**COVID 19 UPDATE
Placing an employee on Flexible Furlough (advice as of 17.6.3020)**

FLEXIBLE FURLOUGH LETTER BEFORE USING THIS LETTER, PLEASE NOTE:

This template letter is intended for use to put employees on flexible furlough under the Revised Coronavirus Job Retention Scheme and is based on the official guidance available as at 17 June 2020. It can be used both for employees who are currently on full furlough and for those who have previously been on furlough but are currently working. Flexible furlough will be possible from 1 July. Wording in square brackets will require tailoring to reflect your company’s approach. We have included some brief drafting notes in red text for your information, which should be removed prior to sending this letter to employees.

HMRC require you to keep a record of the employee’s agreement to flexible furlough for five years.

Note that employees can only be placed on furlough (whether full or flexible) under the Revised Scheme if they had previously been on furlough for at least a three-week period under the Scheme in its original form, at any time between 1 March and 30 June 2020. The last date on which an employee could be furloughed for the first time under the Scheme in its original form was 10 June. There are exceptions for employees who have been absent on statutory family leave, who transferred to a new employer under TUPE after 10 June, or who are armed forces reservists returning to their job after a period of active service.

Elements of this letter need to be tailored and also allow for the possibility of redundancy if this is a route that you are considering.

Please note that you should have had a return to work conversation with your employee before they return to work. You should have a record of this and have identified any pre-existing conditions that you staff have, those who may need to shield or live with those that are shielding. You should also ascertain their fitness to return to work, their means of travel and have in place a reporting procedure should they or those with whom they live or have regular contact with display COVID-19 symptoms.

It is also recommended that you complete a risk assessment of your business which employees can reference and that you furnish them with a copy of this. You should also advise of any training they require prior to returning to work and inform them of alternations to standard operating procedures within your business. There may be elements of their role which will alter to ensure or have changed in light of the COVID-19 pandemic, returning staff should be made aware of these before returning to the workplace.

**TEMPLATE LETTER**

Date

Dear [Employee Name]

**FLEXIBLE FURLOUGH**

We are writing to you regarding the continuing impact of the Covid-19 pandemic on our business, which means that we now need to seek your agreement to vary the terms of your contract of employment with the Company. This is so that we can continue to access financial support under the Government’s Coronavirus Job Retention Scheme (the Scheme) in its revised form (the Revised Scheme) while we work towards the recovery of the business.

The Scheme in its original form did not permit employees to carry out any work for their employer while they were on Furlough Leave. However, under the Revised Scheme, employees can work on a part-time basis and receive pay at their normal contractual rate for the hours that they work, plus Furlough Pay in accordance with the terms of the Revised Scheme for the portion of their usual hours that they are not working (their ‘Furloughed Hours’). This is known as ‘Flexible Furlough’.

[*IF EMPLOYEE IS CURRENTLY ON FURLOUGH UNDER THE SCHEME IN ITS ORIGINAL FORM:* You have been on Furlough Leave since [DATE].] [*IF EMPLOYEE WAS ON FURLOUGH PREVIOUSLY BUT HAS SINCE RETURNED TO WORK:* You were on Furlough Leave from [DATE] to [DATE] but have since returned to work.] We now wish to agree with you that you will move onto Flexible Furlough with effect from [DATE].

Your usual hours are [NUMBER] per [day/week/month]. During your Flexible Furlough, we will require you to work for [NUMBER] hours per [day/week/month] (your ‘Furlough Working Hours’), with the remaining [NUMBER] hours per [day/week/month] constituting your Furloughed Hours.

You will be required to work your Furlough Working Hours across the following days and times: [*INSERT DETAILS OF WORKING PATTERN (e.g. Monday to Friday, 8am to 12pm / or Mondays and Tuesdays, 8am to 6pm)*].

Should the number or pattern of Furlough Working Hours we require you to work change, we will confirm your amended Furlough Working Hours and Furloughed Hours and working pattern in writing. We will aim to give you at least [NUMBER] days’ notice of any such change.

*NOTE: In order to claim under the Revised Scheme for an employee on Flexible Furlough, you will need to calculate the employee’s “usual hours” and their Furloughed Hours, with funding under the Revised Scheme only available in respect of the Furloughed Hours. There are detailed instructions on how to do this in the Government guidance for employers, which we discuss in our FAQs on Furlough under the Revised Coronavirus Job Retention Scheme, available on our website.*

*While we have provided above that the Company will notify the employee of any change in the number or pattern of their Furlough Working Hours, strictly speaking, you should seek to agree any such change with the employee rather than imposing it.*

We will pay you [*INSERT DETAILS OF EMPLOYEE’S NORMAL PAY (e.g. hourly rate, shift allowances, etc.)*] for your Furlough Working Hours, calculated in accordance with your terms and conditions of employment.

For your Furloughed Hours, your normal entitlement to pay under your terms and conditions of employment will be suspended. Instead, we will pay you Furlough Pay, calculated in accordance with the terms of the Revised Scheme as **80%** ( you may wish to increase this) of your pay for your Furloughed Hours, up to the maximum permitted under the Revised Scheme for those hours.

*NOTE: Employees are entitled to receive 80% of their pay for their Furloughed Hours, up to the cap set under the Scheme. For an employee who is on full furlough (i.e. who does not carry out any work for their employer while furloughed), that cap remains set at £2,500 per month. However, the cap is reduced for employees who are on Flexible Furlough on a pro rata basis depending on the proportion of their usual hours that they work. We discuss this, as well as the details of what must be included in Furlough Pay, in our FAQs on Furlough under the Revised Coronavirus Job Retention Scheme, available on our website.*

Your Furlough Pay and your pay for your Furlough Working Hours will be subject to deductions for tax and employee national insurance contributions [and employee pension contributions]. As far as practicable, payments will be made on your normal pay days.

During Flexible Furlough, your continuity of employment will continue.

*NOTE: This letter assumes that the employer will pay 80% of the employee’s pay for their Furloughed Hours, although it is open to employers to top up employees’ Furlough Pay to 100% of normal pay if they wish to do so. If you intend to top up pay for Furloughed Hours you will need to amend the wording of this letter accordingly.*

*Note that from August, the amount of financial support provided by the Government under the Revised Scheme will gradually be reduced (initially by removing coverage of employer National Insurance Contributions and pension contributions and then by tapering the percentage of employees’ wages that employers can claim). We set out details of this reduction in our FAQs on Furlough under the Revised Coronavirus Job Retention Scheme, available on our website.*

[*IF YOU OPERATE A COMPANY SICK PAY SCHEME:* Any company sick pay payable in respect of sickness during Flexible Furlough will be based on the adjusted rate of pay to which you are entitled during Flexible Furlough.]

Your other terms and conditions of employment will remain as set out in your contract of employment during the period of Flexible Furlough.

*NOTE: We have assumed that other than pay and hours of work (and company sick pay entitlement, if applicable), the employee’s terms and conditions will remain as set out in their contract of employment during Flexible Furlough. However, if you do wish to make any other changes, you need to specify them here. In addition, if you are moving an employee who is currently on full furlough onto Flexible Furlough, and you had made any changes to their terms during the full furlough other than to hours and pay, you should specify here whether those changes will continue to apply during Flexible Furlough.*

Your Flexible Furlough shall end on the earliest of the following events:-

1. The Revised Scheme coming to an end (currently anticipated to be 31 October 2020) or the Company no longer being able to claim under the Revised Scheme in respect of you; or

2. the Company requiring you to return to work on the basis of your normal contractual hours. We will try to give you at least [NUMBER] days’ notice of when we need you to return; or

3. your employment with the Company being terminated for any reason, whether by you or by the Company.

[Please note that the level of financial support available to the Company under the Revised Scheme will be gradually reduced from August until the Revised Scheme comes to an end on 31 October 2020. We are currently working towards our business recovery and we are hopeful that the support that is available under the Revised Scheme will be sufficient to maintain employment during this time. However, please be aware that if the Company cannot afford to maintain employment as the level of financial support available under the Revised Scheme decreases, we may consult with you about possible redundancies, and take steps to implement any necessary dismissals at the appropriate time.]

*NOTE: The above optional square bracketed paragraph shaded in green explains that the level of financial support available to employers under the Revised Scheme to fund employees’ furlough pay will be gradually reduced from August. It also acknowledges the possibility that the reduction in support may make redundancies necessary before the Revised Scheme comes to an end.*

*Government guidance for employees states that an employer can make redundancies during furlough, but this is subject to employees’ ordinary employment rights (e.g. the right to a statutory redundancy payment and the right not to be unfairly dismissed). We suggest that you seek legal advice if you are considering consulting on or implementing redundancies while the Scheme is in operation. If you are confident that you will not need to consider redundancies due to the tapering down of financial support under the Revised Scheme you should delete the above paragraph.*

If you are still on Flexible Furlough towards the end of October when the Revised Scheme will shortly be due to end, we will consider and consult with you at that time about whether we are in a position where you can return to work on the basis of your normal contractual hours, or if we may need to make changes to terms and conditions, or consider redundancies. While we hope that we will not need to make redundancies, the impact of the pandemic on our business is severe. Please be aware that, if redundancies do become necessary, we may take steps to implement any necessary dismissals at the appropriate time, including while the Revised Scheme remains in operation.

*NOTE: This wording informs employees of possible outcomes when the Revised Scheme comes to an end. It makes clear that, while it is hoped that redundancies will not be required, if they are necessary, the Company may take steps to implement them at the appropriate time, including while the Revised Scheme is still in operation. As noted above, Government guidance for employees states that an employer can make redundancies during furlough, but this is subject to employees’ ordinary employment rights (e.g. the right to a statutory redundancy payment and the right not to be unfairly dismissed). We suggest that you seek legal advice if you are considering consulting on or implementing redundancies while the Scheme is in operation. Please note that you must consult on redundancies based on NI law which should take place at least 30 days before the redundancies are due to begin or 90 days if more than 100 employees are affected. If this doesn't happen, you or your representative can take your employer to an Industrial Tribunal which can award up to 90 days' pay in compensation to each employee*.

While you are on Flexible Furlough, we will not provide you with any work during your Furloughed Hours and you may not do any work for us or for any organisation linked or associated with us during your Furloughed Hours. However, we may require you to undertake training during your Furloughed Hours. You can also undertake volunteer work during your Furloughed Hours, although you should take care to follow Government guidance on social distancing and self-isolation, as well as adhering to any updated or subsequent guidance in the event that increased lockdown measures are implemented to combat a second wave of the virus.

If you currently have a second job with another employer, you may continue with that job, provided that it does not prevent you from being able to work for us during your Furlough Working Hours. If you took up your second job while you were on Furlough Leave from the Company and it prevents you from being able to work for us during your Furlough Working Hours, you will need to either change your working hours in that job, or give up that job. Please speak to [your line manager/HR] if you find yourself in this position.

*NOTE: The Government guidance indicates that employees may undertake paid work for another organisation where this is permitted under their employment contract and that this won’t affect your ability to claim in respect of them under the Scheme.*

*The above paragraph permits employees to continue to work in a second job with another employer, provided that it does not prevent them from being able to work for the Company during their Furlough Working Hours. This wording aims to deal with the situation where an employee who has been on furlough under the Scheme has taken up paid work with another organisation during their furlough leave. While on full furlough that other paid work would not have given rise to any difficulties, but it may conflict with their Furlough Working Hours when they move onto Flexible Furlough with you. The employee is given the option of changing their working hours in their second job, or giving up that job, and is advised to speak to their line manager/HR to discuss the situation.*

You may not undertake any new paid work for any other organisation, or on your own account, without our permission. If you wish to undertake other paid work during your Flexible Furlough, please contact [your line manager / HR] to seek our permission. Please note that, if we do agree for you to undertake other paid work, you will still need to be able to work for us during your Furlough Working Hours, complete any training that we may require you to carry out during your Furloughed Hours and to return to work for us on the basis of your normal contractual hours (potentially at short notice) if we require you to do so.

*NOTE: We have suggested that employees are not permitted to undertake new paid work for another organisation or on their own account during Flexible Furlough without permission and reminded employees that if they do undertake other paid work they still need to work for the Company during their Furlough Working Hours, be able to complete any required training during their Furloughed Hours and be available to return to work should you require them to do so.*

*Also note that if you require employees to complete training during their Furloughed Hours, then you must pay them at least the NLW/NMW for the time spent training, even if this is more than the percentage of their wage that will be subsidised by the Government under the Revised Scheme.*

It is essential that we have a record of your agreement to the terms in this letter as an indication of your agreement by [DATE] in order to place you on Flexible Furlough so that we are able to claim in respect of you under the Revised Scheme. Please confirm your agreement by signing and returning this letter to [*contact details*].

*NOTE: Although it would be preferable for the company to have a copy of the letter signed by the employee as a record of acceptance, if the letter is sent to employees by email, they may not have access to printing and scanning facilities that would enable them to provide this. Accordingly, you could as an alternative provide for employees to confirm their agreement by email or text message to an appropriate contact at the company (e.g. HR or line manager) using a set form of words, such as “I confirm my agreement to the variation of my terms and conditions of employment to place me on Flexible Furlough as described in the letter from the company dated [DATE]”, or by replying to the company’s email using voting buttons.*

Kind regards

[Name, position]

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I confirm my agreement to the variation of my terms and conditions of employment as stated in this letter.

Signed: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Date \_\_\_\_\_\_\_\_\_\_\_

 (Employe

***Disclaimer****: This letter and its drafting notes do not constitute specific legal advice and should not be relied upon as such.*