At present, full details of the Coronavirus Job Retention Scheme have not been published by the Government. As such, exact details of the Scheme are not available. The below information is based on our current understanding of the detail of the Scheme.

What is the Coronavirus Job Retention Scheme ('CJRS')?

It is a Government grant scheme that is intended to help employers avoid making redundancies if possible in light of the economic downturn. Under the scheme, the government will assist employers with covering the cost of up to 80% of an employee's wages subject to cap of £2,500 per month.

What does an employee need to do to access the scheme?

Employees cannot access the scheme directly. Their employer must apply on their behalf. Before an employer can apply for a grant under the scheme, the employer and employee must agree that the employee becomes classified as a "furloughed worker".

What is a "Furloughed Worker"?

A Furloughed Worker is someone who agrees not to perform any work at all for their employer but who remains employed throughout the period. It is not possible for a Furloughed Worker to do any work and so they cannot work from home and be furloughed at the same time. It is an all or nothing status.

What period will the Scheme cover?

The initial period of the scheme is three months running from 1 March 2020. The scheme will be backdated and so anyone who is furloughed within that three month period should be eligible. The Government may decide to extend the scheme at the end of the three month period.

Who will operate the Scheme?

The scheme will be operated by HMRC which will allow for the PAYE system to be used to process claims. This may well link to the calculation of how much the employer can claim as previous salary payments may be used to calculate the employee's normal remuneration.

Which employees will be eligible for the Scheme?

At the moment there is no guidance on whether there will be any eligibility criteria for the scheme. It is likely that there will be a requirement for employees to have been employed prior to 1 March 2020 in order to be eligible and so there is a risk if a new starter is offered furloughed status. If a new joiner is offered furloughed status and then paid the 80% of salary then the employer may find that they cannot recover that money from the Government.

Does the Scheme cover wages for workers?

It is not exactly clear from government guidance but it appears that the scheme will apply to all who are paid through the employer's payroll. Therefore, from the information available, the scheme is unlikely to cover any workers who are working under self-employed status where they make a self-assessment to HMRC each year.

Will the money have to be paid back?

No, it is a grant scheme not a loan.

How much can be claimed?

Up to 80% of an employee's wages up to a cap of £2,500 per month can be claimed. It is not yet clear whether the percentage will be of an employee's gross or net wage and further it is not clear what will be included when calculating the wages. Some publications have made reference to employment costs and so this could be wider than just basic salary. Overtime, commission and other forms of incentive payment are unlikely to be included particularly if they are discretionary under the employment contract as they could be withheld by the employer as a cost saving measure.

Can an employer top up payments to the employee?

There would seem no reason why an employer could not make up any shortfall in the employees normal wage by topping up with the additional 20%. Of course, that would not be recoverable and so the employer would have to meet that cost itself.

Will payments be taxed?

It is not clear exactly how the grant will be paid to the employee but as there is no entitlement under the employment contract to receive the payment then it is unlikely to be subject to income tax in much the same way as termination payments. It also seems counter-intuitive for the Government to gift money to employers to then reclaim some of it as tax.

What happens to pensions?

Provided that the employee meets the eligibility requirements, the auto enrolment pension provisions will continue to apply. As a result, employee and employer contributions should continue; however, many employees may wish to opt out of the pension scheme for the duration of the furlough in light of the reduction in their pay.

What if an employee becomes sick whilst furloughed?

During the period of furlough, sick pay will be suspended. As the employee does not perform their duties during the period there can be no issue with whether they are medically incapable of performing their role. However, if a period of sickness absence occurs at the time the period of furlough comes to an end then the entitlement to sick pay will resume. If that happens, the employee should comply with their normal reporting obligations as set out in any sick pay policy.

Can furloughed employees be made redundant?

For any employee with more than two years' service, it would be high risk to dismiss an employee as redundant whilst the scheme remains available. As part of any redundancy dismissal, it is necessary for the employer to consider reasonable alternatives to dismissing the employee. If the employee is willing to undertake a period of furlough, it will be very difficult for an employer to argue that dismissing was the reasonable option. As a result, any dismissal for redundancy when the scheme is available will likely be held unfair.

What happens with the employee's holiday entitlement?

As the employee remains employed throughout the period of furlough, they will continue to accrue holiday as normal. It is not clear at this time whether holiday could be taken during the period of furlough. If it is possible then it is likely that the employer would need to make normal holiday payments during the period and could not claim under the scheme for those wages.

How long can the period of furlough last?

As the period of furlough is not a period of lay off or short-time working, the redundancy provisions that are applicable to those arrangements will not apply. As such, it is unlikely that an employee who is furloughed could terminate the employment contract and claim a redundancy payment. As a result, the period of furlough could well last as long as the scheme is available to support the employer.

Does the "furlough period" need to be continuous?

There is no guidance on this point as yet. We would hope that the scheme would not penalise employers who are able to offer work to their staff during this economic downturn. It is likely that terms of the scheme will be designed to encourage employers to offer work where they can in order to ease the overall burden on the scheme. However, that will need to be balanced with minimising the need to submit a high number of individual claims. As such, it is likely that there will

be a minimum period of furlough permitted. We anticipate that this will either be a single day or a single week and periods of furlough that are shorter than this may well not allow an employer to make a claim.

Can employees on maternity leave be brought into Scheme by being “furloughed”?

Once the employee’s maternity leave period has ended, there does not appear to be any reason why an employee could not be offered furlough status and access to the scheme. This is subject to further guidance on whether there will be an eligibility criteria for the scheme.

If employees have already been temporarily laid off, can the employer access the Scheme?

Although this is uncertain at the moment, we believe that provided the employer has classified the employee as “furloughed” the scheme should apply, backdated to 1 March 2020. This would likely involve the employer contacting the employee who has already been laid off and inviting them back to work albeit on a period of furlough.

Does the employer have to pay the employee the money received under the Scheme?

It is extremely likely that any failure to pay the grant over to the employee would result in sanctions for the employer. A claim that is not paid to the employee will most likely be considered fraud.

Does the employer have to guarantee the payments during the period of furlough?

As the scheme rules are not yet available, it is not clear exactly what the employer will be able to claim under the scheme. As the detail may not be available for some time, many employers and employees will need to decide whether to agree a period of furlough without being sure exactly what can be recovered from the government. As such, employers may wish to agree with the employee that only such sums as are actually received under the scheme will be payable to the employee in respect of the period of furlough. That way, if the scheme does not pay out what the employer and employee original expected, the employer will not be left out of pocket. This approach will, however, push all the risk onto the employee and if the scheme were not to pay out for them then they would receive nothing for the period of furlough.

If you require any specific advice regarding the Coronavirus Job Retention Scheme, or any other information regarding Coronavirus generally, please contact the Machins’ Employment Department on 01582 514 000.