



BRIEFING NOTE UPDATE (2)

FURLOUGH SCHEME

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

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

1. Sickness Absence

Employers are able to switch employees from sick-pay to furlough and vice versa, although this should not be abused by using furlough to 'top up' small amounts of SSP for short term absences. Also, it has been clarified that employers can furlough 'shielding' employees, and they do not have to be placed on sick-pay.

2. Work Visas

Employees with certain work visas will not be regarded as breaching their visa conditions if they receive funds under the Furlough Scheme.

3. TUPE

Employers of newly TUPE'd employees can put them on furlough. The new employer is able to claim under the Furlough Scheme in respect of the employees of a previous business transferred after 28 February 2020 if either the TUPE or PAYE business succession rules apply to the change in ownership.

4. Employer's National Insurance and Pension Payments

The reclaimable National Insurance and pension elements are on the furlough salary, not normal salary.

5. Other Employment

Employees cannot work for organisations that are linked to the employer, as well as not working for the employer, when on furlough.

6. Payroll Consolidation

Businesses that engaged in payroll consolidation schemes after 28 February 2020 can place employees on furlough.

7. The Entire Grant should be paid to the Employee

No part of the reclaimed grant can be siphoned off to fund benefits; the entire grant must be paid to the employee with no deductions for fees, admin charges etc.

8. Paying Contingent Workers

There is also separate and specific Cabinet Office guidance for suppliers of “contingent workers” to certain public sector bodies where they cannot work due to coronavirus. The guidance applies to central government departments, their executive agencies and non-departmental public bodies. Other public sector contracting authorities are encouraged to apply the same approach.

Contingent workers include temporary staff such as contractors and freelance workers, as well as agency workers. Specifically, the advice makes clear that it covers those who are on employers’ PAYE systems and those who work through umbrella companies and personal services companies.

The stated purpose of the guidance is to protect the livelihood of contingent workers, guard against the risk that some may attend work when they should be self-isolating and to assist suppliers and keep them solvent.

The guidance essentially states that contingent workers who cannot work because of coronavirus should be paid for at least three months at 80% of the rate of pay before their absence, up to a maximum of £2,500 per month backdated to 1 March 2020, if necessary. This covers workers who cannot work because they are sick, in self-isolation or as a result of workplaces closing and who cannot work from home. The £2,500 monthly cap relates to gross pay, excluding statutory costs such as National Insurance, pension and holiday pay. If the worker has already claimed statutory sick pay, this would have to be deducted so that the total payment does not exceed 80 per cent of gross pay up to the level of the cap.

Where workers are unable to work for some days due to coronavirus and their normal monthly pay would exceed the cap of £2,500 per month, the guidance makes clear that their maximum daily earnings will be subject to a cap of £125 per day.

There is no obligation on public bodies to extend any assignment.