

Important Business Law Second **Update** April

Published 27/04/2020



This bulletin includes important updates in the laws and regulations that might affect your business and includes recommendations to help you stay compliant. Read on to ensure your business is operating safely within the law or log in to ARAG Legal Services.

Coronavirus: Furlough FAQs

By now you'll almost certainly have heard about the UK government's Coronavirus Job Retention Scheme. This allows businesses affected by coronavirus to avoid staff redundancies by instead putting them on furlough leave and claiming back 80% of their salary (capped at £2,500 per individual).

If you plan to do this, you can use our new Letter putting a worker or employee on furlough leave as the first step. It's suitable for employees, workers and other types of eligible staff.

Guidance on both the scheme and furloughing are available on [Gov.uk](#), but we've compiled a few FAQs below. Several key aspects of the scheme changed during the week commencing 13 April. **The information below is correct as of 20 April.**

What is furlough leave?

It's a new form of leave in UK employment law. It essentially means a leave of absence that both you and your staff agree to. It's meant as a temporary period during which they're required not to work.

What are the time limits?

Currently, the scheme runs until 30 June 2020. Staff can't be furloughed beyond this date unless the UK government extends it (which it has already done once). Staff must be furloughed for at least 3 weeks. You can backdate claims to 1 March 2020, though there's some uncertainty around the rules for claiming as far back as that – it's possible, but not certain, that if you've already put staff on unpaid leave since 28 February, you can retrospectively put them on furlough leave and claim.

Which businesses qualify?

You must:

- be a UK business that's severely financially affected by coronavirus;
- have created and started a PAYE payroll on or before 19 March 2020;
- have a UK bank account; and
- not receive any public funding (though there are some exceptions to this).

What does 'severely financially affected' mean?

This hasn't been clearly defined and interpretations will vary. However, Gov.uk guidance states that the scheme:

„...is designed to help employers whose operations have been severely affected by coronavirus (COVID-19) to retain their employees and protect the UK economy. However, all employers are eligible to claim under the scheme and the government recognises different businesses will face different impacts from coronavirus.“

We can't be certain, but this seems to suggest a fairly broad interpretation will be acceptable.

Which types of staff can be put on furlough leave?

Any of the following, on any type of contract, provided they're paid via PAYE and were on your payroll as of 19 March 2020:

- Employees (including directors with service agreements)
- Workers under a contract to provide services to you (provided you aren't their customer/client)
- Agency workers (including those employed by an umbrella company)
- Apprentices
- Salaried members of Limited Liability Partnerships; and
- Company directors (without a service agreement) and other office holders. This includes salaried directors of their own personal service companies.

What about staff who've already been let go?

You can still furlough those who were on your payroll as of 28 February 2020 (and HMRC were notified on an RTI submission) and were made redundant, or stopped working for you (e.g. resigned to take another job that later fell through), between 29 February and 18 March (inclusive). However, you must rehire them first.

How are staff put on furlough leave?

You can only do it if you both agree to it – you need their agreement because it'll change the terms of their contract. Our new **Letter putting a worker or employee on furlough leave** is way of recording their agreement.

Discuss using the scheme with them beforehand. If you intend to use the scheme for 20 or more **employees** from one place of work, you will probably need a collective consultation process.

Be careful not to discriminate when selecting which staff to furlough. That said, it's likely that you'll be able to justify furloughing staff who are disabled and have high-risk underlying health conditions, or older staff in high-risk groups.

Can furlough leave be rotated or used more than once?

Yes, you can rotate it among staff, or put them on it more than once (as long as each instance is for at least 3 weeks).

Can staff do any work while on furlough leave?

No. They can do volunteer work or training, as long as this doesn't provide a service to you or generate any revenue for you.

What if 80% of pay is less than the National Living/Minimum Wage?

This is allowed, but if staff need to complete job-related training while on leave, you must pay them at least the National Living/Minimum Wage for the time spent doing it.

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Can staff be put on furlough leave while on sick leave?

The scheme is not intended for short-term absences from work due to sickness. If you have a business reason to furlough them, they must stop receiving sick pay and become classed as furloughed. Or, you could wait until their sick leave ends before furloughing them, if they provide a medical certificate.

Can staff use their annual leave while on furlough leave?

Currently yes, but this is being kept under review. Note that while on annual leave, they must be paid their full normal rate of pay (or if their pay varies, their average pay in the previous 52 working weeks, or 12 working weeks for employers in Northern Ireland). This will include any contractual overtime, commission or fees. It will mean you having to 'top up' the 80% grant by paying the additional 20% yourself.

Will annual leave and continuous employment accrue while on furlough leave?

Yes.

Can I continue with any pre-existing disciplinary action while they're on furlough leave?

Yes.

How should I calculate a claim?

Your calculation should include any regular contractual payments that you must pay staff. E.g.:

- Wages
- **Compulsory** overtime
- Fees
- Contractually due commission or bonuses
- Monetary benefits

There's uncertainty about which payments of this type are covered by the scheme. A right to an annual bonus of a fixed amount would, for example, be covered, but this isn't very common. Bonuses are more usually paid if the employer hits a certain level of profits or if an employee hits certain performance standards. Earlier government guidance suggested these payments would be covered, but [more recent guidance](#) has suggested not. The same applies to overtime or commission payments, where the payment varies depending on the amount of overtime worked or amount of sales made.

Don't include payment for any non-monetary benefits. This includes taxable benefits in kind, such as:

- Company vehicles
- Private health insurance
- Non-business travel
- Entertainment expenses
- Other business assets that have significant personal use

Those whose pay is fixed

Use their actual salary before tax, paid in the last salary period ending on or before 19 March, to calculate the 80%. If you've already based your calculation using 28 February (which a previous version of the government guidance said you should), you can still use that date for your first claim.

Don't include any discretionary commission, bonuses tips or fees.

Those whose pay varies

If you've employed them for 12 months before the claim, you can claim the higher of either:

- the same month's earnings from the previous year; or
- average monthly earnings from the 2019-20 tax year.

Otherwise, you can claim for an average of their monthly earnings since they started work. If they started less than a month ago, use a pro-rata calculation for their earnings so far to claim.

Once you've worked out how much you can claim for, work out the amount of employer National Insurance Contributions and minimum automatic enrolment employer pension contributions you're entitled to claim. The claim system is now up and running [here](#) and a calculator is available [here](#).

Coronavirus: other measures and law changes

The UK government has also implemented several other initiatives and temporary law changes to support UK businesses. The information below is correct as of 14 April.

Annual leave: extended right to carry over untaken holidays

On 26 March, the Working Time (Coronavirus) (Amendment) Regulations came into force, allowing employees/workers to carry over up to 4 weeks' unused holiday leave into their next 2 holiday years.

Previously, only 8 days could be carried over and only if employers allowed it; many employers have a 'use it or lose it' policy for any untaken leave at the end of their holiday year.

The government has stated that this change is intended for key workers in industries such as food and healthcare. But the wording of the regulations suggests it's possible it covers other industry sectors as well, as it applies to 'the effects of coronavirus on a worker, the employer or the wider economy or society'. This is presumably intended to help other (non-key) businesses to avoid being short-staffed due to everyone taking leave when restrictions are lifted, so they can operate as usual and get the economy moving again. However, it is presently unclear.

Business leases: eviction suspension

Tenants of commercial leases are now protected from eviction due to unpaid rent. The protection differs in Scotland and the rest of the UK. Neither jurisdiction covers other payments under a lease, such as service charges and insurance – this is potentially a loophole for landlords, depending on the wording of your lease.

Another potential problem for tenants is that landlords can still take other action to recover rent, such as serving a statutory demand, which is usually the first step in the process of liquidating a business, or a winding up petition against a limited company. If you're struggling to pay rent, discuss the situation with your landlord – be sure to put anything that you both agree in writing.

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England, Wales and Northern Ireland

Landlords cannot use their right of re-entry or claim forfeiture for non-payment of rent until 30 June 2020. This also applies to trying to enforce current court claims. This date will be subject to review and may be extended.

Scotland

Landlords cannot use their right to claim irritancy for non-payment of rent until the end of September 2020. This may be extended. Any notice served must give 14 weeks' (not 14 days) notice.

Tax: deferring payments

Income tax deferred

If you're due to make a self-assessment payment on account on 31 July 2020, you will automatically be entitled to defer it until 31 January 2021. No interest or penalties will be charged.

Note: no announcements have been made to date to defer corporation tax payments.

VAT holiday

UK VAT registered business can defer VAT payments due between 20 March and 30 June 2020 (other than for VAT MOSS or import VAT). You don't have to inform HMRC if you defer payment and no interest or penalties will be charged. If you defer, those payments will become due on or before 31 March 2021.

If you know or think you won't be able to pay your income tax or VAT even if you defer, contact [HMRC](#) now.

Business rates support

This differs depending on where you are. Rate reductions should be automatically applied by the local authority covering your area.

England

Certain businesses can benefit from a business rates holiday. Currently, this is those in the [retail, hospitality and leisure sectors](#), and [nurseries](#) on Ofsted's Early Years Register.

You can estimate the business rate charge using the [business rates calculator](#).

Wales

Businesses in the retail, hospitality and leisure sectors will receive 100% business rates relief for the financial year 2020/21, if their property has a rateable value of £500,000 or less.

Scotland

Businesses in the retail, hospitality and leisure sectors will receive 100% business rates relief for the financial year 2020/21 (even if they have temporarily closed).

Other businesses will get a deduction of 1.6% from their business rates, which will be applied by their local council.

Northern Ireland

A 3-month rates holiday applies for April, May and June (excludes public sector and utility companies). Bills will be issued in June and businesses can repay by monthly instalments between June and March 2021.

Cash grants

The following cash grants are available from your local authority. They differ depending on where your business is.

England

For business properties in the retail, leisure and hospitality sector:

- £10,000 for those with a rateable value of up to £15,000.
- £25,000 for business properties with a rateable value of over £15,000 and less than £51,000.

£10,000 for all other businesses receiving small business rates relief or rural rates relief as of 11 March 2020.

See [Gov.uk](#) for more.

Wales

- £25,000 for properties with a rateable value of between £12,001 and £51,000 in the retail, leisure and hospitality sector.
- £10,000 for all other businesses eligible for small business rates relief with a rateable value of £12,000 or less.
- £10,000 for small businesses who employ up to 9 people.
- Up to £100,000 for businesses who employ between 10 and 249 people.

See [Business Wales](#) for details of the Development Bank of Wales loan scheme and Economic Resilience Fund that are also available from the Welsh government.

Scotland

- £25,000 for business properties with a rateable value of between £18,001 and £51,000 in the retail, leisure and hospitality sector.
- £10,000 for all other businesses who get [small business bonus scheme relief or rural relief](#).

See [gov.scot](#) for more.

Northern Ireland

- £25,000 for properties with a rateable value of between £15,000 and £51,000 in the retail, leisure and hospitality sector.
- £10,000 for all other businesses who currently get small business rates relief with a rateable value of less than £15,000.

See [nibusinessinfo.co.uk](#) for more.

Coronavirus Business Interruption Loan Scheme

This scheme will be available to all UK small businesses and is backed by the government-owned British Business Bank. To qualify you must:

- Need the loan to support your UK trading activities, having been adversely affected by coronavirus
- Generate more than 50% of your turnover from business activities.
- Want to borrow no more than £5 million.

There are [40 approved lenders](#) for the scheme. For more details, see the [British Business Bank](#) website.

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Grants for the self-employed

There's a [UK-wide scheme](#) to provide support for the self-employed (including members of partnerships). In Scotland, [plans have been announced](#) to supplement this with support for the newly self-employed who might not be eligible for the UK scheme.

The Coronavirus Statutory Sick Pay Rebate Scheme

This scheme will repay UK businesses the statutory sick pay (SSP) they've paid to eligible workers.

Rules of the scheme:

- Workers must be eligible for SSP – i.e.: already working for you, earning an average of at least £120 per week and been ill for at least 4 days in a row (including any days they are not working, e.g. the weekend).
- They must have received SSP when they had coronavirus or because they couldn't work due to self-isolation.
- You must have a PAYE payroll scheme that was created on or before 28 February 2020 and fewer than 250 employees.

Payments will be limited to a maximum of 2 weeks, starting from the first day they are sick. See [Gov.uk](#) for more.

Companies house: filing annual accounts

If your filing deadline has not yet passed and you may be late because your business is affected by coronavirus, you can [apply](#) for a 3-month extension. If you don't and your accounts are late, penalties will still be imposed.

Amendments to right-to-work checks

Since 30 March, checks can now be made:

- Via video call; or
- By job applicants and existing workers sending scans or photos of documents via email or a mobile app, rather than sending originals.

You must still make the check and use the [Employer Checking Service](#) if acceptable documents can't be provided. The government has updated its [guides](#).

ICO data protection and coronavirus information hub

The Information Commissioner's Office has created an [information hub](#) with guidance on how to tackle data protection issues regarding COVID-19. You shouldn't ignore data protection issues during the pandemic – but if you're concerned that your data protection practices might not meet your usual standards or about delayed responses to information rights requests, the ICO have said they won't penalise organisations that they know need to prioritise other areas or adapt their usual approach.

New homeworking documents available

As well as our new furlough leave letter, we've also released 2 new documents to help you deal with homeworking arrangements – a **Homeworking policy** to help you outline rules and responsibilities for homeworkers, and a **Homeworker risk assessment** to help you comply with your continuing health and safety obligations.

We do hope you've found this month's bulletin useful. To learn more and to access our range of legal documents, simply log in to the ARAG Legal Services service.

ARAG Legal Services

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