



Flexible Furlough: an invaluable lifeline for businesses wanting to resume operations

From 1 July 2020, the Coronavirus Job Retention Scheme (**Scheme**) will be extended to allow employers to bring staff back to work on a part time basis while maintaining their furloughed status and using the HMRC grant to top-up wages for the remainder of their normal working hours. This new arrangement is to be called flexible furlough.

Based on the conversations we've had already with clients, we expect the flexible furlough scheme to be popular; for some, it's going to provide an invaluable lifeline. To date the Scheme has worked well, but as businesses have started to ramp up operationally, and require more staff/hours, a more flexible solution has been necessary to get around the principal limitation of the Scheme that furloughed employees cannot perform any work at all. From 1 July all this will change - it will be possible for furloughed employees to carry out (and be paid for) part-time work for their employer and for that employer to still take advantage of the Scheme.

Government Guidance, issued last Friday (12 June), has clarified how flexible furlough will operate. We've summarised the main elements of the new scheme in this note and will be hosting a series of Q&As later in the week for clients to answer questions on how they can take advantage of it. With the fanfare of flexible furlough, it is important not to forget that the current furlough arrangements, that we've had in place since 20 March, will continue to operate and run in concert with the new flexible furlough scheme from 1 July, presenting employers with a choice over who to bring back part- or full-time and who to keep fully furloughed.

Critically, employers should use the time between now and 1 July to decide which employees they wish to bring back on a part-time basis and, importantly, to enter into a dialogue with those select employees to look to obtain their agreement to returning under a new working arrangement from 1 July. Employers should be mindful of individual circumstances that may make it difficult for employees to return to part-time work as well as associated discrimination risks, but if handled sensitively we expect most employees would be receptive to a return to work.

Here's our summary of the other key elements of the new flexible furlough scheme:

Employers wanting to take advantage of the flexible furlough scheme will need to agree the new part-time hours with relevant employees and, once agreement is reached, confirm that revised working arrangement in writing. Having a written agreement in place will be essential. Any further variations in working pattern will also need to be agreed and confirmed in writing with the employee in question. This could include a return to being fully furloughed if resourcing requirements change. We recommend that employers try to be as clear, precise and, of course, fair as possible in setting and agreeing part-time hours to limit the number of variation letters and scope for complaint. Copies of all such documents must be kept for 5 years.

1.



2. There will no longer be a 3-week minimum furlough period for anyone who is flexibly furloughed from 1 July. Flexible furlough arrangements after this date can last any amount of time and employees can be flexibly furloughed more than once.

3. Employees must be paid their contractually agreed rate for any hours that they work while being flexibly furloughed. In most cases, this will mean that employees who agree to a flexible furlough arrangement will be financially better off than those who are fully furloughed. We expect this to serve as an added incentive for employees, selected for flexible furlough, to agree to a return to work.

4. For any claims submitted after July, including new flexible furlough claims, the relevant claim period must start and end within the same calendar month and, subject to a few exceptions, must be at least 7 days in duration. From July, it will no longer be possible for a claim to straddle different calendar months, presumably in readiness for tapering and, eventually, the Scheme's closure at the end of October. For more information on the intended tapering in grant levels from August read our earlier bulletin [here](#).

5. Prior to submitting a claim for someone who has been flexibly furloughed, employers will need to work out the employee's *usual* and *furloughed* hours as the claim will need to confirm both elements. There are two different ways to calculate employee's usual hours depending on whether they work fixed or variable hours. This is not a straightforward calculation but the Government has provided a number of worked examples, click [here](#) to take a look. Where you submit a claim in advance and the actual hours worked are more than you claimed for, you will have to account to HMRC for that element of the grant. This is another reason to try to be as certain as you can about the number of hours to be worked to avoid having to reimburse HMRC.

Finally, as a reminder, the deadline has now passed for new entrants to the Scheme, whether on a full or flexible furloughed basis. For an employee to be eligible for a claim under the Scheme, including a flexible furlough claim, the employer must have already submitted a claim in respect of them for a furlough period of at least 3 consecutive weeks between 1 March 2020 and 30 June 2020.

If you would like any more advice on the Scheme, including the new flexible furlough arrangements, or are at the point of needing to consider making redundancies, please get in touch with a member of our specialist employment team info@torquelaw.co.uk.