

Looking Forward: Updated guidance for employers on the Job Retention Scheme and Return to Work

On the first 1st July the UK Government implemented its Flexible Furlough Scheme in an effort to accommodate the re-opening of businesses across the UK. Businesses are now able to bring furloughed employees back to work on a part time basis, and will be responsible for paying their wages while they are at work.

In this article, the Belfast Employment team take a look at what this means for employers, and offers some practical guidance to assist your business through the coming months.



Focus on
COVID-19
Coronavirus

Flexible Furlough Scheme (FFS)

What is it?

The Coronavirus Job Retention Scheme ("CJRS") has been extended until the end of October. With that extension comes a welcome upgrade to the CJRS which includes an option to "flexibly" furlough employees. The Government has now provided details of its Flexible Furlough Scheme (FFS) which commenced on 1 July 2020.

With most non-essential business set to re-open by 6 July 2020, it is anticipated that there will be a large uptake in the FFS. It is therefore essential that employers know how the changes to the CJRS will impact their business and payroll over the coming months.

What does the FFS offer?

1. The FFS offers less restrictive working options for both employers and employees.
2. It removes the minimum three week period for furloughing employees.
3. Employers have the option to recall staff to work on a part-time basis for any amount of time and on a shift pattern chosen by the employer.
4. Employers can continue to claim 80% salary for employees on a pro-rated basis.

This means that the UK Government will continue to subsidise for hours not worked by employees over the course of a normal week. Employers will still be required to pay the employee as normal (100% salary) for hours that are worked.

How does an employer calculate 'normal working hours'?

To calculate an employee's 'normal working hours', employers need to firstly examine whether the employee has fixed or variable working hours.

Fixed hours

Fixed hours are the usual set hours worked by the employee before the CJRS was implemented on 19 March 2020 (usually in accordance with their contract of employment).

Variable hours

If an employee normally works varied hours, their "normal working hours" for the purposes of the FFS will be the higher of:

1. the average number of hours worked in the 2019 – 2020 tax year; or
2. the average number of hours worked for the same period in the 2019-2020 tax year.

Changes to the CJRS

We set out below a summary of the proposed changes to the CJRS scheme should employees remain on furlough for the entirety of the period in question. In other words, employees continue to not work and the FFS is not being utilised. It is important to remember that where employees are brought back to work in line with the FFS outlined above, the employee will be paid as normal by the employer for any hours worked.

From 1 July 2020

The Government will continue to pay 80% of wages (inclusive of employer NIC's and pension contributions) up to a maximum of £2,500 for furloughed.

From 1 August 2020

The Government will continue to pay 80% of wages. Employers will be required to cover NIC's and pension contributions for furloughed employees. This will represent a true cost to the employer of around 5%.

From 1 September 2020

The Government relief under the scheme will drop to 70% and the wage cap will be reduced to £2,187.50 for furloughed employees. Employers will pay employer NIC and pension contributions. Employers will be required to top up employees pay by at least 10% to ensure all employees receive at least 80% pay to the capped amount of £2,500.

From 1 October 2020

By October, employers can expect to see the CJRS relief drop to 60% wages, to a cap of £1,875 for furloughed employees. Employers will continue to pay NIC and pension contributions. Employers will be required to top up furloughed employees wages to 80% to a cap of £2,500.

From 31 October 2020

It is anticipated that the CJRS will end on this date.

What do employers need to do now?

Employers should carefully review their current and anticipated business needs and work flows over the coming months. Further communications should be issued to all staff that will be subject to the FFS and new agreements with those employees should be reached.

The new pay calculations are subject to change each month and can be complex. With that in mind, employers should prepare return-to-work rotas in a timely manner to ensure a smooth transition back to the workplace. Records of all hours worked by each employee should be kept.

Where employees are to remain on full furlough (not working) until the CJRS closes in October, it would be prudent for employers to continue to keep communication lines open with these affected employees.

If applicable, "top ups" to the CJRS payments should be reviewed on an ongoing basis by employers to assess affordability over the coming months.

Redundancy

Unfortunately, many businesses may need to take steps to engage in potential redundancy consultations with employees over the coming months. Affected businesses should consider if potential redundancies will be required at an early stage as businesses an obligation to engage in a consultation process with affected employees and explore ways of avoiding redundancy. A member of the Employment & Incentives Belfast team can provide step-by-step guidance in relation to any potential redundancy situations.

Return to work considerations

As preparations are now underway with respect to non-essential businesses opening their doors in early July, employers will need to ensure that they are ready for their employees to return to work and the myriad of issues that could potentially arise as a result of poor planning. Some of the key considerations for employers are:

- 1. Health & safety:** The key underlying principle is that employers are required to ensure, so far as reasonably practicable, the health, safety and welfare of their employees. In

this regard, employers will need in the first instance to carry out or update COVID-19 risk assessments to ensure that their places of work are safe to return to.

2. Changes to terms and conditions of employment:

Employers should keep in mind that some of the changes required in the business may mean a change to terms and conditions of employment and that the employees written agreement should be obtained. Issues may arise where employees refuse to fundamental changes to the terms and conditions of employment.

3. Communication with employees:

Some difficult decisions may also need to be made around who is coming back to work and when. Some employees may also refuse to return to work due to health concerns etc. Communication will be key - employers should be open, clear and honest with staff and

reassure employees about the safe working practices that have been implemented.

- 4. Data protection:** Many employers will be currently considering how best to monitor their employees' health to ward against infection causing site closures and to ensure that other employees do not become infected. They may be considering health monitoring like mandatory temperature checking. All of this gives rise to data protection issues and would involve the employer conducting a data impact assessment and reviewing their privacy notices.

If you have any specific questions around the changes to the CJRS, the FFS, potential redundancy process or return to work queries, please contact any member of the Employment & Incentives Belfast team.