

COVID-19 Briefing: The November 2020 Extension to the Furlough Scheme

Many business owners were preparing for the end of the furlough scheme and readying themselves for the move to the Job Support Scheme (JSS). It therefore came as a surprise to many when the government announced on 5th November that the Coronavirus Job Retention Scheme (CJRS), better known as the furlough scheme would be extended until the end of March.

With a new lockdown being introduced and all non-essential businesses required to close, the extension of the furlough scheme aims to provide further support to businesses and their employees who have been impacted by this new lockdown.

More detailed guidance about the scheme was released on 10th November and many business owners and employees will be keen to know how this will affect their business.

The following article aims to provide some clarification on this but is not intended to be taken as legal advice. The legal team at Fraser Dawbarns are always happy to provide advice on your specific circumstances.

IS THE EXTENDED SCHEME THE SAME AS BEFORE?

The scheme will largely be run in the same way as the previous CJRS, with a few differences (discussed below). The most important things to know are:

- The scheme is open until 31st March 2021
- The Government will pay 80% of the salary of furloughed employees for hours not worked up to a maximum of £2,500 per month
- Employer contributions will remain the same as in August 2020, for hours not worked by the employee, the employer will only be required to cover NI and employer pension contributions.
- For hours that an employee works as normal, their wages, employer NI contributions and employer pension contributions will be paid as normal.
- The period where employers can claim 80% of the employee's salary will run until January 2021.
- In January 2021, the Government will conduct a review to test whether economic conditions have improved sufficiently that they can ask employers to contribute more.

WHICH EMPLOYERS CAN CLAIM UNDER THE CJRS?

An employer who wishes to use the scheme does not need to have used it during the previous period.

Employers in the UK can make a claim whether they have had to close their business or whether it remains open.

The government does not expect publicly funded organisations to use the scheme. Partially publicly funded organisations may be eligible where their private revenues have been disrupted. Employees do not need to have been furloughed previously.

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The scheme can be used flexibly for employees for any amount of time or shift patterns. Employees can be furloughed on either a full time or a part-time basis and will be able to vary the amount of hours they work in agreement with the employee. Employees can be on any type of employment contract.

HOW DOES THE EXTENSION DIFFER FROM WHAT HAS COME BEFORE?

1. During October, the Government was paying 60% of salaries. This has now been increased to 80%, at least until the government's review in January.
2. The reference period for calculating wages is now different. Employers can claim for an employee who was on their PAYE payroll on 30th October 2020, providing a PAYE Real Time Information (RTI) submission had been made to HMRC between 20th March 2020 and 30th October, notifying a payment of earnings to that employee.
3. Claims can be made for employees that have not been furloughed before. For employees that have been furloughed previously, employers must use the same calculations for calculating reference pay and usual hours.
 - a. If an employee meets the criteria of the extended scheme but was not previously eligible, 80% of wages must be calculated for employees on a fixed salary at 80% of the wages payable in the last pay period ending on or before 30th October.
 - b. For employees whose pay varies, their wages will be calculated as 80% of the average payable between 6th April 2020 and the day before their furlough starts. If their employment started after 6th April, their average wages will be calculated between their start date and the day before their furlough starts.
4. More details can be found here. www.gov.uk/guidance/claim-for-wage-costs-through-the-coronavirus-job-retention-scheme
5. 4. Employees who have been made redundant or whose employment has ended can be rehired. If an employee was on the payroll on 23rd September 2020, but has subsequently been made redundant or stopped working for their employer, they can be reemployed and claimed for providing the employer has made a PAYE RTI submission for the employee between 20th March and 30th October.
6. 5. An employee who was on a fixed term contract and on payroll on 23rd September, but whose contract expired after 23rd September can be re-employed and claimed for providing other eligibility criteria are met.

EMPLOYEES ON FURLOUGH

Employees with health issues

Employees who are either shielding or need to stay at home with someone who is shielding can be furloughed. Employees that have caring responsibilities as a result of coronavirus (including needing to look after children) can also be furloughed.

The CJRS is not intended to be used for short-term sick leave, however employers who wish to furlough employees who are currently off sick for business reasons they may do so. If a furloughed employee becomes ill (whether because of Coronavirus or any other reason), it is up to the employer to decide whether to keep the employee on furlough or to move them on to SSP.

Can an Employee work?

As was previously the case, an employee cannot do any work for their employer that makes money or provides services to their employer or any organisations linked to their employer during the hours that they are recorded as being on furlough.

An employee can take part in training, volunteer for another employer or organisation or work for another employer if their contract allows.

Work which could be done includes:

Furloughed employees will retain their rights at work, including:

- Statutory Sick Pay
- Annual Leave
- Maternity, Paternity and other parental rights
- Rights against unfair dismissal
- Redundancy payments
- To be paid at least the national minimum wage for hours worked

In addition, the working tax credits working hours easement will apply for this period of the CJRS extension. Employees on statutory parental leave will see no change from CJRS.

IMPORTANT DATES

11th November 2020

Employers can begin submitting claims under the extended CJRS for periods beginning 1st November 2020 from this date.

13th November 2020

For any employees retrospectively placed on furlough from 1st November 2020, a retrospective agreement must have been put in place on or before this date.

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30th November 2020

This is the deadline for any claims made in respect of the claim period ending 31st October 2020.

THE JOB SUPPORT SCHEME AND JOB RETENTION BONUS

The Job Support Scheme (JSS) was due to come in to force on 1st has been delayed until the furlough scheme ends and will then be reviewed.

The Chancellor has confirmed that the Job Retention Bonus (JRB) will fall away due to the extension of the furlough scheme until March 2021. The JRB will not be paid in February 2021 and the government have said that a retention incentive will be re-deployed at the appropriate time.

USEFUL LINKS

www.gov.uk/government/publications/extension-to-the-coronavirus-job-retention-scheme/extension-of-the-coronavirus-job-retention-scheme

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

www.gov.uk/guidance/calculate-how-much-you-can-claim-using-the-coronavirus-job-retention-scheme

PEACE OF MIND THROUGH DIFFICULT TIMES

In uncertain times, the only thing we can say for certain is that nothing will stay the same for long.

It is entirely possible, therefore, that new legislation will have been introduced which will mean that all or part of this briefing no longer reflects the current law.

Because of this, we ask you to consider that, although correct at time of printing, information in this sheet may no longer be up to date and it is always best practice to consult with a lawyer about anything contained in this briefing.

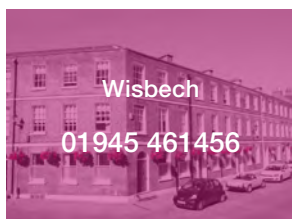
Our lawyers are available to help answer any of your questions about this issue or to help with any other legal concern you have.

Please contact Fraser Dawbarns directly for up-to-date information on your specific circumstances.

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- [Could an LPA Have Helped Me During the Lockdown?](#)
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- [Coronavirus and Business Interruption Insurance](#)
- [Winding Down the Furlough Scheme](#)
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