

Insights

CORONAVIRUS: UK JOB RETENTION SCHEME – GOVERNMENT FILLS IN SOME GAPS IN THE GUIDANCE

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SUMMARY

As an update to our [27 March blog “Coronavirus: UK Job Retention Scheme – further government guidance”](#), the [UK government has revised its online guidance](#) to provide more information on how the Coronavirus Job Retention Scheme (CJRS) operates. A number of points have been clarified, whilst some important issues have still not been addressed.

The following CJRS points have been clarified:

Who can be furloughed?

Clarifications on who can be furloughed include:

- **Terminated and rehired staff:** employees who were terminated on or after 28 February, whether or not for redundancy, can be furloughed, providing the employer rehires them. Previously the guidance only talked about those who were made redundant;
- **Carers/shielding employees:** employees who are unable to work from home because they have caring responsibilities, or because they are shielding in line with public health guidance, are expressly covered;
- **Insolvency:** employees of a company which is in administration may be furloughed, although the government expects administrators to only access the CJRS if there is a reasonable likelihood of rehiring them; and
- **Non-employees:** whilst we already knew that non-employees such as agency workers who are paid through PAYE could be furloughed, the updated guidance highlights that company directors and salaried members of LLPs are also covered, as are apprentices.

What elements of staff remuneration can be reclaimed?

- **Fees, commission and bonuses:** previously the guidance said these aspects of remuneration could not be part of the remuneration that could be reclaimed. However, the guidance now provides that employers can claim for any regular contractual payments, including overtime, fees and compulsory commission payments that they have worked before being put on furlough. However, discretionary bonuses/commission and benefits in kind are excluded.
- **Salary sacrifice:** The guidance also indicates that for employees who have reduced their salary under a salary sacrifice scheme, the reference salary for reclaim is the reduced salary, not their notional pre-sacrifice salary.
- **Apprenticeship Levy and Student Loans:** Grants from the CJRS do not cover these, which should therefore continue to be paid as usual.

What can furloughed staff do whilst on furlough?

- The baseline position remains that furloughed staff must not work or provide any services for their employer while furloughed, although they can undertake training and do volunteer work. However, the revised guidance highlights that if contractually allowed, staff can work for a different employer whilst on furlough. This suggests such staff could receive a wage from their new (temporary) employer on top of the furlough pay from their main employer.

Key points that remain unclear

Many aspects of furlough still require clarification, including whether it is possible for staff on furlough to take holiday and whether employees who TUPE over after 28 February can be furloughed by their new employer. We hope that further guidance addresses these points soon.

BCLP has assembled a COVID-19 Employment & Labor taskforce to assist clients with employment law issues across various jurisdictions. You can [contact the taskforce here](#). You can also view other thought leadership, guidance, and helpful information on our dedicated [COVID-19 / Coronavirus resources page](#).

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