

CORONAVIRUS RESOURCE CENTER

COVID-19: UK Government Publishes Guidance on Coronavirus Job Retention Scheme and Announces Help for the Self-Employed

30 March 2020

The UK government announced recently that it is launching a new arrangement allowing UK employers to access support to continue paying part of the salary of employees whose employment would otherwise have been terminated during the COVID-19 crisis. Guidance has now been published explaining further details of the arrangement, to be known as the Coronavirus Job Retention Scheme (the “Scheme”).

Separately, the government has also announced details of the assistance that it will offer to the self-employed.

Amount Covered. Under the Scheme, the government will give grants to employers to reimburse 80% of the relevant employees’ usual monthly salary, up to a cap of £2,500 per month, plus the associated employer National Insurance (social security) contributions and minimum automatic enrolment pension contributions on that amount. Fees, commissions and bonuses are not included in the amount that can be claimed. The employee’s gross salary as of February 2020 should be used for the purpose of the 80% calculation. For employees whose pay varies, the higher of (i) the same month’s earning from the previous year and (ii) average monthly earnings from the 2019-2020 tax year should be used for the calculation. For employees with less than 12 months’ service, their average monthly earnings should be used. The national minimum wage thresholds will not apply for furloughed workers (except for periods in which they take part in training, which is permitted under the Scheme).

The Scheme is open to all UK employers with a UK bank account that had created and started a PAYE payroll scheme by 28 February 2020. The Scheme will be backdated to 1 March 2020. It will be up to the employer to decide whether to top up the amounts paid under the Scheme so that employees receive more than the capped amount.

Employees Covered. To be covered under the Scheme, employees must have been on the PAYE payroll on 28 February 2020. Employees must be furloughed for a minimum of three weeks. It appears that employers can take staff in and out of furlough on a three-week (or longer) cycle, if they want to spread the burden of, or opportunity to do, actual work. The guidance states that employees on any type of contract can be covered, including part-time employees, employees on agency contracts (provided they are not working) or employees on zero-hours contracts. Employees who were made redundant after 28 February 2020 can also be re-hired and included in the Scheme.

The Scheme will cover employees who have been designated as “furloughed workers”. This is not a term previously used under UK employment law, but it is intended to cover employees who have been laid off for a temporary period. Unless this is permitted by an employee’s contract of employment, it will need to be agreed with the employee, although given the choice of a redundancy termination or being sent home with at least some of their monthly pay preserved, many employees will readily agree to the latter. If the alternative to agreeing to being furloughed is redundancy, then, assuming that at least 20 employees are affected, a collective consultation with employee representatives will be required. The practical challenges of carrying this out may be considerable under the circumstances. We would be happy to advise employers on the appropriate way to navigate this.

In all cases, a formal designation as a “furloughed worker” will be required. The selection of employees to be asked to agree to be furloughed must be carried out in compliance with equality and discrimination laws. For employees who have a disability making them particularly vulnerable, it is likely to be a reasonable adjustment to give them priority access to the opportunity to be furloughed. The employee must not work at all for the employer during the period for which payments are made under the scheme. However, employees can take part in volunteer work or training, as long as it does not provide services to, or generate revenue for, the employer.

Employees who are absent through sickness, or are self-isolating, should be paid statutory sick pay, but can be furloughed after that.

The Scheme will not offer any support to employees dismissed prior to, or hired after, 28 February 2020 or to employees who have been placed on short-time working by their employer.

Employees who have been furloughed have the same rights as other employees, such as maternity and other parental rights, rights against unfair dismissal and the right to redundancy payments.

Timing. The Scheme will be administered through the UK tax authority, HMRC. Employers will need to submit information to HMRC about the employees that

have been “furloughed” and their earnings through a new online portal. The portal has not yet been set up, and the government has said it expects the Scheme to be operational by the end of April. Whether that is going to be soon enough for a business facing severe cash-flow difficulties remains to be seen.

Assistance for the Self-Employed. In a separate development, the UK government has announced a new self-employed income support scheme that will pay self-employed people a taxable grant worth 80% of average monthly profit, capped at £2,500 per month. This arrangement is not expected to be operational until June 2020. Importantly, this benefit will only be open to people with trading profits of up to £50,000 and, unlike the similar scheme for employees, the individual receiving the benefit will be able to continue to work whilst receiving the grant. HMRC will contact the self-employed directly. The self-employed scheme is only for those who have submitted a tax return for 2019. However, those who did not submit their tax return by the due date of 31 January 2020, and have not yet submitted one, can still submit a tax return for 2019 for a further four weeks from 26 March 2020 and participate.

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Please do not hesitate to contact us with any questions.

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