

CHANGES TO THE CORONAVIRUS JOB RETENTION SCHEME

Introduction

At the end of May 2020 the Chancellor of the Exchequer, Rishi Sunak, announced changes to the Coronavirus Job Retention Scheme (CJRS) that would be implemented from 1st July.

Combined with further guidance that the Government published on 12th June, this Reps Bulletin will be looking at how the CJRS which we reported on in previous Reps Bulletins¹ has changed.

Members who have been furloughed and face a further period away from work with salaries largely financed by the Government should be mindful of how the furlough scheme has been changed.

What are the terms of the amended CJRS?

Among the most significant changes to the CJRS are that:

- The Scheme will close to new entrants from 30th June and for all claims from 31st October 2020;

- Flexible furloughing will be introduced from 1st July 2020;
- The costs that employers can claim for will reduce between August and October.

What is flexible furloughing?

Under the Scheme as originally set up there was a requirement that the wages of an individual employee could only be claimed if that person had been put on unpaid furlough for a minimum of three consecutive weeks. During this time, employees could do no work for their employer although training was permitted provided the individual was paid at least the National Living Wage or Minimum Wage.

The revised Scheme now allows a new flexibility which means that from 1 July 2020 employers can:

- bring back to work employees who have previously been furloughed;
- for any amount of time and any shift pattern;

¹ EMP/123/March 2020 and EMP/124/April 2020

- while still being able to claim CJRS grant for their normal hours not worked

In essence, this means that staff can be brought back to work on a part-time/reduced hours basis but the employer can only claim for the unworked hours and pay staff their lost time. For instance, instead of working 5 days a week, the employee could be asked to return for two days which may then increase to three days as work picks up. The employer could then claim for the hours not worked.

Government guidance documents² state that in making the claim, the employer has to show the hours worked and the hours the employee would have expected to have worked in the claim period.

However, CIPD³ advise that whilst employer claims no longer have to be in respect of blocks of three consecutive weeks, they do have to be for a minimum of 7 calendar days.

Government Guidance⁴ states that from 1st July claims cannot overlap months because of the reduction in what employers can claim for from August.

A few additional notes on this matter:

- employers do not have to furlough workers (about 40%

don't according to Government figures⁵;

- they can also still fully furlough employees (ie, for all hours);
- employees can enter into a flexible furlough agreement more than once (eg, different periods);
- staff furloughed, even on a flexible basis, cannot perform any work for their employer. They can, however, do training during that time provided they are paid at least the National Minimum Wage.

Closed to new entrants

The CJRS scheme will close to new entrants from 30 June 2020.

In practice, and as described in Government Guidance,⁶ this means that an employee must have been furloughed for the first time by 10th June to meet the current three consecutive weeks furlough period. It doesn't mean that an employee has to be on furlough at 30th June but the employer must have previously submitted a claim for the employee in relation to a furlough period of at least 3 consecutive weeks taking place any time between 1 March and 30 June 2020.

Personnel Today seek to clarify the situation where a person who has previously been on furlough for three

² See:

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/888764/Factsheet_for_SEISS_and_CJRS_schemes.pdf

³ Chartered Institute of Personnel and

Development at: <https://www.hr-inform.co.uk/news-article/detail-on-flexible-furlough-scheme-released> See the more detailed rules in: <https://www.gov.uk/guidance/steps-to->

[take-before-calculating-your-claim-using-the-coronavirus-job-retention-scheme#deciding-the-length-of-your-claim-period](https://www.gov.uk/guidance/check-if-you-could-be-covered-by-the-coronavirus-job-retention-scheme#deciding-the-length-of-your-claim-period)

⁴ See Government Guidance in previous note and note 2.

⁵ See Note 2

⁶ See: <https://www.gov.uk/guidance/check-if-you-could-be-covered-by-the-coronavirus-job-retention-scheme>

weeks is on a further furlough period and not due back until after 1st July. The arrangement here is that the second period of three weeks would have to be served. Only once the employee is back at work could they then be offered flexible furlough.⁷

Limits to number of employees who can be claimed for

What may appear to be a technicality in the CJRS is that for claims from 1st July a cap has been put on the number of claims that an employer can make.

The cap is based on the maximum number of claims made in any single instance between March and June. Personnel Today⁸ illustrate this by using the example of an employer who had previously made three claims between March and June, one for 20 employees, another for 30 and the third one for 50. This would mean that from 1st July the maximum number an employer can furlough in a single claim will be 50.

Exceptions in the revised Scheme

The Government introduced an exception into the revised Scheme which means that employees returning to work from parental leave (defined as parents returning from statutory maternity leave, paternity leave, adoption leave, shared parental leave, and parental bereavement leave) after the 10th June cut off for new claims will

be permitted to be furloughed and employers can make claims for them.⁹

Reduction in the costs that employers can submit a claim for

With effect from 1st August 2020, the new rules¹⁰ introduce a tapering effect to what employers can claim for in respect of furloughed employees:

- June and July: The government will continue to pay:
 - 80% of wages up to a cap of £2,500 for the hours the employee is on furlough;
 - employer National Insurance Contributions (ER NICs) and pension contributions for the hours the employee is on furlough. Employers will have to pay employees for the hours they work;
- August: the government will pay 80% of wages up to a cap of £2,500 for the hours an employee is on furlough. However, employers will have to pay ER NICs and pension contributions for the hours the employee is on furlough;
- September: The government will pay 70% of wages up to a cap of £2,187.50 for the hours the employee is on furlough; Employers will have to pay:
 - ER NICs and pension contributions and
 - Top up employees' wages to

⁷ See Personnel Today, 15th June 2020 at: <https://www.personneltoday.com/hr/flexible-furlough-guidance/>

⁸ Personnel Today, 15th June 2020 at: <https://www.personneltoday.com/hr/flexible-furlough-guidance-unveiled-ditching-three-week-rule/>

⁹ See Government announcement, 9th June 2020 at:

[https://www.gov.uk/government/news/parents-returning-to-work-after-extended-leave-eligible-for-furlough#:~:text=News%20story-,Parents%20returning%20to%20work%20after%20extended%20leave%20eligible%20for%20furlough,announced%20today%20\(9%20June\).](https://www.gov.uk/government/news/parents-returning-to-work-after-extended-leave-eligible-for-furlough#:~:text=News%20story-,Parents%20returning%20to%20work%20after%20extended%20leave%20eligible%20for%20furlough,announced%20today%20(9%20June).)

¹⁰ See Note 2

ensure they receive 80% of their wages up to a cap of £2,500, for time they are furloughed (NOTE: a number of employers are already topping up wages to 100%);

- October: the government will pay 60% of wages up to a cap of £1,875 for the hours the employee does not work.; Employers will have to pay:
 - ER NICs and pension contributions and
 - 20% of wages to make up to 80% total up to a cap of £2,500.

As stated earlier, the CJRS finishes at the end of October 2020.

Reps action

Reps are advised:

- To make the contents of this Bulletin available to their colleagues and ask those who are not TSSA members to join the union asap. They can do this online at:
<https://www.tssa.org.uk/en/join-us/join-online/index.cfm>
- to ensure that their TSSA organiser is kept up to date with any developments related to changes to furlough arrangements (eg, staff being offered flexible furlough or if colleagues are being kept on fulltime furlough when others are brought back). This also applies if their employer starts to talk about job losses or announces redundancies;
- that with extra employer costs from August, reps should push their company, where necessary, to continue to top up affected employees'

salaries so that they continue to receive 100% of their contractual pay.

Acknowledgements

In putting this circular together, TSSA would like to acknowledge the Government, CIPD and Personnel Today sources that appear in the footnotes.