

Another Friday night, another [announcement](#) on the Coronavirus Job Retention Scheme! But this is at least a big one and will be genuinely helpful to employers' forward planning.

The changes concern how far employers will be required to contribute to the wage costs of staff who have been furloughed. The good news for them is that the widely-anticipated tapering provisions are more gradual (and thus more generous to employers in terms both of money and latitude for delaying hard decisions) than had been rumoured.

Key changes are:

“Flexible Furloughing”

- From 1 July (so a month earlier than previously announced), employers will be able to bring furloughed staff back to work for any amount of time and on any shift pattern, but continue to be able to make a claim under the CJRS for any normal hours **not** worked by them. When claiming the CJRS grant for furloughed hours, employers will need to report and claim for a minimum period of a week. The scope for abuse of these rules is much greater than the prior very black-or-white arrangement and so key to defending the CJRS claims you make against later audit will be controlling and documenting rigorously the hours your recalled staff do and do not work.
- To be eligible for the CJRS grant, employers must agree with employees any new flexible working arrangements and **confirm** that agreement in writing. This seems to mean “agree” only in the implied sense already applicable, i.e. no express written consent from employees required, but they must be told of the arrangements in writing and abide by them, so no gratuitous sneaking in and doing a bit of work on the QT, yes? The government’s clear concern remains to prevent employers claiming what is in effect a subsidy on wage costs for time their people spend working.
- Further guidance on “flexible furloughing” will be published on Friday 12 June.

Closure to New Entrants from July

- In line with press speculation this week, the CJRS will be closed to new entrants from 30 June. From this date onwards, employers will only be able to furlough employees who have already been furloughed for a full three-week period prior to 30 June. In practical terms, this means that the **final date by which employers can furlough any individual employee for the first time will be 10 June** (so that three-week minimum period can be completed by 30th). With 10 June less than two weeks away, **it is critical that employers consider now whether they will need to furlough any more staff so they do not miss the closing date.**

Employer Contributions to Wage Costs

- As highlighted by the Chancellor a couple of weeks ago, employers will be required to make a growing contribution to wage costs for furloughed staff, although this is being introduced more gradually than many expected. The announcement says that the caps below will be proportional to the hours worked, so if your employee works half a week, for example, you can only claim £1,250 in respect of the unworked period, not £2,500.

See table below for a summary of the new rules.

June and July 2020	The government will continue to pay 80% of wages up to a cap of £2,500 as well as employer National Insurance Contributions (NICs) and pension contributions for any hours the employee has not worked. As highlighted above, employers will have to pay employees for any actual hours worked by them and cannot claim under the CJRS for those hours.
August 2020	The government will pay 80% of wages up to a cap of £2,500 but (new bit) employers will now be required to pay the employer NICs and pension contributions for the hours the employee does not work (and obviously also those where they do). According to the government, around 40% of employers have not made a claim for employer NICs costs or employer pension contributions under the CJRS – it is hard to see quite why– and they will be unaffected by these changes in August if their employees’ working patterns do not change.
September 2020	The government will pay only 70% of normal wages up to a cap of £2,187.50 for any hours the employee does not work. Employers will be required to pay employer NICs and pension contributions plus (new bit) 10% of wages to take them to the current 80%, still subject to the same cap of £2,500.
October 2020	The government will pay only 60% of wages (new bit) up to a cap of £1,875 for any hours the employee does not work. Employers will be required to pay employer NICs and pension contributions and 20% of wages to make up that 80% total, again subject to the £2,500 cap.

- The CJRS will close on 31 October 2020. It is not beyond possibility that some serious reversals in the national fight against the virus may lead that to be revisited, but we consider it extremely unlikely.

NHS Test and Trace Service

In separate news, on 27 May, the government released [details](#) about the NHS test and trace service and how it will operate in England.

Under the service, anyone who has been in close contact with a person who has tested positive for coronavirus will be told to self-isolate for 14 days from their last contact with that person.

The government has published [guidance](#) for employers on this new service. This says that employers should support workers who are told to self-isolate and in particular must not ask them to attend work even if they are suffering no symptoms and say they are happy to come in anyway. If employees are able to work from home during that period, they should be allowed to do this. The guidance says this might include finding staff alternative work that could be completed at home during this period. If this is not possible, workers in self-isolation in these circumstances will be entitled to Statutory Sick Pay for every day they are in self-isolation, as long as they meet the eligibility conditions. New [regulations](#) have been published this week to reflect this. The NHS test and trace service will generate a notification that can be used as evidence that someone has been told to self-isolate for SSP purposes.

It does not necessarily follow that an employee will be entitled to company sick pay in these circumstances if they are not unwell or displaying any symptoms themselves. This will turn on the wording of the company sick pay scheme. Employers may, however, choose to pay company sick pay in these circumstances. The guidance says that *"If people can't work from home, employers must ensure any self-isolating employee is receiving sick pay and give them the option to use their paid leave days if they prefer."* It then goes on to say that *"An employee can ask to take their paid holiday for the time they're off work, entitling them to full pay for the duration of their leave, as opposed to Statutory Sick Pay, if they choose."* This seems to acknowledge that company sick pay is unlikely to be available in these circumstances.

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