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Furlough Advice

Further information has been released by Government and analysed by our solicitors, O'Reilly Stewart. Here is a summary of the latest information.

1. Eligibility

- a. Employers must have created and started a PAYE payroll scheme on or before 28 February 2020
- b. Enrolled for PAYE online – this can take up to 10 days
- c. Have a UK bank account

2. Apprentices

Apprentices must be furloughed in the same way as other employees. They can continue to train whilst furloughed. Employers must pay Apprentices NLW/NMW for all time spent training. This might be above and beyond the 80% when it comes to training and subject to changes in NLW/NMW since 1st April 2020.

3. Administrators

An Administrator can access the Scheme however the expectation is only where there is a reasonable likelihood of rehiring the workers i.e. administration and pursuit of a sale of the business.

4. Employees

- a. Employees can be rehired if they left on or after 28th February 2020 and placed on furlough to benefit from the Scheme.
- b. Claims can be made for employees that started unpaid leave after 28th February 2020.
- c. Employees who are on sick leave or self-isolating get SSP. They can be furloughed and claimed for once they are no longer receiving SSP.
- d. Shielding Employees (doing so in accordance with public health guidance) can be furloughed or if an

employee needs to stay home with someone who is shielding, if they are unable to work from home and you would otherwise have made them redundant.

- e. Employees who are unable to work because they have caring responsibilities resulting from coronavirus can be furloughed i.e. employees that need to look after children can be furloughed.
- f. Fixed term contracts – Employers can place these employees on furlough. Contracts can be renewed or extended during the furlough period. Where a fixed term contract ends and is not renewed, that employee can no longer be furloughed.
- g. Maternity leave, adoption leave, paternity leave or shared parental leave – employers can claim through the Scheme for enhanced (earnings related) contractual pay for such employees.
- h. Employers can claim for any regular payments they are obliged to pay to the employee including wages, past overtime, fees and compulsory commission payments. Discretionary bonus (including tips) and commission payments and non-cash payments should be excluded.
- i. The reference salary should not include the cost of non-monetary benefits provided to employees including taxable BIK and those through a salary sacrifice scheme which reduce an employee's taxable pay. Benefits provided by the employer should be in addition to the wages paid under the Scheme. HMRC agreed COVID-19 counts as a life event that could warrant a change to a salary sacrifice arrangement.

5. Non-Employees

In addition to employees, the grant can also be claimed for the following, if they are paid via PAYE:

- A. Office Holders
Furlough and any ongoing payment during the furlough, will need to be agreed between the office holder and the party who operates PAYE on the income received for holding their office.
- B. Company Directors
Where a Board of Directors considers that it is in compliance with the statutory duties of an individual salaried director, the Board can decide to that such directors can be furloughed. This should be adopted as a decision of the Company, noted in the company records and communicated in writing to the director concerned.
Where furloughed directors need to carry out particular duties to fulfil the statutory obligations they owe to the Company, they may do so provided they do no more that would reasonably be judged necessary for that purpose.
This also applies to salaried directors who are directors of their own Personal Service Company.
- C. Salaried Members of LLPs
Members designated as employees for tax purposes are eligible to be furloughed. To furlough a member, the terms of the LLP may need to be varied by a formal decision of the LLP.
- D. Agency Workers
Agency workers paid through PAYE are eligible to be furloughed, including when employed by an

umbrella company. Furlough should be agreed between the Agency as the employer and the worker however discussion should take place between the Agency and the client. Where an umbrella company is involved, it is for the umbrella company and the worker to agree.

- E. Limb (b) Workers
Where paid through PAYE, Limb (b) workers can be furloughed. Those however who pay tax on their trading profits through Income Tax Self-Assessment may instead be eligible for the Self-Employed Income Support Scheme.
- 6. Rotation**
Employees can be furloughed multiple times, but each separate instance must be for a minimum period of 3 consecutive weeks.
- 7. Redundancy**
Grants under the Scheme cannot be used to substitute redundancy payments.
- 8. Other Employment whilst Furloughed**
If contractually allowed, employees are permitted to work for another employer whilst they are placed on furlough.