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Employers questions on lay-offs and short-time working (Furloughing Staff due to Covid)

Employers need to think clearly and carefully as there are three options for staff cost challenges at this time

1. sack them
2. lay-off staff
3. put staff on the 80% of salary scheme
4. The scheme is changing from 1st August so it will taper down until 31st October
5. The scheme will "definitely end on 31st October". Thereafter if an employer retains a member of staff until January 2021, the employer will get £1,000 cheque for each person so retained. E.g. you have 4 staff, sack one on 31.7.20, and keep the rest until end January 2021 to get £3k etc.
6. From 1st August the help is tapering, so employers gradually pay more of the wages, but also you can bring staff back part-time, so it's more flexible.
7. In August, the government will pay 80% of wages up to a cap of £2,500 for the hours an employee is on furlough but employers will pay E'er NICs and pension contributions for the hours the employee is on furlough. But the employee can be part-furloughed, so work 2 days full pay, and furlough pay on 3 days etc.
8. For September, the government will pay 70% of wages up to a cap of £2,187.50 (how did they work this figure out?) for the hours the employee is on furlough. Employers pay E'er NICs / pension contributions and ALSO top up employees' wages to ensure they receive 80% of their wages up to the cap of £2,500, for the time they are furloughed
9. In October, the government will pay 60% of wages up to a cap of £1,875 for the hours the employee is on furlough. Employers pay E'er NICs and pension contributions and top up employees' wages to ensure they receive 80% of their wages up to the cap of £2,500, for time they are furloughed



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Our previous notes are here.

NB. All of HMRC guidance online talks about “by 28th February”, “starting 1st March”...etc. Could be some interesting arguments coming up when claims go in? has anyone told HMRC it's a leap year? check out their notes.

Furloughing Staff due to Covid

HMRC	Comment
<i>When can I put staff on reduced pay via the government scheme?</i>	<i>now</i>
<i>Financial support for furloughed workers will be provided to employers through the ‘Coronavirus Job Retention Scheme’.</i>	<i>Furlough option starts wef 1.3.20</i>
<i>This scheme is available to employers who were using a PAYE payroll on 28 February 2020.</i>	<i>PS. Don't ask about events on 29th February!</i>
<i>When can I get the dough?</i>	<i>Unfortunately HMRC haven't worked that out yet. Finally started May (2020)</i>
<i>When do I pay the furlough wages</i>	<i>You are supposed to pay your wages as normal but at the 80% rate, fund this yourself, and then wait for refund from HMRC when they get their act together, maybe in May</i>
<i>But I'll run out of cash if I've got to wait another month</i>	<i>yep</i>
<i>How do I apply</i>	<i>Unfortunately HMRC haven't worked that out yet either They mutter it will be some magic portal on their website asking for</i>

<https://www.gov.uk/guidance/claim-for-wage-costs-through-the-coronavirus-job-retention-scheme#what-youll-need-to-make-a-claim>



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HMRC

Comment

To be eligible for the scheme, employers will need to:

select and tell ('designate') the employees affected that they're furloughed

keep employees on the employer's payroll

make sure furloughs last at least 3 weeks

If someone was made redundant on or after 28 February 2020

An employer can decide to rehire them and put them on furlough.

If someone has more than one job

Each job is treated separately. This means they may be able to either:

continue to work for their other job

be furloughed for both jobs

Selecting and telling affected employees:-

Employers must select employees for furlough in a fair way to avoid any discrimination.

They need to also get agreement from the employee to do this, unless it's covered by a clause in the employment contract.

If an employee disagrees with their employer's decision, they'll need to talk to their employer

as yet unspecified info based on unspecified facts in order to pay out using unspecified criteria. Just trust them.....

You need to tell employees in writing, and get a receipt at least by email

Why? – because you're short of admin nightmares.

Say you are really stupid and do this, then you have to sack them at the end of the scheme, and you'll be mired in all the usual redundancy hoo-hah that will bog you down in employment tribunal hearings for years instead of running your business.

obvs

Hmm, you have 10 serfs doing identical work, and you send 8 home, amazingly the two who come to work in miniskirts are kept on.....



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HMRC

Comment

and try to come to an agreement.

Changing an employment contract:-

zzzzzz

If an employer cannot reach an agreement, they may want to change the written terms in an employee's contract.

If there are more than 20 employees affected, employers will need to consult staff representatives ('collectively consult').

Any furlough agreements should be in writing. It's a good idea to include:

Note! Letter template [here](#), e&oe x 110%

the date furlough starts

when it will be reviewed

how to keep in contact during furlough

HMRC (HM Revenue & Customs) will reimburse 80% of furloughed workers' wage costs to employers, up to a maximum of £2,500 per month.

*It will be Normal wages, so for variable numbers there will be a formula based on average earnings over various unfathomable periods, that definitely can't be printed out from your payroll x another meaningless number, to calculate your potential entitlement which will then be reduced due to **** etc...*



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HMRC

Comment

If the employee has been employed (or engaged by an employment business) for a full twelve months prior to the claim, you can claim for the higher of either:

the same month's earning from the previous year

average monthly earnings from the 2019-20 tax year

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.

If the employee only started in February 2020, use a pro-rata for their earnings so far to claim.

What if wages are over £2,500 per month

Employers can use a portal to claim for 80% of furloughed employees' usual monthly wage costs, up to £2,500 a month, plus the associated Employer National Insurance contributions and minimum automatic enrolment employer pension contributions on that wage

Payments will be made every 3 weeks. This is because 3 weeks is the shortest period a furlough can last.

So now you see clearly now

tough

Employers payroll costs are on top of the wages, which in theory is good, reality?

They picked this interval as it coincides with no payroll system ever operated so is likely be the hardest to produce numbers for.

A numpty with an iq of 4 would have said claim based on your normal payroll cycle, and HMRCy will fit in



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HMRC

Comment

What you'll need to make a claim

To claim, you will need:

your PAYE reference number

the number of employees being furloughed

the claim period (start and end date)

amount claimed (per the minimum length of furloughing of 3 consecutive weeks)

your bank account number and sort code

your contact name

your phone number

You will need to calculate the amount you are claiming.

HMRC will retain the right to retrospectively audit all aspects of your claim

Claiming the furlough grant

You should make your claim using the amounts in your payroll - either shortly before or during running payroll. Claims can be backdated until the 1 March where employees have already been furloughed.

If appropriate, worker's wages should be reduced to 80% of their salary within your payroll before they are paid. This adjustment will not be made by HMRC.

It's up to employers whether they pay the

Don't forget how easy it is to get three-weekly pay period reports out of your payroll software, phew!

Fritemare, how will this work?

A knock on the door at 1 in the morning "evening sir, we've come to inspect the records of all 42 staff you furloughed. We had a telephone call (probably from that busybody old bat who lives 3 doors down the road) that you may have had the lights in your office on two weeks ago - have you been lying about furloughing your staff?"

We're nearly halfway through the first furlough quarter, and no one's had a cheque yet.

Employers have already (allegedly) paid the whole of March payroll, and are expected to pay ALL of April payroll, and then maybe get some money back sometime in May?

We've heard some Employers are refusing to pay their staff until they receive the refund.

Hahahahaha.....



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HMRC

Comment

remaining 20% of wages. They do not have to pay it.

If employers need short-term cash flow support, they may be eligible for a 'Coronavirus Business Interruption Loan'.

The scheme is open to all UK employers that had created and started a PAYE payroll scheme on 28 February 2020

What if I have only just started my business, or perhaps was in partnership that recently finished, and converted to a limited company?

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. While on furlough, the employee's wage will be subject to usual income tax and other deductions.

This scheme is only for employees on contracts who are not working.

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.

Employees hired after 28 February 2020 cannot be furloughed or claimed for in accordance with this scheme.

Hahahahahaha.....

Check out the interview with the lady from Liverpool at 6.15am on the Today programme appropriately on 1st April

This will be an area of contention

Who knows, until we see the application process details it's guess time

Furlough means furlough. Policing this condition will be interesting to observe....

Reducing someone from a 5 day week to 2 day week means you get £0.00 support. It's all or nothing

Note.

What HMRCy actually mean is that STARTS on 1st March + are not covered, even though you made an employment offer etc. in



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HMRC

Comment

How long does this excellent scheme from the government run for?

Jan/Feb., and they signed the contract, and resigned from another company.

What if I'm a small LTD, and took the astute advice from Abell Morliss to draw much of my remuneration through small salary and large dividends

*It's been extended twice so far.....
Once to end of June (before it had even started), In May it's been extended to end of July, with some vague different terms for August to October 2020.*

Individuals are only entitled to the National Living Wage (NLW)/National Minimum Wage (NMW) for the hours they are working.

You're toast now, because all the help is centred on salary.

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.

But remember all the thousands in tax you have saved over the years is stashed in a savings account in case of a rainy day, and now it's definitely raining.

However, if workers are required to for example, complete online training courses whilst they are furloughed, then they must be paid at least the NLW/NMW for the time spent training, even if this is more than the 80% of their wage that will be subsidised.

Bet you didn't think of this. So you can legally pay a serf less than the minimum wage through this scheme.

This is French for – if they're NOT furloughed.

For some mad reason you would insist on them carrying on training, even though their college is closed, and your business is going down the pan faster than you can say flush.



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HMRC

Comment

I'm a topman with lots of important roles....

Company Directors

As office holders, salaried company directors are eligible to be furloughed and receive support through this scheme. Company directors owe duties to their company which are set out in the Companies Act 2006. Where a company (acting through its board of directors) considers that it is in compliance with the statutory duties of one or more of its individual salaried directors, the board can decide that such directors should be furloughed. Where one or more individual directors' furlough is so decided by the board, this should be formally adopted as a decision of the company, noted in the company records and communicated in writing to the director(s) concerned.

Where furloughed directors need to carry out particular duties to fulfil the statutory obligations they owe to their company, they may do so provided they do no more than would reasonably be judged necessary for that purpose, i.e. they should not do work of a kind they would carry out in normal circumstances to generate commercial revenue or provides services to or on behalf of their company.

This also applies to salaried individuals who are directors of their own personal service company (PSC).

Payments received by a business under the scheme are made to offset these deductible revenue costs. They must therefore be included as income in the business's calculation of its taxable profits for Income Tax and Corporation Tax purposes, in accordance with normal principles.

A vast paragraph to say that one-man companies are part of the scheme, and that obv a director has residual statutory responsibilities whilst furloughed from doing his/her main job. E.g. filing annual returns, or accounts.

Interestingly they don't cover the obvious of preparing and filing VAT returns which requires lots of admin work. Not to mention running the payroll to claim the 80% credit etc.

The 80% grant is taxable, because the payment to the staff is also deductible



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HMRC

Comment

Businesses can deduct employment costs as normal when calculating taxable profits for Income Tax and Corporation Tax purposes.

When the government ends the scheme you must make a decision, depending on your circumstances, as to whether employees can return to their duties. If not, it may be necessary to consider termination of employment (redundancy).

The scheme WILL end before you think it's ok for it to end.

Perhaps your main market is usa, and their restrictions are still in force, or maybe they have a mad President who when he restarts the economy unilaterally imposes high tariffs to boost home production opportunities at your expense.

You're expected to reopen your plant making stuff, so all the serfs reluctantly stop watching Friends, and waddle back to work three stone heavier. But of course after the machines start whirring it will be a while before you receive any cash from the restart, so you will need a covid loan to tide you over.

Note that sacking some staff to reflect the new reality of your decimated company with a fraction of the markets it used to have means that the usual statutory redundancy rules will apply (based on pre-furlough salary levels for sure).

Ask Abell Morliss how to deal with this in the most efficient way possible for you.



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HMRC

Comment

Traditionally I have received half my money in cash and never declared this income as it seemed a clever idea

You're toast now, because all the help is centred on people who tell the truth.

But remember all the thousands in tax you have saved over the years is stashed in a savings account in case of a rainy day, and now it's definitely raining.

I work in the black economy, so I disappeared years ago, but now my local pub/brothel/tarmaccer is closed and I have no cash coming in

You're toast now, because all the help is centred on people HMRCy know about.

But remember all the thousands in tax you have saved over the years is stashed in a savings account in case of a rainy day, and now it's definitely raining.

But I said HELP

We have proposed to the government that they allow undocumented people to come forward and claim unemployment benefits immediately, on the basis that they will not then investigate your past – a sort of amnesty

When's this fritemare going to end

Watch the daily death rate, and once it shows a clear downward trend, the government will start relaxing some stuff, hopefully starting with pubs.

If they have half a brain they will keep air traffic at 0 flights anywhere at all for any reason for as long as possible as that's how it was flown in to the country in the first place.



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Still short of things to worry about? Well read on, here's a taster

Data Protection regulations under GDPR still apply, and it's your job to make sure all staff while working at home are only using your VPN running via GCHQ, supervised by Huawei, for all communications with third parties and their colleagues. And of course that they're all running the latest Virus protection/firewall on their amstrads at home. And definitely not using Zoom for any online meetings etc...

See link at bottom for details.

Statutory Sick Pay (SSP) updated rules

The government said that if you get up and think you've half a chance of covid you should self-isolate for 14 days. (with your family - doh)



<i>question</i>	<i>Comment</i>
<i>Who pays SSP</i>	<i>The employer</i>
<i>When can you get SSP</i>	<i>After 3 waiting days at statutory rates</i>
<i>Why do I get Sick Pay based on my salary straightway</i>	<i>Because you work for the State, and they're not connected to making a profit</i>
<i>Why do I get my full pay for 3/6 months when I'm ill</i>	<i>Because you work for the State, and they're not connected to making a profit</i>
<i>I dimly heard they have changed SSP</i>	<i>Yep, the ever generous government has allowed you to</i>



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question

Comment

Why were employers whining then

claim SSP from day one as a knee jerk reaction to millions of people being asked to stay off work due to covid isolation

Because ssp is paid by employers NOT the state

So what has been changed again

HMRCy will now pay the first 14 days of SSP themselves

How will that work then

The online service you'll use to reclaim SSP is not available yet. HMRC will announce when the service is available and this guidance will be updated

What do you mean

So employers are supposed to pay all the SSP now and trust HMRCy to refund it later on. It's a good job employers are cash rich at the moment

But I can't afford this extra cost, I've got no dough

Check out the Abell Morliss covid email sent on 3rd April



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New Holiday rules

The government said that if can't take your time off in the firms holiday year due to covid you can carry it forward for two Leave years.

question

Government to amend regulations to allow annual leave to be carried over into the next 2 years

measures will ensure workers won't lose their leave entitlements

move gives flexibility to business at a time when it is needed most

Comment

The employer pays this cost 100%, previously you could bin unused holiday entitlements, or at least make sure employees took all their leave each year.

Again they need a dictionary as it clearly does NOT "give flexibility to business at a time when it is needed most"

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lay-offs guidance

The text below is from ACAS

There's been a lot of casual talk in the Press/online about laying off staff as though this is something you can just do easily when times are hard. Funnily enough our employment laws mean this is really is not that simple.

Lay-offs are an option that exists under existing employment laws, and this may be more suitable for some employers depending on circumstances.

ACAS

Comment

When can I lay off employees?.

When there is an express contractual right agreed between you and your employee, an agreement covering the issue between the company and the union, or a national agreement for the industry that you follow.

Such agreements only have contractual force if they are incorporated into each affected employee's employment contract. You might also have an implied right if you can show by clear evidence that this right has been established over a long period by custom or practice

Only if you ALREADY have a clause in each employment contract giving yourself the power to do this.

It's always going to be contentious amending employment contracts to add this in. However if the employer is in a dire situation then you put it to the staff to sign amended contracts, or you close, so they have a 'choice'....

Do employees have any right to payment while laid off?

Not if there is a specific term in their contract allowing you to lay them off without pay. When they are laid off, they might be entitled to a statutory guarantee payment from you, limited to a maximum of five days in any period of three months. The daily amount is subject to an upper limit which is reviewed annually. On days when a guarantee payment isn't payable, employees might be able to claim Jobseekers Allowance and should contact their local Jobcentre office about

No



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ACAS

Comment

eligibility.

How long can a lay-off last?

This will depend on the terms specified in the contract. However, your employee may in certain circumstances give you written notice of their intention to claim a redundancy payment.

The layoff clause needs to be widely drawn to give you, the employer, the greatest discretion.

This is why you put the clause in when employing the serf, as they will hardly think about it at job offer time

When can I put employees on short-time working?

You must have an express or implied power to lawfully reduce the amount of pay. Normal practice would be for the workforce or their union to agree to short-time working as an alternative to redundancies. Employees placed on short-time working might be able to claim Jobseekers Allowance for the balance of the hours they don't work. Advice on eligibility can be obtained through a local Jobcentre

Whenever you fancy as long as the lay-off clause is in there.

Usually the clause will specify some circumstances the employer can invoke e.g. loss of orders, force majeure, government emergency regulations, factory burned down....



ACAS

Comment

Can employees claim redundancy payments because of lay-offs or short-time working?

If an employee is either laid off (receives no wages) or put on short-time working (receives less than half a week's pay) for four consecutive weeks (or for six non-consecutive weeks within a 13-week period) because of a shortage of work, the employee can give written notice that he or she intends to claim a redundancy payment

Yes

ALSO.....

Comment

Rate and length of statutory lay-off pay

*Employee is entitled to **guarantee pay** during lay off or short-time working. The maximum you can get is £29 a day for 5 days in any 3-month period - so a maximum of £145*

'SSP' infests employers lives everywhere. You have to pay £145, and then it's £0

Applying for redundancy

You could apply for redundancy and claim redundancy pay if you've been laid off without pay or put on short-time and receive less than half a week's pay for:

4 or more weeks in a row

6 or more weeks in a 13-week period

Write to your employer to claim redundancy within 4 weeks of the last day of the lay-off or short-time period. Your employer has 7 days to accept your claim or give you a written counter-notice. If your employer does not give you counter-notice, you can assume they've accepted your redundancy claim.

A counter-notice means your employer expects work

So if the employee concludes there is no prospect of things getting back to normal, the layoff clause will not protect you from the usual redundancy obligations flowing from employing staff.

Or maybe you have treated him/her differently from his best mate doing the same job at the same firm who funnily enough has been recalled to work before you (your unending periods off sick



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Comment

will soon be available - it must start within 4 weeks and must last at least 13 weeks.

every Monday morning made no difference to this decision of course)

Extra work or claiming benefits

You can take on another job while you're laid off or on short-time (unless your contract says you must not).

You should get your employer's agreement, make sure you're not working for a competitor, and make sure you're available for your original job once the lay-off or short-time ends

However the employee might just get a better job whilst laid off and not reappear, it's the employers risk flowing from laying off

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Links

<https://archive.acas.org.uk/index.aspx?articleid=3840>

Guarantee payment

<https://www.gov.uk/lay-offs-short-timeworking/guarantee-pay>

ACAS furlough link

https://www.acas.org.uk/coronavirus/if-the-employer-needs-to-close-the-workplace?utm_medium=email&utm_campaign=Coronavirus%20guidance%20%20Carrying%20over%20paid%20holiday&utm_content=Coronavirus%20guidance%20%20Carrying%20over%20paid%20holiday+CID_5c218c0ee4901de111f2e503dce50ac5&utm_source=Acas%20National%20Email%20Marketing%20Live&utm_term=government%20financial%20support%20for%20furloughed%20workers

HMRC link

<https://www.gov.uk/guidance/claim-for-wage-costs-through-the-coronavirus-job-retention-scheme>

SSP

<https://www.gov.uk/employers-sick-pay>

Holidays

<https://www.gov.uk/government/news/rules-on-carrying-over-annual-leave-to-be-relaxed-to-support-key-industries-during-covid-19>

GDPR guidance

<https://ico.org.uk/for-organisations/data-protection-and-coronavirus/>

JM Swallow, FCA

Abell Morliss International

Abell Morliss International Limited

Chartered Accountants

128 Cannon Workshops, Canary Wharf,
LONDON, E14 4AS

Telephone +44(0)207 148 4785 Fax +44(0) 207 990 7503

Email: abell@chartered.org Web: www.chartered.org

regd. In England no.3772744 regd. office:- above

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