



REC

Recruitment
& Employment
Confederation

July 2020

Coronavirus Jobs Retention Scheme

Information for
temporary workers

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Information for temporary workers

This document has been produced by the REC for members to share with temporary workers who are being furloughed under the Coronavirus Jobs Retention Scheme (the Scheme).

The advice given here is correct at the date of publication.



What is the Coronavirus Jobs Retention Scheme?

The government introduced this temporary scheme to allow all UK employers to access support to continue paying part of their employees' wages and avoid redundancies where their operations have been severely affected by coronavirus. The Scheme started on 1 March and was initially intended to run for 3 months, however it has been extended twice and will now run until 31 October 2020.

From 1 July new changes were introduced:

1. The Scheme closed to new employers. So if your agency has not furloughed you for a minimum period of 3 consecutive weeks on this date then you cannot be furloughed (there are exceptions to this for employees that are returning from parental leave, armed forces reservists or employees that have newly been transferred under TUPE regulations to a new employer after 10 June).
2. Flexible furlough was introduced. This means that your agency can ask you back to work for any amount of time and on any work pattern. Your agency can then claim a grant for the hours that you have not worked (compared to the hours you would normally work in that period) while paying you in full for the hours that you have worked.
3. From 1 August the agency must start to contribute to the cost of furlough.
 - » From 1 August the agency must pay employers' national insurance and pension contributions
 - » From 1 September the governments wage subsidy will reduce from 80% to 70%. The agency must then make up the 10% decrease (from the original 80% that the government paid) themselves.
 - » From 1 October the governments wage subsidy will reduce from 70% to 60%. The agency must then make up the 20% decrease (from the original 80% that the government paid) themselves.

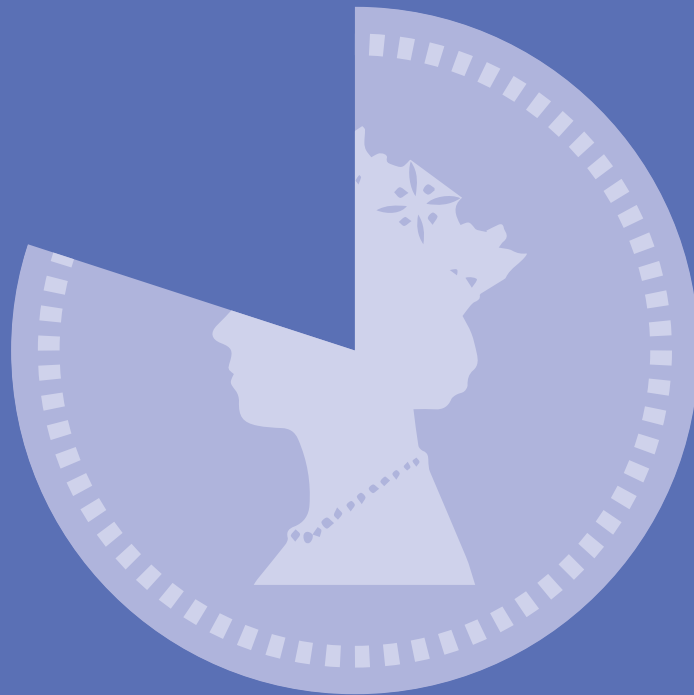
These changes will make it more expensive for agencies to furlough temporary workers. Unfortunately, many will not be able to afford to keep workers on furlough when the costs of doing so increase.



From

1 August

the agency must start to contribute to the cost of furlough.





As a temporary worker will I benefit under the Scheme?

The Scheme rules and government guidance use the words 'employee' and 'employer' as catch all terms. This does not mean that you are an employee for employment rights purposes and your employment status will be determined by your contract.

Agencies want to support their temporary workers at this time however they must comply with the rules of the Scheme and not all temporary workers will be eligible to benefit under the Scheme.

- » Workers on any type of contract, including a zero-hour or temporary contract can be furloughed provided that the conditions for furloughing are met. However, you do not have an automatic right to be furloughed and your agency must agree to furlough you. HMRC will penalise agencies that furlough workers when they should not have done so.
- » If you work through an umbrella company, then the umbrella company is your 'employer' for the purposes of the Scheme it will be up to the umbrella company to decide whether or not to furlough you.
- » If you are a limited company contractor working in the public sector then you may be eligible to be furloughed. Other contractors working through their own PSC cannot be furloughed by agencies as they will not be on the agency's payroll. It may be possible for the PSC to furlough the contractor and use the scheme to cover 80% of the contractor's pay if the contractor is on the PSC's payroll.

There is also a separate government scheme to support self-employed workers:

<https://www.gov.uk/guidance/claim-a-grant-through-the-coronavirus-covid-19-self-employment-income-support-scheme>



What are the conditions around furloughing?

You will be eligible to be furloughed if your agency agrees to furlough you and:

- » You were on your agency's payroll on or before 19 March 2020;
- » Your agency has instructed you to stop all work or not to work the full amount of your usual hours.
- » You have already been furloughed for a minimum period of 3 weeks by 30 June. In practical terms, this means that you cannot be furloughed if you were not put on furlough on or before 10 June 2020. (There are exceptions to this for employees that are returning from parental leave, armed forces reservists or employees that have newly been transferred under TUPE regulations to a new employer after 10 June).
- » Your agency's instruction is given by reason of circumstances arising from coronavirus.

The reason your work has finished has to be because of coronavirus. **If your work has finished, but that was not related in any way to coronavirus the agency cannot furlough you.** If you are being furloughed you must agree with your agency and your agency must confirm to you in writing that you are being furloughed. This can be done by email.



You will be eligible to be furloughed if your agency agrees to furlough you and:



You were on your agency's payroll on or before 19 March 2020



Your agency has instructed you to stop all work or not to work the full amount of your usual hours



You have already been furloughed for a minimum period of 3 weeks by 30 June



Your agency's instruction is given by reason of circumstances arising from Coronavirus



What does furlough pay include?

Up until the end of July, if the agency's claim for your furlough pay is successful they will receive the lower of 80% of your regular wage or £2,500 per month. The agency must deduct tax, national insurance, their pension contributions and possibly other deductions such as student loans, where relevant.

The government has yet to confirm whether certain deductions can be made from the furlough grant such as attachment of earnings or child maintenance orders. If you have a student loan and are concerned about it see the Student Loan Company guidance:

<https://www.gov.uk/guidance/guidance-for-repayment-customers>

From 1 August the government will stop paying the employers' national insurance contributions and employers' pension contributions so the agency will have to pick up these costs.

From 1 September governments wage subsidy will reduce from 80% to 70% and from 1 October this will reduce to 60%.

If your agency is keeping you on furlough, you will still be entitled to 80% of your pay for furloughed hours. The agency must make up the difference between what it receives from the government and 80% This means that it will cost the agency more to furlough you from 1 August 2020. Unfortunately, most agencies will not be able to afford this as they are not being paid by clients and so will probably end your furlough leave. However as more business open up, agencies may have more temporary assignments available.

When calculating your regular wage, your agency can include the following: regular wages, non-discretionary overtime, fees and commission payments and piece rate payments.

The furlough grant does not cover:

- » payments made at your agency's discretion including tips, discretionary bonuses or discretionary commission payments;
- » non-cash payments and non-monetary benefits



Does my agency have to top up the furlough pay?

Agencies are not obliged to top up the grant to 100% but can do so if they wish. If they do, HMRC will not cover the cost of the top up and your agency will have to cover this cost. However agencies are not being paid by clients whilst temporary workers are furloughed so most agencies will not be able to top up furlough pay to 100%.





Can I be furloughed if I am on sick leave?

The furlough scheme is not intended to cover short term sickness. If you are sick or self-isolating as a result of coronavirus you may be able to claim statutory sick pay, provided you meet the relevant criteria. However, if your agency wants to furlough you for business reasons, and you are off sick at the time, then your agency can furlough you (following the correct process) but you must not receive sick pay for any of the furlough leave period.

If you become sick while on furlough, it is up to your agency whether to move you onto sick pay or keep you on furlough. You are not entitled to receive both furlough pay and sick pay at the same time.





Am I entitled to holiday pay and leave while I am being furloughed?

If you have already accrued holidays and you take them while you are on furlough leave then you should be paid this at 100% of your normal rate of pay.

There are conflicting opinions on whether you will continue to accrue holiday leave and pay while you are on furlough. Government guidance currently states that you will continue to accrue holidays as per your employment contract when you are on furlough.

If you are a temporary worker engaged on a contract for services, there is no contract when you are between assignments. One argument is that as you accrue holiday according to the time you work when you are on assignment, if you are furloughed by your agency, you cannot work for that agency and therefore cannot accrue holiday leave or pay during furlough from that agency. Some, however will argue that holiday leave does accrue for temporary workers during furlough.

At the time of writing we await more detailed advice and guidance from government on this point.



If you have already accrued holidays and you take them while you are on furlough leave then you should be paid this at

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of your normal rate of pay





I am a teacher, can I receive furlough pay during school holidays?

The REC was advised by Crown Commercial Services and the Department for Business, Energy and Industrial Strategy that agency workers in schools can be furloughed during usual school holiday periods. Despite repeated requests we have not received written confirmation of this. However, in Parliament, the Financial Secretary to the Treasury (FST) recently stated that supply teachers could be furloughed over the summer holidays subject to the usual requirements of the Scheme.

This does give some comfort but the question remains whether a teacher, who would not have ordinarily worked over the summer holidays, has been adversely affected by coronavirus as required by the Scheme rules. There is an argument that s/he hasn't once the school term is over, and that therefore they should not be furloughed over the summer period. It is up to the agency to decide whether or not to continue to furlough teachers during school holidays.

The concern is that if agencies choose to furlough over the summer period, they may still be challenged by HMRC under the claw-back arrangements. Also, as the cost of furloughing will increase when the government subsidy reduces, not all agencies will not be able to afford to continue to furlough workers.



How will my agency calculate my monthly wage?

As a temporary worker whose pay varies:

If you've been engaged for a full year, your agency will claim for the higher of either:

- » The amount you earned in the same month last year
- » Average of your monthly earnings from the last year

If you've been engaged for less than a year your agency will claim for an average of your regular monthly wages since you started work.

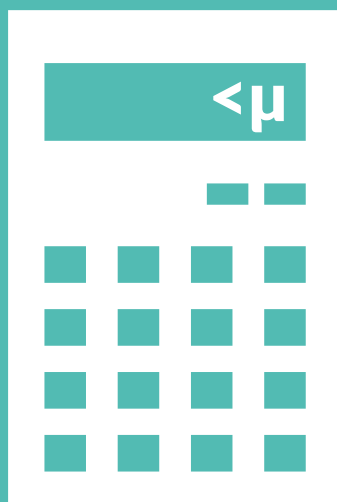
The agency must follow the formula set by HMRC. For more information on how to calculate the hours for temporary workers being furloughed on a part-time basis, see: <https://www.gov.uk/guidance/steps-to-take-before-calculating-your-claim-using-the-coronavirus-job-retention-scheme>



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a year**

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How long can I be furloughed for?

When the Scheme was first introduced the minimum furlough period was 21 days. That has now changed. From 1 July businesses can furlough people on a part-time basis. From that date there is no minimum furlough period which means that if an agency has work for you they may stop your furlough leave, either temporarily or permanently.

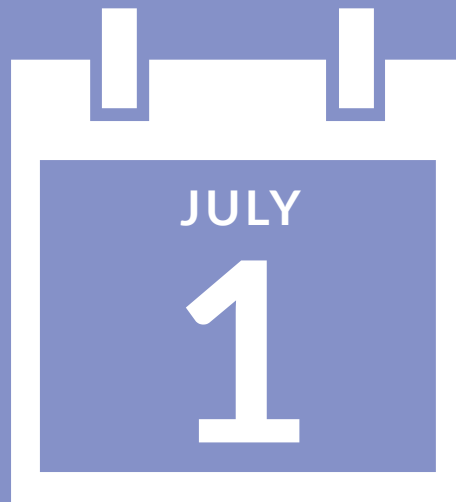
You can be furloughed until the Scheme ends on 31 October provided you continue to meet the requirements of the Scheme (though see our earlier comments about the increased costs to agencies from August).



from

1 July

there is no minimum
furlough period





Can I work elsewhere while I am being furloughed?

You cannot work either for the agency that has furloughed you, or for any organisation linked or associated with that agency. However, you can work for another agency whilst on furlough if:

- » your contract allows you to do so, or
- » you work for more than one agency, in which case each job should be treated separately for furlough purposes.

This means that you may work elsewhere, including for your agency's clients but either directly or through another agency. Importantly your agency cannot stop you from working elsewhere - to do so would be in breach of Regulation 6 of the Conduct of Employment Agencies and Employment Businesses Regulations 2003.



Where can I get more information on my rights under the scheme?

The government has published guidance for employees on the scheme:
<https://www.gov.uk/guidance/check-if-you-could-be-covered-by-the-coronavirus-job-retention-scheme>

ACAS have further guidance and advice for employees:
<https://www.acas.org.uk/coronavirus>

For more general advice on your rights as a temporary worker see the REC and TUC factsheet for temporary workers:
<https://www.rec.uk.com/our-view/news/press-releases/rec-and-tuc-publish-factsheet-help-agency-workers-understand-their-rights>





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