

JOINT UNANSWERED QUESTIONS ON FURLOUGHED WORKERS

EVIDENCING AND HMRC	RESPONSE
The Coronavirus Job Retention Scheme is a temporary scheme open to all UK employers for at least three months starting from 1 March 2020. It is designed to support employers whose operations have been severely affected by coronavirus (COVID-19).” How is the government defining severely affected?	
How should employers evidence to HMRC that an individual is a furloughed worker?	
Some firms have been hearing rumours that businesses might have to show their cash in the bank before being able to access the JRS. Could you clarify if this will be the case?	
Will employers have to give their reasons for deciding to close to HMRC (or another agency) at some point in the future? Will an employer need to show they were financially compromised in order to benefit from furlough grants? We have seen advice from other organisations stating that topping up to 100% is risky as you might then appear to have sufficient funds yourself.	
Can an employer transfer an employee from one employer PAYE ref number to another employer PAYE ref number during a furlough period?	
SELECTION AND CONSULTATION	
If an employer needs to make redundancies amongst furloughed employees, can it carry out collective redundancy consultation during the furlough period? Does participating in redundancy consultation count as work for employees and their reps?	
If employers are looking to furlough more than 20 people in a 90-day period, do they have to notify the Redundancy Payments Service and follow a consultative process?	
Is there scope to revise the three-week minimum recall period for employees that have been placed on furlough? Bearing in mind the changing nature of the situation, businesses who see an increase in work may wish to recall employees before the 3 week period has expired.	

If a furloughed worker needs to be recalled, and rehired temporarily, who would be liable for their wages?	
Are there any exceptions to the three week minimum - e.g. if another employee becomes sick and needs to be replaced by someone on furlough. Would the employer forfeit that funding for any time already passed (e.g. if they return 2 weeks into a 3 week period).	
Can an employee have multiple periods of furlough with periods of work in between? Is there a minimum working time between periods of furlough? Can firms do shift patterns e.g. three weeks working, three weeks furlough and repeat?	
If an employee is already on furlough leave, would they remain furloughed if they became unwell, or needed to self-isolate in accordance with government guidance?	
Will furlough pay cover any accommodation offset?	
How will furlough operate alongside benefits in kind?	
How should holiday entitlement and pay be managed and calculated during furlough?	
Can you confirm that the only payments excluded from the 80% are fees, bonus and commission (i.e. that overtime/shift premia/other allowances are included)	
How do you run the calculation for weekly paid employees – the guidance gives a method for monthly paid employees.	
Do you apply the calculation for variable pay employees rigidly where this means that the 80% is based on a figure that is much more or less than they would have done had they been at work? We are aware of cases where the current method, whilst sometimes causing windfalls, will also cause real hardship for employees who are working in different roles or whose hours have changed over the last year.	
Can employees that have been furloughed take sick leave or annual leave whilst on furlough leave or whether these types of leave, if taken, would end their furlough leave?	
How would weekly pay for statutory redundancy purposes be calculated for a worker who is furloughed and who may then be earning less than their normal pay?	

SECOND JOBS AND WORKING WHILE FURLOUGHED	
Can a furloughed employee, start a new second paid job with a different employer, after being furloughed?	
MINIMUM REQUIREMENT FOR FURLOUGHING WORKERS	
Can companies consolidate the three-week furloughing period, or does it need to be 3 consecutive weeks?	
If employees were due an annual pay rise during the furlough period can this happen, and will it be reflected in what is covered by government?	
ANNUAL LEAVE – BANK HOLIDAYS	
Can employees be on furlough and holiday at the same time? If they cannot, then must employers expressly notify employees that such holidays are withdrawn by employers in order to be able to claim furlough payments given the three week minimum period of furlough?	
If bank holidays fall during the furlough period, will these be treated as non-working days?	
Will employers need provide 2 extra days of holiday after furlough to make up for the lost bank holidays?	
On the new regulations dealing with carry-over of leave, if the 4 weeks WTD leave can be carried over, what happens to the 1.6 weeks of WTR leave? This can be carried over with relevant agreement, but not without. Usually, the first four weeks of the year are treated as WTD leave which leaves an odd situation when they might be able to carry over WTD leave but not the 1.6 weeks, but the WTD leave is taken first.	
When the furlough measures were first announced, they were stated to be for employees who would otherwise be laid off. This link to lay off or redundancy does not appear in the guidance published on 26 May. Is it still the case that furlough can only be used instead of lay off/redundancy or can it be used eg for carers of those who are shielding?	
Can an employer continue with disciplinary proceedings when an employee is furloughed, provided the process can be carried out fairly?	
WHO CAN BE FURLOUGHED	
Can all temporary staff be furloughed ie are those with an employment contract treated differently to those with a service contract?	
TUPE	
What is the impact of a post 28 February TUPE transfer, where an employee is not on your payroll on 28 Feb?	

If you have been furloughed pre-transfer by their employer, do they remain on furlough after a TUPE Transfer	
COLLECTIVE BARGAINING	
Can consent be obtained via collective bargaining where pay/hours are normally negotiated collectively and expressly incorporated into individual contracts?	
LAY OFF	
What is the impact of backdating furlough on guarantee payments?	
If an employer has no funds to pay wages now under the furlough scheme, and if they cannot access the COVID-19 loan straight away, should they lay staff off until they receive a loan to pay wages and then furlough staff? In the meantime, should staff claim Universal Credit?	
How would weekly pay for statutory redundancy purposes be calculated for a worker who is furloughed and who may then be earning less than their normal pay?	
PENSION CONTRIBUTIONS	
Can employers reclaim employer auto-enrolment contributions regardless of the type of qualifying scheme used?	

AREAS WHERE SOME CLARITY IS AVAILABLE BUT FURTHER FLEXIBILITY IS SOUGHT BY BUSINESS	
Can furloughed directors and non-executive directors continue to act to meet their ongoing statutory duties?	
Will companies have to claim every three weeks, or can they claim in line with monthly payroll periods?	
Would you consider enabling businesses to part -furlough an employee to enable them to work at a reduced level (eg for part of the week, or mornings only, for example)?	
In what time frame will firms be reimbursed for furloughed workers? How long will businesses have to wait?	
Could you furlough staff who start after 28 February as long as the legal obligation was created before 28 February?	

<p>Is there any help for employers who have employees on long term sickness absence who are receiving contractual sick pay, along the lines of that proposed for contractual maternity pay?</p> <p>Could the SSP rebate be extended to cover all small employees whether they are receiving contractual sick pay or SSP</p>	
<p>Can commission be included in the furlough pay calculation for salespeople? As most salespeople work in a non-essential 'Retail' business which have been forced to close by the Government during this crisis to reduce the spread of COVID-19, this forced closure effectively stops salespeople from earning the commission most are reliant on to help their families survive. It would be fairer to have their commission included whilst calculated on the 'variable income' calculation that the Government have already agreed during Furlough Leave.</p>	