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Extension to Furlough in the UK: What You Need to Know Today

November 13, 2020

(Updated November 13, 2020)

Further to the HM Treasury's announcement at the end of October that the Coronavirus Job Retention Scheme, which was originally due to end on 31 October 2020, would be extended until 2 December 2020, and its subsequent announcement on 5 November 2020 of a further extension until 31 March 2021, the UK government has now issued guidance on the continued operation of the scheme. As a result of the extension, the Job Support Scheme, which was to replace the scheme, has been postponed. We outline below the key things to note if you are either continuing to furlough your employees after 31 October 2020 or considering furloughing employees for the first time from 1 November 2020.

Who is eligible during this extension?

For periods from 1 November 2020 onwards, employers can claim under the scheme for employees who were employed on 30 October 2020, as long as they made a Pay As You Earn Real Time Information submission to HM Revenue & Customs between 20 March 2020 and 30 October 2020, notifying a payment of earnings for that employee.

In addition, employees who were made redundant or whose employment terminated on or after 23 September 2020 can be re-employed and furloughed, provided they were employed and on the payroll on 23 September 2020. As above, this means a RTI submission must have been made in respect of employees on or before this date.

Unlike under the rules on the operation of the scheme earlier this year, an employee does not have to have been previously furloughed and employers do not need to have used the scheme previously. Employers across the UK can claim whether their businesses are open or closed.

If no agreement is currently in place with furloughed staff, employers should get such furlough arrangements agreed with each employee and put in place **by 13 November 2020** in order to be able to claim for the retrospective period from 1 November 2020.

How much can be claimed?

Until 31 January 2021, the level of the grant will mirror the levels which were available under the scheme in August, i.e., the government will pay 80% of wages up to a cap of £2,500 for the hours not worked and employers will pay employer national insurance contributions and pension contributions for furloughed employees' pay.

Employers are still able to choose whether they wish to top up employee wages above the scheme grant at their own expense.

Is flexible furlough still an option?

Flexible furlough will continue to be an option, so employees will still be able to work part time and receive a furlough grant in respect of unworked hours.

What else should we be aware of?

- **Re-hiring employees:** While there is no legal obligation to re-hire employees who were, for example, made redundant, employers may be considering this themselves or employees may ask about it. Employers should note that this period of furlough is not cost-neutral (given the cost of employer NICs and pension contributions) and should also take into account what the government has said in relation to contractual and statutory notice periods, explained below.

- **Contractual and statutory notice periods:** The government has confirmed that for claim periods starting on or after 1 December 2020, employers cannot claim for any days on or after 1 December 2020 during which furloughed employees were serving a contractual or statutory notice period for the employer (this includes people serving notice of retirement or resignation). If an employee subsequently starts a contractual or statutory notice period on a day covered by a previously submitted claim, employers are required to make an adjustment. The guidance also states that for periods relating to November 2020, claims can be made for furloughed employees who are serving statutory notice periods, but the guidance is silent in relation on contractual notice periods.

This is a significant issue for any employers who are considering dismissing or making redundant furloughed staff in the near future, as, to be able to make claims in respect of the notice periods for such staff, the employees will need to be given notice **before 1 December 2020** – meaning that any required redundancy consultation would need to start **as soon as possible**.

- **The fate of the Job Retention Bonus:** As a result of this extension, the Job Retention Bonus will no longer be available. The government has stated that "a retention incentive will be deployed at the appropriate time."

- **Changes at the end of January 2021:** The government has announced that the scheme will be reviewed in January 2021. As such, the 80% government contribution may not last for the duration of the extension.

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