

U.K. Government Extends Furlough Scheme

Article By:

Alex Denny

Emma Vennesson

Charlotte Marshall

Fred Kelleher

The UK Government has announced that the Coronavirus Job Retention Scheme (also known as the furlough scheme)¹ will be extended until 31 March 2021. Prior to this announcement, the furlough scheme was due to close on 31 October 2020 and be replaced by the Job Support Scheme from 1 November², however this has now been postponed.

From 1 November 2020, all UK businesses can furlough employees under the extended scheme and there is no requirement for the employer to have previously used the furlough scheme. Employers will need a UK bank account and a UK Pay As You Earn (PAYE) scheme in order to claim.

Employers can claim for employees who were employed on 30 October 2020 and in respect of whom they have made a PAYE Real Time Information (RTI) submission to HMRC between 20 March 2020 and 30 October 2020. If an employee was made redundant, stopped working or their fixed term contract expired on or after 23 September 2020, the employer can re-employ them and place them on furlough, as long as a PAYE RTI submission was made in respect of that employee between 20 March 2020 and 30 October 2020. Employers can continue to claim in respect of employees on furlough periods ending on or before 31 October 2020 until the deadline on 30 November 2020.

Employers must enter into a written furlough agreement with employees and keep copies of such agreements for five years. When entering into such agreements, employers should consider any existing employment legislation (including equality and discrimination laws) and ensure that any changes to employees' contracts are made by agreement. Employers must keep records of how many hours their employees work and the number of hours they are furloughed for six years.

Employers can choose which employees to furlough and employees can be furloughed full time (i.e., the employee does not work for the employer) or placed on flexible furlough (i.e. the employee can work for the employer on a part-time basis or other working pattern). There is no minimum furlough period and flexible furlough arrangements can last any amount of time (up to 31 March 2021), although the period claimed for must be for a minimum of seven calendar days (unless otherwise

specified). Whilst furloughed, employees must not do any work for their employer that makes money or provides a service to the employer during the hours being recorded as furlough hours, although they can still take part in training or (if permitted by their employer) volunteer or work for another employer.

Under the extended scheme, employers must pay employees their usual wages for any hours worked but can claim back 80% of an employee's usual wages for any hours not worked, up to a maximum of £2,500 per month. In respect of hours not worked, employers can, but are not required to, top up the employee's wages to 100% of usual wages. Employers will continue to be responsible for paying employers' national insurance contributions and employers' pension contributions, and employees' wages will continue to be subject to deductions of income tax and employee's national insurance contributions.

The U.K. government is due to review the scheme in January 2021, which may lead to further changes.

Introduction of New Employer Obligations to Ensure Compliance with Self-Isolation Rules

The Health Protection (Coronavirus, Restrictions) (Self-Isolation) (England) Regulations 2020 (Regulations), which came into force on 28 September 2020, impose several obligations regarding self-isolation and notification which have implications for both employers and employees. The Regulations only apply to England, but other parts of the U.K. have implemented guidance that mirrors the Regulations.

Self-Isolation

The Regulations make it a legal requirement for anyone who has tested positive for COVID-19, or who is notified by the NHS Test and Trace that they have come into contact with someone who has COVID-19, to self-isolate for up to 14 days.

Employers

The Regulations require employers to ensure employees comply with their obligations to self-isolate. If an employer is made aware that an employee is required to self-isolate, it is an offence for the employer knowingly to allow the employee to attend any place of work or carry out any work in a place other than where the employee is self-isolating.

Employees

The Regulations also place a corresponding obligation on employees to notify their employer that they are required to self-isolate as soon as reasonably practicable and no later than the next working day.

Fines

Fines — starting from £1,000 for the first offence and rising to £10,000 for the fourth and subsequent offences — may be imposed on anyone who breaches their self-isolation obligations or on any employer who knowingly allows self-isolating employees to come to work.

Footnotes

1. <https://www.faegredrinker.com/en/insights/publications/2020/5/uk-employment-law-update-furlough-leave-updates-and-recommended-changes-to-employment-tribunal-proce>
2. <https://www.faegredrinker.com/en/insights/publications/2020/9/new-uk-job-support-scheme-to-take-effect-november-1>

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