

Coronavirus Job Retention Scheme and Pension Contributions

In addition to their help with access to loans and grants, the government has announced details of the Coronavirus Job Retention Scheme. The scheme will provide a grant to employers to help cover employment costs for workers who have been furloughed (placed on leave) for at least three weeks, as a result of disruption caused by the fight against Covid 19. The scheme will last for at least 3 months.

We expect that many employers will be looking at whether they should furlough some or all employees and have produced this guidance to help employers and advisers. If employers are considering a reduction in pay or other benefits during the period of furlough, we would recommend that they seek legal advice from an employment lawyer. A key feature of the furlough process is that employees remain employed and existing contracts of employment remain in force unless they are varied.

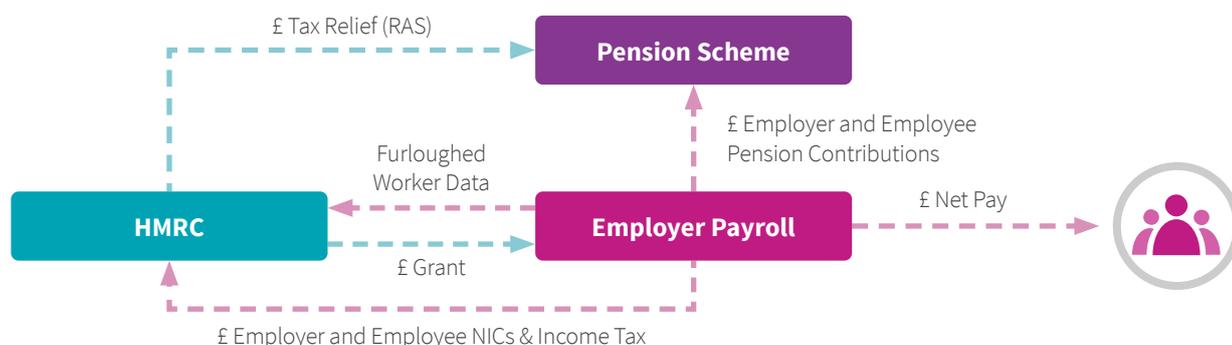
Where can I find out more details of the Coronavirus Job Retention Scheme?

Government has issued updated guidance [here](#). The scheme is a grant to employers which will cover the following costs:

- 80% of wages before tax for furloughed workers (capped at £2,500 per month). Wages will be salary at 28 February 2020* and will not include fees, commission and bonuses; plus,
- Employer national insurance contributions due on the 80% above; plus,
- Employer minimum automatic enrolment minimum contributions payable on the 80% above (i.e. 3% of qualifying earnings)

Furloughed workers must not carry out any work for you during the period of furlough. Their pay must be maintained at a minimum of 80% of regular pay at 28 February, or £2500 if lower, and will be paid through payroll as normal.

The process is as illustrated below:



Government plan to issue guidance on how to calculate employer NICs and pension contributions to be claimed, before the scheme goes live. Access to online claims is expected to be available at the end of April 2020.

*see guidance in the link above for people on zero hours contracts.

What do I need to do to place staff on furlough?

You should notify your staff that they're being placed on furlough and make any changes to your employment contracts by agreement. Unless it's written into the contract of employment with your employees it's not usually possible to reduce pay and benefits without agreement from your employees and there may be consultation requirements too. While we cannot give employment advice it's generally considered best practice to:

- Provide workers with written details of why they're being furloughed i.e. the high-level business case
- Provide full details of any new levels of pay and benefits proposed
- Tell employees the date the position will be reviewed
- Get employee agreement to the new terms in writing - to protect you from any future claim for loss of income or benefits.

If you're changing the contracts of some, but not all, workers you should be mindful of anti-discrimination legislation and ensure that decisions are not made on grounds of protected characteristics.

Government guidance on changing contracts of employment can be found [here](#).

What pension contributions are due if wages are reduced to 80% of pay (or £2,500 if lower)?

There is no automatic change to contracts of employment when employees are furloughed. As such pension contributions will remain payable based on the pensionable salary definition, and the % defined within the pension scheme documentation, or the agreements in place between you and your employees.

The only automatic change is that pensionable earnings will reduce to those based on what you actually pay your employees e.g. £80%.

For example:

Prior to 28 February

Someone earns £2,000 per month normally and pension contributions are 5% from the employee and 10% from their employer i.e. £100 from the employee and £200 from the employer.

If they're furloughed and you pay 80% of pay,

Salary will fall to £1,600. Contributions will be due at the same % but based on this lower salary. So, the amounts due will be £80 from the employee and £160 from the employer.

The amount you receive from government will be based on automatic enrolment minimum contributions based on qualifying earnings. So, for March your employee will receive:

$$\mathbf{£1,600 - £512 = £1,088 \text{ (qualifying earnings)} \times 3\% = £32.64^*}$$

You, as employer, would need to make up the additional amount due in respect of your employer contribution (£127.36) as this would not be covered by the government's grant. You would deduct the employee contribution from their pay.

Details of further help for employers in the form of loans and grants can be found [here](#)

*On 6th April, the lower earnings threshold will increase to £520, so the amount paid to you in the government grant will reduce.

Can I change pension contributions due to match what I can claim from government?

Minimum pension contributions are 8% of qualifying earnings of which at least 3% must be paid by employers so pension contributions of at least this level must be maintained, unless employees ask for contributions to stop.

Employers are encouraged by government to discuss any changes to employment contracts with staff and make changes by agreement. You may need to seek legal advice on the process.

If you employ 50 or more workers, the law currently requires you to follow a 60 day consultation process if you:

- Reduce the % of employer contributions, or
- Change the definition of pensionable pay which results in a reduction in employer pension contributions for some or all workers e.g. a change definition of salary to qualifying earnings.

There is provision in guidance from [the Pensions Regulator](#) to allow the Pensions Regulator to allow for a reduction in the consultation period in exceptional circumstances. Aviva are actively engaging the Pensions Regulator and DWP to push for a statement on this across the board. In the interim we suggest that employers seeking to make a change, but who are unable to provide 60 days' notice, should contact the regulator as stated in the guidance.

We would hope that the regulator will allow the 60 day consultation period to be waived, particularly if the changes are temporary.

If you have fewer than 50 employees there is no need for a formal consultation period before you reduce contributions to the minimum required by automatic enrolment regulations. However, you should investigate any contractual arrangements you may have with your employees and seek legal advice before making any changes.

My employees have salary sacrifice arrangements in place for pension contributions can these be changed?

Yes, HMRC allow employees to vary their salary sacrifice arrangement for pension contributions at any time, but changes can't normally be backdated, other than on opt out within the automatic enrolment opt out period.

What pension contributions are due if we pay our employees what we get from the Coronavirus Job Retention Scheme, but contributions are paid by salary sacrifice?

There is no official guidance on salary sacrifice, this may be clarified when government provide information on how pension contributions should be calculated.

Salary sacrifice is a change to the employee taxable pay, in return for a benefit paid by you as employer. As the Coronavirus Job Retention Scheme grant is based on "regular wages" at 28 February the amount paid to you may be based on the post sacrifice wage, plus the NICs and automatic enrolment pension contributions due, based on 80% of that post sacrifice wage.

As your contract with the employee says that you will pay all of the pension contributions due, and the employee will still see a reduction in pay as a result of the sacrifice (assuming you pay them what is paid to you by government), it may be that you will have to fund the total "employee contribution" as well as your employer contribution, despite only receiving 3% of qualifying earnings from the government.

We've contacted government regarding this issue and have suggested solutions that would allow employees and employers to meet the cost of pension contributions from within the amount paid to employers under the Coronavirus Job Retention Scheme. We suggest employers wait and see what guidance Treasury provide as to what can be claimed before making any firm commitment to paying contributions that are made via salary sacrifice.

Can an employer implement a pension freeze for three months or other period to help get over any short-term financial stress?

Current legislation doesn't allow employers to initiate a contribution holiday.

If you did decide to stop contributions employees wouldn't be deemed members of a qualifying pension scheme from that point. As membership would have ceased due to an action other than an employee's request, this would trigger a need for immediate re-enrolment into a qualifying scheme - so wouldn't achieve anything except extra work.

Employees are able to request that contributions stop at any time and this may be something employees ask for, especially if their pay has been reduced.

Employers are able to make employees aware of the option to stop contributions but cannot do anything with the sole or main purpose of inducing members to opt out of the pension scheme. Any communication to employees regarding the option to request a contribution holiday needs to be factual and it's worth documenting the rationale for making the offer (this shouldn't be simply to protect the employer from additional costs). As an example, you may believe that members could struggle financially over a 3 month (or more) isolation period, especially if they or other family members are not in receipt of full pay.

If employees request a contribution holiday both employer and employee pension contributions can stop.

Further information

We've tried to cover the areas of concern raised with us to date. We strongly recommend that you seek legal advice if you're unsure about any change to contractual benefits.

If you have further questions relating to the impact on pension contributions, please direct them to your usual point of contact.