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Coronavirus Job Retention Scheme (CJRS)

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Updated guidance has now been issued by HMRC and the rules published by HM Treasury. HMRC's Portal for making claims opened on 20 April 2020.

The Government has implemented these arrangements to allow employers to claim money quickly with very few checks by HMRC before making payments. However, HMRC will audit claims in the future and will recover any overpayments plus interest and penalties and may take criminal proceedings.

So, it is important that you understand your obligations under the scheme and keep proper records. HMRC have already stated that furlough letters need to be kept for 5 years. We would recommend keeping these records for the current and previous six tax years.

The Treasury directions state that *"by making the claim, the person making the claim accepts that:*

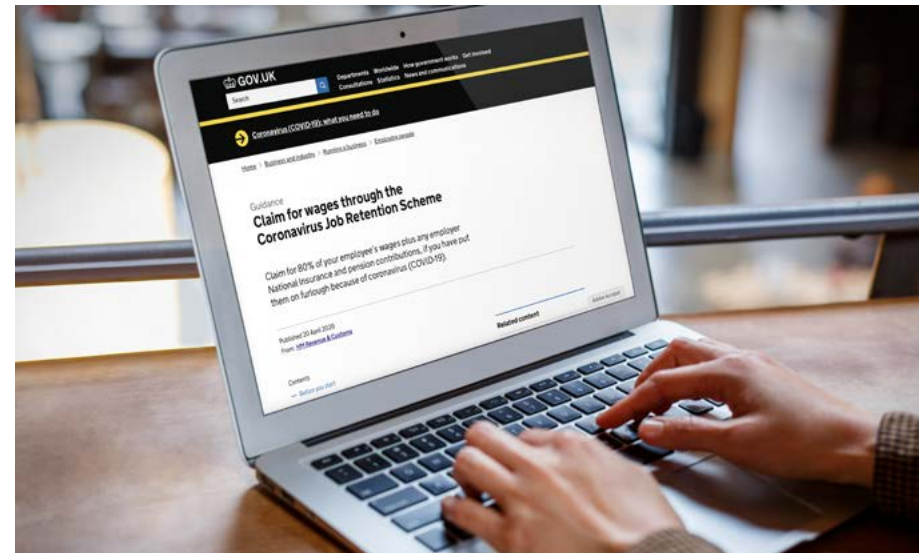
(a) a payment made pursuant to such claim is made only for the purpose of the reimbursement of specifically defined expenditure incurred or to be incurred by the employer in respect of the employee to which the claim relates; and

(b) the payment must be returned to HMRC immediately upon the person making the CJRS claim becoming unwilling or unable to use the payment for the purpose of CJRS.

No CJRS claim may be made in respect of an employee if it is abusive or is otherwise contrary to the exceptional purpose of CJRS."

The published aim of the CJRS grant is to support businesses severely affected by coronavirus to protect their workers and the economy.

A "whistle blower" helpline has also been set up by HMRC, which may be used either by disgruntled former workers or indeed competitors.



What evidence do you need to keep?

You need to demonstrate to HMRC that the workers are being furloughed specifically due to the impact of Corona virus. As with any potential redundancy process, you need to keep records of how employees were selected. Equality and discrimination laws will apply in the usual way and you should select who to furlough fairly based on your work requirements and be able to justify how you have done this. You also need to demonstrate that:

- **the worker has been instructed to cease all work in relation to their employment**
- **the employer and worker have agreed in writing (which may be in an electronic form such as an email) that the worker will cease all work in relation to their employment including for any associated and connected employments**
- **the number of days each worker has been furloughed**
- **any training activities are directly relevant to a worker's employment and must be agreed between the employer and the worker before being undertaken. If any training is undertaken NMW/NLW must be paid even if this exceeds the CJRS grant.**
- **how you have calculated your entitlement to the CJRS grant**

If you have fewer than 100 furloughed workers you will be asked to enter details of each one you are claiming for directly into the online system - this will include their name, National Insurance number, claim period

and claim amount, and payroll/employee number (optional). HMRC are currently being lobbied for these businesses to be allowed to send electronic files.

If you have 100 or more furloughed workers, you will be asked to upload a file with the information to the online portal. HMRC will accept the following file types: .xls .xlsx .csv .ods

The file should include the following information for each furloughed worker: name, National Insurance number, claim period and claim amount, payroll/employee number (optional).

When calculating the amount you can claim you need to take into consideration the 80% restriction on reference pay and the maximum daily, weekly or monthly limits. You need to exclude statutory payments, salary sacrifices and earnings that are not "regular", for example, benefits in kind and discretionary payments including performance related elements of pay which are conditional upon certain targets. These may need to be considered on a case by case basis but should be identifiable through payroll.

You need to be aware that calculations are daily if for periods of less than a week or a month, so different numbers of days apply in different reference periods.

You must pay all of the CJRS grant received to your workers and cannot make any charges, deductions or take off salary sacrifices etc. If you do not comply with this, you may be asked to repay the money to HMRC.

You can only recover employer's NIC on the CJRS grant that you have paid so need to be aware that there is no employer's NIC for certain workers and the impact of the Employment Allowance. You cannot claim back additional National Insurance contributions which you make because you choose to top up your employee's salary. If pay has been topped up, this reduces the amount of NIC you can claim and is further complicated if an employee is not furloughed for the full payment period.

Similarly, if you pay more than the minimum contributions to registered pension schemes, you can only claim what is required under auto-enrolment. It is worth checking your company rules against the auto-enrolment rules.

You must continue to pay Apprenticeship levy and Student Loans.

Workers will continue to accrue holiday pay in accordance with their contracts but if more than the statutory minimum you can consider asking them to vary their terms. Current guidance is that holidays can be taken while workers are furloughed but this must be paid at the appropriate rate.

It should be noted that there are additional requirements for company directors and office holders.

There is now an online calculator which can be used to work out what employers can claim for employees who are paid the same amount each pay period (for example, weekly or monthly). It is still of limited use but will hopefully will be more functional soon.

Please note that the information included in this guide is accurate as of 24 April 2020

When should we claim?

HMRC states that you can make your claim in anticipation of an imminent payroll run, at the point you run your payroll or after you have run your payroll. You can only claim once in a claim period and currently cannot make corrections so it is important to get it right first time. Guidance released on 23rd April 2020 confirms however that HMRC are now looking to develop a process to allow for amendments to be made. Separate guidance has been released which clarifies how and when to report payments made to employees under the CJRS to HMRC.

It should be noted that the rules for reporting under RTi for Covid 19 are different to the normal late reporting rules for both PAYE and NIC.

Other considerations

Some other areas that you need to consider are:

- **workers with more than one job**
- **employing someone who is being furloughed by another company**
- **re-employing leavers so that they qualify for furlough payments**
- **new joiners who were employed but not paid through RTi**
- **workers entitled to benefits in kind**
- **salary sacrifice arrangements**
- **claiming for enhanced maternity and paternity pay**
- **TUPE transfers**
- **Salaried partners in LLPs**
- **Office holder and directors of PSCs.**

How can we help?

You need to make sure that you have followed the correct procedures to legally vary your worker's contracts. We can assist you with:

- checking you have followed the necessary processes
- drafting the necessary amendments to contracts and furlough letters to ensure you have explicit consent
- negotiating with your workers and, if necessary, unions or other representatives.
- determining whether elements of pay would be contractual or discretionary and consequently need to be either included or excluded from your calculations.

In conjunction with an ex HMRC employment tax expert, we can review your claim and tell you if we think your calculations and records are likely to satisfy HMRC or if you will need additional evidence.

Note when reviewing claims retrospectively, HMRC will be looking not just at payroll and financial records but also phone, social media and e-mail activity, interviewing current and former employees and potentially even clients. It is much easier to check that this information is available now than trying to recreate it when HMRC carry out audits which could be several years in the future.

If you would like our help, please do not hesitate to contact Paul Chamberlain on paul.chamberlain@jmw.co.uk or your normal JMW Solicitors contact.

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