

Business Update 23 October 2020

We used to say, 'There is nothing more unpredictable than the British weather' we now say, 'There is nothing more unpredictable than 2020!' As employers we have all been through a lot this year, and even if there is a distinct possibility that Christmas is not able to be spent with all of our loved ones, the break will be long overdue and welcome.

Job Support Scheme

First, we had JSS, then we had JSS expansion. We now have JSS *open* and JSS *closed*.

The *Job Support Scheme (JSS)* will come into effect on 1 November and as a lot of employers try and make informed decisions on their staffing levels, this late addition may be extremely helpful in saving jobs for viable businesses that are trying to make it through the winter. The scheme's aim is still to protect viable jobs with employers that are facing a lower demand over winter due to COVID-19. But what is the new scheme, who is eligible, and what does it cost employers?

Job Support Scheme OPEN – Employers facing decreased demand

The scheme's T&C's are the same as JSS version 1 where:

- ◆ Employers can apply for employees that have been on PAYE payroll on or before 23 September 2020 (including RTI submissions).
- ◆ An employee does not have to have been placed on furlough to be eligible for the JSS.
- ◆ Employers must pay their employees what they are due in the normal pay period and then claim back any grants from the Government in arrears. (Employers will not be able to claim back JSS until December).
- ◆ The Government payments will be taxable, and the employer will be required to cover any National Insurance and pension contributions.

So what is changed:

- ◆ Employees must work at least 20% of their usual hours to be eligible and this must be paid by the employer.
- ◆ Employees will then receive 66.67% of their normal pay for the hours not worked, divided as follows:
 - ◇ 61.67% can be claimed back from the Government, up to a cap of £1,541.75 per month



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- ◇ 5% paid by the employer, up to a maximum of £125 per month (employers can pay more if they wish)
- ◇ 33.33% shouldered by the employee through loss of earnings

We summarise what this means for various examples below.

Employee Working Time (% of usual hours)	20.00%	30.00%	40.00%	50.00%	60.00%	70.00%	80.00%
Non-working Time (% of usual hours)	80.00%	70.00%	60.00%	50.00%	40.00%	30.00%	20.00%
% of usual pay that the employee will receive	73.34%	76.67%	80.00%	83.34%	86.67%	90.00%	93.33%
JSS Grant	49.34%	43.17%	37.00%	30.84%	24.67%	18.50%	12.33%
Employer cost as % of usual pay	24.00%	33.50%	43.00%	52.50%	62.00%	71.50%	81.00%

Job Support Scheme CLOSED – Employers that are legally required to close

The expansion will only cover an employer that, because of restrictions set out by the Government, is legally required to close their premises. It includes any premises restricted to delivery or collection only services.

- ◆ It will only apply to an employee that is unable to work (paid or unpaid) for that employer.
- ◆ The employer must be instructed to cease work for a minimum of 7 consecutive calendar days.
- ◆ Employees that meet eligibility criteria will be able to receive 2/3 of their wages for the time not worked, paid by the employer, and fully refunded by the JSS Closed up to a limit of £2,083.33 per month.
- ◆ Employers that are required to close due to a specific workplace outbreak of COVID by the local public health authorities are *not* eligible.



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Eligibility for JSS Open and Closed

The scheme opens on 1 November until 30 April 2021 but will be reviewed in January. Employers can only start claiming JSS from 8 December 2020 for November's pay period and more details will be published by the end of October.

Employees can be on any type of contract including zero hours or temporary contracts, and agency workers are eligible too if they are employees for income tax purposes. An employer can not claim JSS open and closed for the same employee on the same day but can claim open and then closed in separate periods (subject to meeting criteria).

SMEs with less than 250 employees on 23 September 2020 are eligible for JSS open; however, employers with 250 or more employees must undergo a Finical Impact Test (FIT) to prove they have been adversely affected due to COVID. Further details on the FIT are available at <https://www.gov.uk/government/publications/the-job-support-scheme/the-job-support-scheme>

Working arrangement and agreement with employees

Like the CJRS, employers must have a written agreement with their employees to implement JSS open or closed. Each temporary working agreement must:

- ◆ Cover at least 7 consecutive days.
- ◆ Be consistent with employment, equality and discrimination laws.
- ◆ Be made available to HMRC on request.

Employers must keep a record of the agreement for 5 years and keep accurate records of how many hours each employee works and the number of hours they do not work. Further guidance will be released by the Government by the end of October on what must be included in a written agreement.

Conditions of JSS

Unlike the CJRS, employees *cannot* be made redundant or placed on notice of redundancy during a period of JSS. Therefore, if redundancies are required, you must cease the JSS. Employees can cycle on and off the scheme but each period of JSS must be for 7 consecutive days.

This JSS open and closed *does not* cover National Insurance Contributions (NICs) or pension contributions – these must be paid by the employer and reported to HMRC via a Full Payment Submission (FPS).



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The JSS grant received from the Government must be paid in full to employees and employers must pay their employees upfront before claiming the funds back through the JSS scheme.

The Government is encouraging all large employers not to make capital distributions whilst claiming JSS to include dividend, charge, free or other distribution, or equivalent payment that a partnership might make to its partners.

Calculating JSS Open

We are still awaiting details of JSS closed; however, JSS open guidance is available. The employees' *reference salary* is made up of the regular payments an employer is obliged to make, including:

- ◆ Regular wages
- ◆ Non-discretionary payments for hours worked, including overtime
- ◆ Non-discretionary fees
- ◆ Non-discretionary commission payments
- ◆ Piece rate payments

Calculations cannot include:

- ◆ Discretionary payments (where the employer was under no contractual obligation to pay), including any tips, discretionary bonuses, discretionary commission payments, non-cash payments and benefits like benefits in kind (such as a company car) and salary sacrifice schemes.

Reference salary

Reference salary for *fixed pay* employees is the *greater of*:

- ◆ The wages payable in the last pay period ending on or before 23 September 2020; or
- ◆ The wages payable to the employee in the last pay period ending on or before 19 March 2020, this may be the same salary calculated under the CJRS scheme.

This means any employees that may have agreed a reduction in wage since March may be eligible to receive their pre-agreement reference salary.

Reference salary for *variable pay* employees is the *greater of*:

- ◆ The wages earned in the same calendar period in the tax year 2019 to 2020; or
- ◆ The average wages payable in the tax year 2019 to 2020; or



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- ◆ The average wages payable from 1 February 2020 (or the employee's start date if later) until 23 September 2020.

Usual hours

For employees with *fixed hours*, usual hours is calculated based on the *greater of*:

- ◆ The hours that the employee was contracted for at the end of the last full pay period ending on or before 23 September 2020; or
- ◆ The hours that the employee was contracted for at the end of the last full pay period ending on or before 19 March 2020.

This must include hours paid as annual leave and statutory leave.

For employees with *variable hours*, usual hours are calculated based on the *greater of*:

- ◆ The number of hours worked in the same calendar period in the tax year 2019 to 2020; or
- ◆ The average number of hours worked in the tax year 2019 to 2020; or
- ◆ The average number of hours worked from 1 February 2020 (or the employee's start date if later) until 23 September 2020.

This must include hours paid as annual leave and statutory leave.

Further guidance on how to calculate regular pay and usual hours are available at: <https://www.gov.uk/government/publications/the-job-support-scheme/the-job-support-scheme>

Please contact your Beststart HR Consultant or any of our HR Team on 01438 747 747 or email enquiries@beststarthr.com to discuss how these may impact your specific circumstances.

Whilst every effort has been taken in compiling this Business Update, the current situation is fast changing and Government announcements on COVID-19 can be clarified and/or amended after their initial publication. Beststart HR cannot be held responsible for any errors or omissions. The update is not intended to be a substitute for specific advice from Beststart HR or other suitably qualified professional.



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