

CORONAVIRUS JOB RETENTION SCHEME – REVISED GOVERNMENT GUIDANCE

Introduction

In TSSA's Reps Bulletin EMP/123/Mar 2020 the details of the Government's Job Retention Scheme were highlighted for reps and organisers at a time when a handful of railway companies were about to begin consultation on furloughing workers.

That Bulletin was based on the contemporary Government guidance which has, in the past week, experienced some significant changes, one of which may invalidate company claims for assistance with salaries.

What are the changes from the last Bulletin?

The following are some of the main changes:

- Instead of a delay until the end of April 2020 before companies can make claims under the JRS, the Government has now published details about how employers can apply to HMRC from Monday 20th April.¹ HMRC has also published a step by

step guide.²

- Previously, employers could only claim for those staff employed up to 28th February 2020. That has now been extended to cover those employees who were on the PAYE payroll on or before 19th March 2020.³

CIPP advise that:

“This also means that Employees employed as of 28 February 2020 and where their employer notified HMRC of them on an RTI [Real Time Information] submission on or before 28 February, who were made redundant or stopped working for the employer after that and prior to 19 March 2020, can also qualify for the scheme if they are re-employed by their employer and placed on furlough. This applies to employees who were made

¹ See: <https://www.gov.uk/guidance/claim-for-wages-through-the-coronavirus-job-retention-scheme>

²

<https://assets.publishing.service.gov.uk/governme>

nt/uploads/system/uploads/attachment_data/file/880099/Coronavirus_Job_Retention_Scheme_step_by_step_guide_for_employers.pdf

³ See Page 2 of step by step guide at Note 2

redundant or stopped working for an employer after 28 February 2020, even if they were not re-employed until after 19 March 2020. An RTI submission showing payment in respect of that employee must have been made to HMRC on or before 28 February 2020”;⁴

- To be eligible for Coronavirus Job Retention Scheme an employer must agree with the employee that they are a ‘furloughed worker.’ This condition appears in the latest guidance from the Government (HMRC) and featured in TSSA’s previous Bulletin on this issue.

However, a legal update published online from Daniel Barnett, an employment law barrister, has now highlighted that employers making claims to HMRC could well find that their application to the JRS is not progressed. This is because the guidance does not reflect the Chancellor of the Exchequer’s original Treasury Direction⁵ to the HMRC. That direction requires, at paragraph 6.7 that:

“An employee has been instructed by the employer to cease all work in relation to their employment only if the employer and employee have agreed in writing (which may be

in an electronic form such as an email) that the employee will cease all work in relation to their employment.”

Mr Barnett’s legal update indicates that in the event that an employer has not obtained the written agreement before furloughing that employee, they may not be able to rely on an agreement after being furloughed to ensure eligibility for the JRS. This is because of the language used in paragraph 6.1 of the Treasury Direction.

Reps should be aware that there could be consequences if an employer is refused its JRS claim. Amongst them could be redundancies or firms having to begin their furloughing scheme again, leading to questions about what staff would be paid in the intervening period (i.e. between being furloughed the first time and then the date of their agreement for the new scheme).

The legal update also suggests that one of the outcomes of the omission from the guidance published by HMRC and the original Treasury Direction is that there may be a number of legal claims for judicial review when employers are refused access to the JRS.

⁴ CIPP “Further updates to Coronavirus Job Retention Scheme guidance for employers and employees” published 15th April 2020, available at: <https://www.cipp.org.uk/resources/news/further-updates-to-cjrs-employers-employees.html>

⁵ Available at: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/879484/200414_CJRS_DIRECTION_-_33_FINAL_Signed.pdf

Mr Barnett's update, co-authored with fellow barrister Max Schofield, is available online and would be worth reading by organisers and reps.⁶

Reps action

Especially in relation to the last point, reps whose members have been furloughed – or are about to be – should urgently draw this matter to their employers' attention.

Reps may also be aware of staff who have joined their company between after 28th February but on or before the expiry of the new end date (19th March 2020) and should similarly contact management to ensure they are included in the company's application to the JRS

Acknowledgements and further information

In putting this circular together, TSSA would like to acknowledge all of the sources that appear in the footnotes.

⁶ See: <http://emplawservices.co.uk/wp-content/uploads/2020/04/Claims-against-HMRC.pdf>