

The UK's revised Job Retention Scheme

15 June 2020

On 20 March 2020 the UK government announced its coronavirus Job Retention Scheme (JRS), which allowed businesses to place employees on furlough (temporary leave of absence) and reclaim 80% of their usual monthly wage costs from HMRC, subject to a cap of £2,500 per month.

As businesses begin to re-open after lockdown, the government is amending the JRS to allow it to operate on a more flexible basis (the new JRS). Furloughed staff will be able to carry out work on a part-time basis, with employers responsible for paying staff for the hours they work. Employers will also have to begin making a contribution to the wage costs of furloughed employees for periods when they are not working.

The new JRS will run from 1 July 2020 until the end of October 2020. This note outlines how it will operate during that period.

Employer eligibility

Employers are only eligible to access the new JRS if they have furloughed some or all of their employees for a minimum three week period between March and the end of June.

Employees that can be placed on furlough

The JRS closes to new entrants on 30 June. Only staff who have been furloughed for at least one three week period at any stage before that date are eligible to be furloughed under the new JRS. This means that if employees were not placed on furlough for the first time by 10 June, they are not eligible under the new JRS.

There is an exception for individuals who started periods of maternity, paternity, adoption, shared parental or parental bereavement leave before 10 June and who returned to work after that date. Even if those individuals had not previously been furloughed, provided that they were on the employer's payroll on or before 19 March they are still eligible to be furloughed after 1 July, despite the closure of the scheme to new entrants.

Broadly, the categories of staff that can be furloughed before and after 1 July remain the same, provided that any individual furloughed after that date has already been furloughed at least once for the minimum period. For example, it is still possible to furlough staff because they are shielding or have childcare responsibilities.

The number of employees an employer can claim for in any claim period under the new JRS cannot exceed the maximum number of employees they claimed for in any previous claim under the JRS, plus the number of employees who are being furloughed for the first time after a period of statutory family related leave. This may have an impact on employers who have furloughed staff on a rota basis if they have only had a proportion of the workforce furloughed in each previous claim period. For example, if an employer furloughed 400 employees in total between March and the end of June, but only 100 employees in each claim period, it will be able to claim a furlough grant for a maximum of 100 employees (plus any employees furloughed on a return from statutory family leave) in any one claim period after 1 July.

TUPE transfers

Special rules apply if there has been a TUPE transfer to a new employer after 10 June. In that case the transferee employer can still furlough any transferring employees that the transferor had furloughed for at least three weeks at any stage between 1 March and 30 June.

The maximum number of employees for which the transferee employer can claim the furlough grant in any claim period will be the maximum number of employees it had claimed for in any claim period before 1 July plus the number of eligible employees who have transferred, subject to the maximum cap that would have applied to the transferee employer.

Mechanics of the new JRS

From 1 July 2020 there is no minimum period for which employees have to be furloughed and flexible furlough agreements can last any period of time. However, periods of furlough that started before 1 July 2020 still have to last a minimum of three weeks.

Employers can submit furlough claims for periods of a minimum of a week, or at longer intervals if they choose. Theoretically this means that an employer could agree with employees what their working arrangements will be on a week by week basis, because they can enter into flexible furlough agreements more than once. This has the potential to be administratively cumbersome, because the employer has to confirm what has been agreed to the employee in writing on each occasion and keep a written record of the agreement for five years. Any agreement has to be consistent with employment and equality law.

There are no minimum or maximum hours of work that can be carried out and employers do not have to offer employees work if they do not choose to do so. It is possible for employees to remain on full time furlough. Even if an employee is on flexible furlough, they can still carry out training or volunteer work (provided it is for a different organisation) in the hours for which a furlough grant is being claimed, or act as a union or employee representative. However, they cannot carry out any work for the employer during the hours when they are on furlough.

The employer is responsible for paying employees for the hours that they work. The government will continue to pay 80% of wages for hours when furloughed employees are not working. The cap on the government contribution remains a maximum of £2,500 but will be pro-rated to reflect the proportion of an employee's normal hours that are not being worked.

Employers will be required to submit data on the usual hours an employee would be expected to work and the hours they have actually worked in every claim period. It will no longer be possible

to submit claims that straddle two calendar months, because of the different way in which grants have to be calculated from August onwards. Claims for periods ending on or before 30 June have to be submitted by 31 July and claims under the new JRS for days in July cannot be made until 1 July.

Gradual withdrawal of government support

Government support will start reducing on a tapered basis from 1 August 2020. Employees who are on furlough remain entitled to 80% of their usual pay, up to a maximum of £2,500 a month, but employers will start to be required to make a contribution towards those wage costs.

- During August, the government will continue to pay 80% of wages for furloughed workers up to the £2,500 cap (pro-rated if relevant), but employers will be required to pay employer NICs and mandatory employer auto-enrolment pension contributions and will no longer be able to reclaim these from the government.
- During September, the government will pay 70% of wages up to a cap of £2,187.50 (pro-rated if relevant), with employers being liable for employer NICs, mandatory employer auto-enrolment pension contributions and for 10% of wages up to £312.50.
- During October, the government will pay 60% of wages up to a cap of £1,875 (pro-rated if relevant), with employers being liable for employer NICs, mandatory employer auto-enrolment pension contributions and 20% of wages up to £625.

15 June 2020

Contacts



Stefan Martin
Partner, London
T +44 20 7296 2751
stefan.martin@hoganlovells.com



Ed Bowyer
Partner, London
T +44 20 72962682
ed.bowyer@hoganlovells.com



Jo Broadbent
Counsel Knowledge Lawyer
London
T +44 20 7296 2026
jo.broadbent@hoganlovells.com

www.hoganlovells.com

"Hogan Lovells" or the "firm" is an international legal practice that includes Hogan Lovells International LLP, Hogan Lovells US LLP and their affiliated businesses. The word "partner" is used to describe a partner or member of Hogan Lovells International LLP, Hogan Lovells US LLP or any of their affiliated entities or any employee or consultant with equivalent standing. Certain individuals, who are designated as partners, but who are not members of Hogan Lovells International LLP, do not hold qualifications equivalent to members. For more information about Hogan Lovells, the partners and their qualifications, see www.hoganlovells.com.

Where case studies are included, results achieved do not guarantee similar outcomes for other clients. Attorney advertising. Images of people may feature current or former lawyers and employees at Hogan Lovells or models not connected with the firm.

© Hogan Lovells 2020. All rights reserved.