



BRIEFING NOTE UPDATE (1)

FURLOUGH SCHEME

Following the previous Briefing Note regarding the Government's Coronavirus Job Retention Scheme - the Furlough Scheme, further guidance has been provided and the Furlough Scheme has been updated.

Below is listed a summary of further guidance, clarification and changes to previous Government Guidance:

1. Who can be furloughed?

Employees can be on any type of employment contract, including full-time, part-time, agency, flexible or zero hours contracts.

Those caring for children, shielding or with someone in the household who is shielding can be furloughed.

2. Apprentices

Apprentices can be furloughed in the same way as other employees and they can continue to train whilst furloughed (but must be paid the Apprenticeship Minimum Wage, National Living Wage or National Minimum Wage – as appropriate) for the time they spend training.

3. Eligible individuals who are not employees

As well as employees, the furlough grant can be claimed for the following groups, providing they are paid via PAYE (and were on 28 February 2020): office holders (including company directors); salaried members of Limited Liability Partnerships; agency workers (including those employed by umbrella companies); and 'limb b' workers.

4. How to Calculate Furlough Pay

For salaried employees the calculation is the employee's salary as of 28 February 2020. For employees whose pay varies the calculation is the higher of: the same month's earnings from the previous year; or average monthly earnings for the 2019 – 2020 tax year. If an employee has been employed for less than 12 months the calculation is 80% of their average monthly earnings since they started work. If the employee commenced in February 2020 the calculation is to work out a pro-rata for their earnings and receive 80% of it.

5. Employer Must Confirm the Furlough in Writing

An employer must notify employees of their furlough status in writing and keep a record of that

written notification for five years.

6. Multiple Furlough Periods

The Government has clarified that the minimum furlough period of three weeks means that work places can, if they are able to, run a rotation scheme provided each employee is furloughed for a minimum of three consecutive weeks.

7. Alternative Work

Employees are able to start a new job when on furlough, meaning they could obtain 80% of pay in their old salary and 100% of their new salary. However the guidance says that it must be allowed under the old employment contract.

8. Contractual Bonus, Commission and Fees

Furlough pay includes regular payments that an employer is obliged to pay the employee. This includes wages, past overtime, fees and compulsory commission payments (presumably contractual). However, discretionary bonus (including tips) and commission payments and non-cash payments should be excluded.

9. Employers in Administration

The Government has said that it would expect that an Administrator would only access the furlough scheme if there is a reasonable likelihood of re-hiring the employees.

10. Annual Leave

The Government has confirmed that workers who have not taken all of their statutory annual leave entitlement due to COVID-19 will now be able to carry it forward over the next two years, up to a maximum of four weeks. The Working Time Regulations 1998 will be amended. However, it must have been not reasonably practicable for the worker to have taken the annual leave due to COVID-19.

11. Conditions on Employers

Any entity with a UK payroll can apply, including businesses, charities, recruitment agencies and public authorities. The employer must have created and started a PAYE payroll scheme on or before 28 February 2020; enrolled for PAYE on-line and hold a UK bank account.

12. Holiday Pay

The issue regarding holiday is not clear and further guidance is awaited. In particular whether an employee can take annual leave whilst on furlough leave and if so at what rate of pay?