



Macc webinar: Furlough

Date of webinar: 28 April 2020

Webinar was delivered by Wrigleys Solicitors Sue King and Alacoque Marvin

Summary:

Employer and employee must agree to the furlough. Employees can request to be furloughed but not insist on it. Employers should get consent, preferably written from the employee before embarking on the furlough – both as good employment practice, and as a defence against later claims of unfair treatment from the employee should they arise.

Decisions on who to furlough should be based on the business case – how many staff do you need to continue to run your organisation; what skills should they possess. Take care to avoid possible indirect discrimination by only furloughing certain workers such as lower paid or part time staff who may be predominantly women for example. Furloughing staff and the choice of staff to furlough should be proportionate response to a legitimate business aim.

Ensure you are eligible as an organisation to furlough staff before you do so, otherwise you may have to repay the money received later, or not even receive any money at all but have agreed to pay staff. Check the start dates; check you are using the correct HMRC process

Staff on furlough cannot do any work for their employer, either paid or unpaid as this could be considered to be contributing to the delivery of services or profits which are prohibited under the scheme.

The purpose of the scheme is to support employers who have been adversely affected by Coronavirus. The scheme also aims to stop large numbers of claimants entering the benefit system and to avoid large numbers of workers being laid off, or made redundant.

Employers in receipt of public funds need to ensure they can furlough staff. Some employers will be in receipt of both public and private funding so need to be careful they can justify who is being furloughed. HMRC have the power to audit furlough returns for 5 years and could drawback funds paid if they were considered to have been claimed erroneously, or even fraudulently.

Furlough scheme initially set to run from 1st March to 30th June (N.B. recent government extension of the scheme to 31st October, although it may be modified from its current form in July)

Furlough period is for a minimum of 3 weeks. This must be a continuous period of time for each furloughed employee. After 3 weeks employees could return to work, or be furloughed again. Employees can also go on additional periods of furlough, but each period of furlough must last for at least 3 weeks.



Government portal is now open for employees to register for the scheme. The recommendation is for employees to submit the required data on or immediately after they run their payroll.

Most employees and workers can be furloughed – the main requirement is that they are on the company's payroll (PAYE) and have been registered with HMRC before 19th March. Employees could work or volunteer for another company if they are furloughed.

If people have more than one employer, each employer can make its own decision about whether or not to furlough that person. The only caveat is a company cannot furlough someone you rehire if they are already furloughed by another employer.

TUPE'd employees can be furloughed

Sick leave is not an alternative to furlough

When registering on the scheme, employers or their agents only have a short time to input the data, so have all the necessary information at your fingertips before you start!

Under the furlough scheme, employers will be reimbursed 80% of an employee's gross salary, plus NIC and minimum pension contribution. The employer can top-up the salary – where they don't this should be noted and agreed in advance with the employee as it could constitute a significant change in their employment terms and conditions

Annual leave will accrue as normal during the period of furlough. Annual leave can be taken whilst an employee is on furlough. Working time regulations have been amended so that employees can now take up to four weeks' annual leave forward over the next two years.

Q & A session

Wrigleys Solicitors have a FAQ section on their website which they have advised you to visit as these will be updated on a regular basis and will cover a lot of the area and queries coming up with the Furlough scheme. www.wrigleys.co.uk/news/charity-social-economy/faqs---covid-19-employment-law-and-furlough-leave/