



June 2020

Flexible Furloughing under the Coronavirus Job Retention Scheme

Updated Guidance from the Government has been issued on the rules relating to the Government's Coronavirus Job Retention Scheme (ie, the Furlough Scheme), including the ability to have flexible furloughing.

What is changing from 1st July?

From 1 July, employers will:

- only be able to claim for employees who have previously been furloughed for at least 3 consecutive weeks taking place any time between 1 March 2020 and 30 June (unless the employee has been on statutory family leave, such as maternity leave, and was, because of this, not placed on furlough – see below).
- be able to flexibly furlough employees – this means they can bring employees back to work for any amount of time, on any work pattern.
- still be able to claim the furlough grant for the hours the flexibly furloughed employees do not work.

Which employees can be flexibility furloughed?

- Regardless of flexible furloughing, the number of employees an employer can claim for after 1 July cannot exceed the number in any previous claim. The guidance provides the following example:

An employer had previously submitted three claims between 1 March 2020 and 30 June, in which the total number employees furloughed in each respective claim was 30, 20 and 50 employees. Then the maximum number of employees that employer could furlough in any single claim starting on or after 1 July would be 50.

- The employee must have been furloughed before for a minimum period of 3 weeks between 1st March and 30th June.
- The employees the employer wishes to have on flexible furlough do not need to be on furlough on 30th June. This means that an employee who is fully in work on 30th June can be placed in flexible furlough – provided however they have been on furlough before for a minimum period of 3 weeks between 1st March and 30th June.

- However, where an employee has returned from statutory family leave, e.g. maternity leave, they can still be furloughed on their return, even if they do so after 10th June (which was the cut off for placing employees on furlough).

What formalities are needed?

If an employer wants to place employees on flexible furlough, they will need to:

- agree this with the employee (or reach collective agreement with a trade union); and
- keep a new written agreement that confirms the new furlough arrangement.

The employer will also need to:

- keep a written record of the agreement for five years (previous Guidance referred to six years, so employers may wish to err on the side of caution and keep the records for six years).
- keep records of how many hours the employees work and the number of hours they are furloughed.

Is there a minimum furlough period?

Until 30th June

- any employees placed on furlough must be furloughed for a minimum of 3 consecutive weeks.
- When they return to work, they must be taken off furlough.
- Employees can be furloughed more than once, but they must be furloughed for a minimum of 3 consecutive weeks each time they are furloughed.

From 1st July

- Employees on flexible furlough arrangements can come back to work for any amount of time.
- Employees can enter into a flexible furlough agreement more than once.

Note that where a previously furloughed employee starts a new furlough period before 1 July, this furlough period must be for a minimum of 3 consecutive weeks.

This is the case regardless of whether the 3 consecutive week minimum period ends before or after 1 July.

The Guidance provides the following example:

A previously furloughed employee can start a new furlough period on 22 June which would have to continue for at least 3 consecutive weeks ending on or after 12 July. After this, the employee can then be flexibly furloughed for any period. However, after 1 July, employers cannot make claims that cross calendar months, so the employer will need to make a separate claim for the period up to 30 June.

Although flexible furlough agreements can last any amount of time, unless otherwise specified the period that the employer claims for must be for a minimum claim period of 7 calendar days.

The Guidance says:

Claim periods starting on or after 1 July must start and end within the same calendar month and must last at least 7 days unless you're claiming for the first few days or the last few days in a month. You can only claim for a period of fewer than 7 days if the period you are claiming for includes either the first or last day of the calendar month, and you have already claimed for the period ending immediately before it.

How do I calculate a claim?

As you can see from the above example, it's becoming increasingly complicated to calculate claims, including from 1st July with flexible furloughing, so the Government has produced further guides plus worked examples – see the following link:

<https://www.gov.uk/government/publications/find-examples-to-help-you-work-out-80-of-your-employees-wages>

For more information on any of the items discussed in this article please contact either [Nick Hall](#) or a member of the [Employment Law team](#).

This Legal Update is produced by Hewitsons LLP for clients and contacts of the firm to provide them with a useful summary of recent cases, journal reports, developments in the law and dates to be aware of. It is not a definitive statement of the law in any area. Advice should be sought from a solicitor in the appropriate specialist team at Hewitsons in respect of any information contained in this legal update that affects any matter with which you may be concerned. While the articles and opinions expressed in this publication are summations of current general legal matters the firm can take no responsibility for their application to specific situations in which specialist advice is required.

Hewitsons LLP is authorised and regulated by the Solicitors Regulation Authority, SRA ID number 487681.

Hewitsons LLP is a limited liability partnership. Hewitsons LLP Reg Office: Shakespeare House, 42 Newmarket Rd, Cambridge, CB5 8EP.
Reg No: OC334689