



Community First Yorkshire

Coronavirus Job Retention Scheme: What we know and what employers need to do

On Friday 20 March, the Government announced further measures to help businesses and employees in these uncertain economic times. The Government announced a new Coronavirus Job Retention Scheme to provide employers with access to “*support to continue paying part of their employees’ salary for those employees that would otherwise have been laid off during this crisis*”.

Information about the scheme can be found on the government guidance for [employers](#) and [employees](#). Details are scant at present and we will provide further updates as more details emerge.

Which employees will be eligible?

The guidance states that the scheme will apply to those employees who would “*otherwise have been laid off*” and who are not undertaking work for their employer. Although “lay-off” has a technical legal meaning, it is likely that the reference to “lay-off” is being used in the non-technical sense and applies more widely to employees who are not working and designated as eligible for the scheme by their employer. The further detail to follow will clarify this point.

At present we do not know if there will be any other eligibility criteria which will be required to access the scheme.

What process will employers need to follow?

1. Negotiating a change of status to “Furlough Worker”

The first step is designating employees as “Furlough Workers”. The guidance makes it clear that “*changing the status of employees remains subject to existing employment law*”. What this means is that, in the vast majority of cases, the employer will not be able to unilaterally impose a change of worker status to “Furlough Worker”. In most cases, employee consent will be required. This means that most employers will be required to commence a process of consultation and negotiation with employees and representatives to agree the designation. We can provide advice on the process to follow.

In the current unusual circumstances, it is anticipated that many employees will agree to this change. However, employers will also need to consider what steps they will take in the event that agreement is not reached.

Consultation and agreement might not be needed where the employment contract gives the Employer the unilateral right to withdraw work. This is not likely to be the case for most employers.



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2. Employee notification

There will then be a formal process of notifying the employees of their designation as a Furlough Worker. When further details are released, there may be specific requirements for this notification.

3. HMRC Submission

The final step is submitting details about the Furloughed Workers and their earnings to HMRC. This will be done through an online portal. We understand this has not yet been set up.

Can employees insist on being placed on Furlough Leave?

No, employees cannot unilaterally choose to be on Furlough Leave – the agreement of their employer will be needed.

If not all of the workforce is to be placed on Furlough Leave, care must be taken, and fair process followed, to determine which employees will remain at work and which will be on Furlough Leave. For example, it will be important to ensure that any decisions are not discriminatory.

What payments will employees receive under the scheme?

HMRC will reimburse 80% of Furloughed Workers wage costs, up to a cap of £2,500 per month. The system for reimbursement is still being set up. It is, however, understood that the payment will come to the employer who will pass this on to the relevant employees.

We do not yet have details of how the 80% will be calculated.

Do employers have to pay the remaining 20% of salary?

There is no automatic right for employees to be paid the remaining 20% of salary not covered by the Scheme. However, this may be a topic which forms part of the negotiations with employees when agreeing their change of status.

How long will the scheme last?

The Scheme will run for three months from 1 March 2020. The Government has, however, said that it will extend the scheme if necessary.

Will employment rights continue to accrue during Furlough Leave?

Employees will remain employed during Furlough Leave and will retain their length of service. It is not yet clear what the position will be in relation to other rights, such as the accrual of annual leave during periods of Furlough Leave.