

Business Update 17 June 2020

Following recent Government updates regarding the CJRS, from 1 July 2020 employers will be allowed to bring their furloughed workers back to work on a part-time flexible basis and claim any unworked hours through the CJRS. This new type of furlough is called Flexible Furlough. We have outlined the key elements of it to help you in your planning for returning workers from furlough before the scheme ceases on 31 October 2020.

The Coronavirus Job Retention Scheme (CJRS) – Flexible Furlough

The Chancellor announced on 12 May 2020 that support through the CJRS will continue until the 31 October 2020. The scheme would be amended to include flexibility and a wind down of the support as the UK re-opens and tries to adapt to the new 'normal' with COVID-19.

Flexible Furlough

From 1 July, employers will be able to bring furloughed employees back to work for any amount of time and on any working pattern and claim furlough for the normal working hours that an employee has not worked. Flexible furlough is only available for workers that have been previously furloughed for a least a 3-week period between 1 March and 30 June. The cut-off date for new furloughed employees was 10 June, therefore if your workers have not been furloughed already, sadly this scheme will not be available to these workers.

As with normal furlough guidance, to implement flexible furlough you must:

1. Consult with workers on your plans to implement flexible furlough

This should include essential information such as: what hours you require them to work; when they are required to work; where they are required to work; how long the period of flexible furlough will last; pay for periods of work; and pay for periods of non-work.

There are no minimum hours a worker must complete each week and the hours worked can be any pattern that suits the business. That said, if you want to ask employees to work outside their normal working pattern, it may be harder to get agreement so this should be factored into your decision making.

Within flexible furlough you can amend the working hours on a weekly basis (minimum claim period of 7 calendar days), but you must ensure you consult with your workers on each change or provide them with a proposed schedule and then consult further if you need to amend the plan. Consultation details will be dependent on the company, this may be as simple as a



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meeting with employees to discuss and agree the times of work or may require a more formal process if unionised.

A business must also take employees health and safety into consideration and if you require your workers to return to the workplace you should complete a COVID Secure Assessment (please see Business Update dated 13 May for further details). The current Government guidelines are to '*work from home if you can*' and we would encourage all employers to be as flexible as they can and to offer home working where possible, for as long as possible to minimise the risk of any health and safety and discrimination claims. This is especially important for workers with childcare concerns or those that may be shielding or classed as clinically vulnerable.

NOTE – Due to recent investigations that BAME may be more likely to develop a severe illness from COVID-19, employers may wish to consider including any BAME workers in a H&S review. It must be stated that BAME individuals have not been placed on the list of clinically vulnerable people at this time and no specific Government action has been advised for businesses, therefore this is not a requirement but may help ease staff concerns.

2. Confirm the agreement in writing

As with any changes to workers terms and conditions (even if temporary), you must confirm changes in writing and keep suitable records. You do not have to have a signed agreement from your workers to implement flexible furlough but may wish to do so if you or your workers have any concerns.

You must ensure that any flexible furlough arrangements are implemented fairly and in line with employment, equality, and discrimination laws. You do not have to place all employees on flexible furlough but must be able to demonstrate a clear business case for any decisions made.

For example, a stores department were requested to return to work on flexible furlough for 10 hours a week, while the sales department were only required for 5 hours due to different work demands for their roles.

All employers must keep a written record of the agreement for 5 years as it may be subject to a HMRC audit and you must keep detailed records of how many hours your workers complete and the number of non-working hours that you claim for.



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3. Complete the period of flexible furlough

During any period of work, your workers must receive their normal pay as detailed in their terms and conditions of employment.

Please be aware that any pay increases confirmed to employees before or during furlough, such as an increase to National Living Wage (NLW), must be implemented at this stage. Likewise, if any workers have agreed to take a temporary or permanent reduction of pay, the reduced pay may be implemented from the date agreed.

During any periods of non-work, normal furlough rules apply and include:

- ◆ Workers must not complete any work for you or an associated/linked business.
- ◆ They may work for another employer if permitted under their current terms and conditions of employment.
- ◆ They may complete voluntary work.
- ◆ They may take part in training.

On a workers return from furlough it is important to update them on any business updates and ensure if they are required to attend the workplace they have received sufficient training and support to ensure they can work safely in the workplace.

4. Claim for flexible furlough periods

As with normal furlough you may include the following when calculating wages:

- ◆ Regular wages
- ◆ Non-discretionary payments (e.g. contractual overtime, commission, fees, etc.)

It is essential to remember that the pay for working and non-working may be different. A working period must be calculated on contractual rates and must include any pay increases or decreases that have come into effect. However, the non-working (furloughed rate) must be calculated based on the worker's last pay period before 19 March 2020, or the average wage for the tax year 2019/20, or the corresponding period in previous tax year.

Example: An employee that receives NLW and therefore observed an increase in salary with effect from 1 April 2020, will receive £8.72 per hour for any work completed but any period of furlough will be calculated from the pre-April rate of £8.21 per hour.

For flexible furlough periods you must keep accurate records and calculate the worker's usual working hours and record the actual hours worked and their furloughed hours.



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Example: Employee contracted to 35 hours per week.

Normal hours (1 July to 31 July)	Worked hours	Furloughed hours
35 hours per week, 7 hours per day, 23 working days in July (23 x 7 = 161 hours)	Worked 5 hours every Monday and Friday starting from 1 July	Normal hours – worked hours
161 hours in July	45 hours worked	116 hours

From 1 July 2020 you may not (during one claim submission) claim for overlapped months. This means that you may be required to make two separate claims for any overlapped months.

Example: An employee is on furlough from 1 May 2020 until 15 July 2020 and then commences flexible furlough. You may claim for 1 May 2020 until 30 June 2020 in one claim and then submit a separate claim for any furlough in July.

For any period of full furlough, the calculation remains the same; however, to calculate flexible furlough the Government have created detailed guidance and calculators to support you when calculating your workers furlough periods <https://www.gov.uk/guidance/calculate-how-much-you-can-claim-using-the-coronavirus-job-retention-scheme#work-out-80-of-your-employees-usual-wage>. We advise that the calculator is used to ensure calculations are correct and businesses should speak to their financial advisors if they need any guidance on this matter.

You may make a claim up to 14 days before a claim period end date and are encouraged to make claim periods that match your payroll dates. However, you should not claim for any flexible furlough unless you are certain of the exact number of hours worked. If a company claims in advance and the worker works more hours, you will be required to pay back some of the grant to HMRC.

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.



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