



## Update on the CJRS and Flexible Furlough

**18 June 2020**

On 15 June 2020, the Government provided further guidance on the Coronavirus Job Retention Scheme (**CJRS**), including the new Flexible Furlough Scheme. A summary of the updated Guidance is set out below:-

1. From 1 July 2020, employers will have the flexibility to bring furloughed employees back into the workplace on a **part-time basis**. Flexibly furloughed employees no longer need to avoid doing any work for their employer. They can work part of the week and remain on furlough for the remainder of the week. It is up to the employer and the employee to decide and agree the hours of work and the hours of furlough.
2. Employers can continue to fully furlough employees until 31 October 2020. Flexible furloughing is **optional**. Fully furloughed employees cannot undertake any work for their employer but they can undertake training, or volunteer or work for another employer (if contractually allowed).
3. The CJRS is now closed to new entrants. However, **parents returning** to work after statutory parental leave, such as maternity or paternity leave, are eligible for furlough even after 10 June 2020.
4. From 1 July 2020, flexible furlough agreements can last any amount of time. Employees can also enter into a flexible furlough agreement more than once. It is important to note that where an employee starts a new furlough period before 1 July 2020, this must be for a minimum period of 3 weeks, even if this takes the employee past 1 July 2020. This means that there will need to be two claims for any overlapping claim of 21 days from 10 June onwards because of the need to claim on a month by month basis from 1 July. Although there is flexibility over the length of the furlough agreement, the period that employers claim for must be for a **minimum claim period of 7 calendar days**.
5. From 1 July 2020, claim periods must start and end within the same calendar month and must be at least 7 days unless you are claiming for the first few days or last few days in a month. The first time an

employer will be able to make claims for July will be 1 July. Employers cannot claim for periods in July before this point. 31 July is the last day that employers can submit claims for the period ending on or before 30 June 2020.

6. The updated Guidance states that *"If you flexibly furlough employees, you'll need to agree this with the employee (or reach collective agreement with a trade union) and keep a **new written agreement** that confirms the new furlough arrangement"*. The agreement must be consistent with employment, equality and discrimination laws. Even if an employer has already a written furlough agreement in place with its furloughed employees, if the employer moves them onto flexible furlough, the employer will need something new in writing that sets out the new flexible furlough agreement.
7. A written record of the flexible furlough agreement should be kept for **five years**. This retention period is different from record keeping on pay which is addressed at point 11 below.
8. Employers **must inform** their employees that they have made a claim for their wages under the CJRS.
9. Calculating **usual hours and furloughed hours** – To claim under the CJRS, employers will need to calculate the employee's usual hours and record the actual hours they work as well as their furloughed hours for each claim period. The Guidance on "usual hours" is complex. In summary:-
  - (a) For employees with fixed hours and whose pay does not vary, you take the number of hours the employee was contracted to work at the end of the last pay period ending on or before 19 March 2020.
  - (b) For employees who work variable hours, the usual hours are calculated based on the higher of either (i) the average number of hours worked in the tax year 2019 to 2020 or (ii) the corresponding calendar period in the tax year 2019 to 2020.

When you calculate the usual hours, you should include any hours of leave for which the employee was paid his/her full contracted rate (such as annual leave) and any hours worked as overtime (but only if the pay for those hours was not discretionary).

10. Once the usual hours are established, the employer will then need to calculate the number of working and furloughed hours for

each employee. Employers **must agree** with the employee how many hours will be worked. The employee will be furloughed for the rest of their usual hours. Employers will then need to calculate 80% of the employees' usual wages to establish how much they can claim under the CJRS for the furloughed hours.

11. Employers must keep the following **pay records** pay for a period of 6 years:- (i) the amount claimed and the claim period for each employee; (ii) the claim reference number for the employers' records; (iii) the employers' calculations; (iv) usual hours worked, including any calculations for employees flexibly furloughed; and (v) actual hours worked for employees flexibly furloughed.
12. The Guidance now includes a new section on the process employers should follow if they have **made an error** when claiming. The Government's preferred method of raising queries is through Webchat and there is a request that direct contact with HMRC is to be kept to a minimum.
13. Overall, the updated Guidance outlining the Flexible Furlough Scheme is complex and the practicalities are likely to create administrative issues. One of the first priorities for employers now will be to agree a new Flexible Furlough Agreement with any currently furloughed employees if the employer wishes to implement flexible furloughing.
14. A link to the updated Guidance can be found [here](#).

**This article does not constitute legal advice and specific advice should be sought in respect of particular cases.**