
UK

Company

Tax measures (deferrals, reductions)

- HM Revenue & Customs (“HMRC”) is operating the Coronavirus Job Retention Scheme (the “Scheme”), which is described in the “Enforced Leave” section below.
- Businesses and self-employed people who are experiencing difficulty meeting tax liabilities may be eligible to receive support on a case-by-case basis through HMRC’s “Time to Pay” arrangements (see “Social Security measures” section below).
- The Government has deferred, until April 2021, proposed changes around the treatment of self-employed contractors disguised as employees under “IR35”.
- Income tax payments due on 31 July 2020 through the “self-assessment” system do not need to be paid until 31 January 2021. Individuals do not need to be self-employed to be eligible for the deferral, but it is likely to be of most significance for self-employed people, given that almost all employees have their employment tax withheld from payroll through the PAYE system. The deferral is optional and automatic. No application is required, and no penalties or interest for late payment will be charged if individuals defer the payment.

Social Security measures (deferrals, reductions)

- HMRC’s “Time to Pay” arrangements may cover employer’s National Insurance contribution (“NICs”) liabilities on a case-by-case basis. Those concerned about being able to pay their taxes due to COVID-19 should contact HMRC through the dedicated helpline: 0800 024 1222.
-

UK

Employer

Sick pay (eligibility, obligations to pay, recovery from Government)

- Employees who earn over £120 per week are entitled to receive statutory sick pay (“SSP”) if they are off work sick. These employees will now be entitled to SSP if they are self-isolating or “shielding” due to COVID-19 in accordance with official guidance. SSP will be payable from the first day of absence (on or after 13 March 2020) at £95.85 per week.
- Employers with fewer than 250 employees may be able to claim a refund of up to two weeks’ SSP per employee off work due to COVID-19 symptoms or self-isolation. The Government will work with employers to set up a repayment mechanism. An online service is now available for employers to make claims to recover qualifying SSP payments they have made to their employees.
- Employers should not require a GP note from employees off work due to COVID-19, and this will not be required to obtain an SSP refund. For those who have to self-isolate for more than seven days, an alternative “isolation note” from NHS 111 is available online [here](#).
- If, for business reasons, employers wish to furlough employees who are currently on a period of sickness absence, they may do so in line with the guidance (see “Enforced leave / use of holiday” section below). Where employees have been furloughed, they should no longer receive sick pay, and would instead be classified as furloughed employees (subject to the requirement for their agreement). Where employees have been furloughed, employers can only reclaim expenditure through the Scheme (and not the SSP rebate scheme).
- Furloughed employees retain their employment rights, which include their right to SSP. This means that furloughed employees who are unwell or become unwell must be paid at least SSP. In practice, however, SSP may be lower than an employee’s furlough pay. It is up to employers to decide whether to move furloughed employees who become unwell onto SSP or to keep them on furlough (where they would be paid at their furloughed rate).

Enforced leave / use of holiday (paid vs unpaid)

- All employers in all sectors (including both profit and not-for-profit) are eligible for the Scheme. The Scheme will run until the end of October 2020, and, under the Scheme, HMRC will provide grants to reimburse employers for the following amounts:
 - Until the end of July:
 - the lower of: (i) 80% of the usual monthly wage cost before tax of each employee who is furloughed (i.e. an employee who is, by agreement between the employer and employee, on a leave of absence and not performing any work for the employer); and (ii) £2,500; PLUS

- employer's NICs; PLUS
- minimum auto-enrolment employer pension contributions up to 3% of the qualifying earnings of furloughed staff; however
- if an employer has agreed to top up the employee's pay above the Scheme limit, this is at the employer's cost and will not be reimbursed through the Scheme;
- Between 1 August 2020 and 31 August 2020:
 - the lower of: (i) 80% of the usual monthly wage cost before tax of each employee who is furloughed; and (ii) £2,500; however
 - employers will be required to pay, but will not be able to recover, employer's NICs and pension contributions, plus any pay that the employer has agreed to pay the employee in excess of the Scheme limit;
- Between 1 September 2020 and 30 September 2020:
 - the lower of: (i) 70% of the usual monthly wage cost before tax of each employee who is furloughed; and (ii) £2,187.50; however
 - employers will be required to pay 10% of the usual monthly wage cost before tax (to make up 80% total up to the £2,500 cap), plus any pay that the employer has agreed to pay the employee in excess of the Scheme limit, and employer's NICs and pension contributions; and
- Between 1 October 2020 and 31 October 2020:
 - the lower of: (i) 60% of the usual monthly wage cost before tax of each employee who is furloughed; and (ii) £1,875; however
 - employers will be required to pay 20% of the usual monthly wage cost before tax (to make up 80% total up to the £2,500 cap), plus any pay that the employer has agreed to pay the employee in excess of the Scheme limit, and employer's NICs and pension contributions
- The last day that an employer can place an employee on furlough for the first time and have access to the Scheme is 10 June 2020 (the Scheme will be closed to new entrants from 30 June).
- From the beginning of July, furloughed employees will be able to return to work part-time. Under this flexible-furlough, employers are expected to pay their employees for the days worked (at the normal rate), and claim under the Scheme for the days that they are on furlough.
- The Scheme covers: (i) all employees and company directors who are paid through the UK's PAYE withholding system; and (ii) members of LLPs who are treated as employees for these purposes, provided in both cases that they were on the payroll as at 19 March 2020 (employers must have notified HMRC of payment in respect of the relevant employee through an RTI submission on or before 19 March 2020). The Government has confirmed that this includes employees who are unable to work because they are: (i) on long-term sick leave; (ii) "shielding" in line with public health guidance for extremely vulnerable persons (i.e. following measures including not leaving the house at all); or (iii) caring for dependents. The Government has confirmed that the Scheme is not

intended for employees on short-term sick leave. The minimum period an employee can be furloughed for is three weeks, and employers can only submit one claim in any three-week period. It is possible to rotate employees on and off furlough, provided that each furlough period lasts for a minimum of three consecutive weeks. If a set time-scale was given for a period of furlough, this can be extended by any amount of time whilst the employee is on furlough.

- Following recent judgments, administrators can furlough employees during the 14-day moratorium period and, if the employees agree to becoming furloughed employees, their contracts will be adopted by the administrator when: (i) the administrator makes an application under the Scheme; or (ii) payment is made to the employees under their varied contracts.
- Claims for reimbursement can be made to HMRC through an online portal. Claims can be backdated to 1 March 2020, if applicable. HMRC aims to provide grants between four and six working days after a claim is submitted.
- Employees may carry over up to four weeks of unused annual leave into the next two leave years if, due to the COVID-19 pandemic, it is not reasonably practicable for a worker to take some or all of the holiday to which they are entitled.
- Employees who are furloughed under the Scheme continue to accrue, and may take, annual leave whilst furloughed, and this will not break a period of furlough. Employers must pay employees for statutory leave at the employee's normal rate of pay (or, where this varies, at the employee's average rate of pay over the previous 52 working weeks). Guidance provided makes it clear that an employee's "normal rate of pay" means their usual holiday pay, based on their full non-furlough pay calculated in accordance with the Working Time Regulations. If this is higher than the employee's furlough pay, the employer must make up the difference (whilst continuing to claim under the Scheme for the lower of 80% of the usual monthly wage cost or £2,500 (or such lower amounts depending on when the claim is made, as outlined above)).
- Furloughed employees who take paid maternity, paternity, parental or adoption leave on or after 25 April 2020, and who were on furlough for any of the eight week period immediately prior to starting such leave, will be entitled to have their average weekly earnings for their period of furlough during that eight week period calculated using the higher of the furloughed pay they received and what they would have received if they had not been on furlough. If the employee is entitled to enhanced contractual pay during the period of family-related leave, the employer will be entitled to claim for this pay under the Scheme, subject to the usual criteria.
- Employers may require staff to take annual leave at certain times, if their employment contracts do not prohibit this. They should receive holiday pay as normal, unless agreed otherwise with the employees.
- Employers must generally give employees at least twice as many days' notice as the number of days' annual leave they are being required to take

(for example, 10 days' notice for five days' annual leave). This should be in writing and, where possible, specify the relevant dates.

- Employers may reduce employee hours or provide employees with no work for a period (see below for further detail).

Temporary layoffs

- Employers may require employees to cease work, with or without pay, for a temporary period (a "Layoff"). A Layoff without pay is permitted only if provided for in an employment contract or a trade union agreement, or if an employer receives the employee's consent. Legislation may be introduced to allow Layoffs without an express contractual provision or consent.
- If provided for in their employment contracts, employees may be entitled to receive "Contractual Guarantee Pay" during a Layoff period. If the Layoff is unpaid, employers may have to pay "Statutory Layoff Pay" of £29 per day if certain criteria are met (including one month's continuous employment) for up to five days in any three-month period.
- If a Layoff period continues for four consecutive weeks or six weeks within a period of 13 weeks (of which no more than three are consecutive), employees may be entitled to claim statutory redundancy pay if certain conditions are met (including two years' continuous service).

Reduction in pay and/or hours

- Employers may reduce an employee's contractual hours and corresponding pay ("Short-time Working") only if this is permitted in their employment contract or a trade union agreement or if they receive the employee's consent.
- During a Short-time Working period, employees should receive full pay unless their employment contracts provide for unpaid Short-time Working or Contractual Guarantee Pay of a different amount. If the Short-time Working arrangement is unpaid, employers may have to pay Statutory Layoff Pay in relation to days on which no hours are worked.
- If a Short-time Working period continues for four consecutive weeks or six weeks within a period of 13 weeks (of which no more than three are consecutive), employees may be entitled to claim statutory redundancy pay if certain conditions are met (including two years' continuous service).

Terminations

- Employees with two years' continuous service may have a claim for unfair dismissal where their employment is terminated, unless there is a fair reason (as defined by statute) and the employer has acted reasonably (i.e. followed a fair process). Dismissal on the grounds of redundancy may be fair where an employer has a reduced need for work of a particular kind or where a business or premises is shut down.
- Employers should consider whether furloughing employees provides a viable alternative to making employees redundant.
- Employers must follow a fair redundancy procedure, including informing/consulting with employees or, in collective redundancies of certain sizes, consulting with employee representatives over 30 or 45 days, depending on the number of employees. Employers should consider

voluntary redundancy and ensure they provide adequate notice or payment in lieu of notice where applicable.

- Employees will be entitled to statutory redundancy pay where they have worked for more than two years. Employers should check whether employees are entitled to enhanced redundancy pay.
-

UK

Workforce

Teleworking

- The Government has brought in measures which require workers to work from home unless this is not possible, and they advise particular caution in relation to employees from vulnerable groups. In order to facilitate this, employers should:
 - support employees to continue to work wherever possible, including providing technology where possible to facilitate remote working; and
 - maintain contact with employees and encourage staff members to support each other and be flexible whilst the workforce adjusts.

Travel (business and personal)

- The Foreign & Commonwealth Office advised against all non-essential travel worldwide for an initial period of 30 days from 17 March 2020. This has now been extended “indefinitely”.
- Employers should encourage staff to avoid unnecessary travel, including to and from the workplace or work-related events. In the event of necessary travel, employers should encourage staff to comply with Government guidance to minimise risks, including avoiding busy times, maintaining distance from other commuters, and washing their hands as soon as they arrive at their destination.
- If employees cannot travel abroad as planned, it is likely that they will request a cancellation of booked annual leave. Employers are not obliged to allow employees to cancel leave, but should consider whether this would be appropriate in the circumstances.

Preventive actions (reception policy, public interactions, management of infected employees)

- The Government has required certain non-essential industries to cease operations, restricted movement of individuals and social gatherings, and provided authorities with the power to enforce these measures. The Government has announced that non-essential retailers will be able to open from 15 June 2020, provided they are ‘COVID-secure’.
- The Government has published guidance for employers, employees and those who are self-employed on how to keep their workplaces as safe as possible (i.e. COVID-secure). Employers must undertake a risk assessment of their workplaces using the guidance to inform decisions and control measures. There are eight guides which cover a variety of different types of workplaces including offices and contact centres, construction and other outdoor work, and factories, plants and warehouses. The guidance covers such topics as, who should go to work, social distancing at work and cleaning the workplace, and is available [here](#).
- Employers must consult on health and safety measures with the health and safety representative selected by a recognised trade union or, if there is no such representative, a representative chosen by employees. Employers should ensure the workforce is kept updated as to preventative

actions being taken by the business and the latest guidance on how to reduce their risk.

- Where workplaces are open, employers should provide facilities for hand washing and hand sanitiser and encourage staff to use them regularly.
- Companies should ensure that managers are made aware of how to identify symptoms in staff and of procedures to follow in the event a staff member exhibits symptoms.

Employees with children or older dependants

- Employees are entitled to reasonable time off to care for dependants. This will apply, for example, to time off to care for a child whose school has closed or another dependant who is sick.
- Employers are not required by law to pay employees for time off to care for dependants unless this is provided for in employment agreements or contractual workplace policies.
- Employers should consider whether special arrangements can be made for employees whose caring responsibilities temporarily affect their availability for work, for instance flexible hours, to enable them to continue to work.

Consultants

- Self-employed individuals (including members of partnerships who are not paid as employees under PAYE) may be eligible for a taxable grant of 80% of average monthly profits measured over the last three years, up to £2,500 per month (capped at £7,500) under the Self-Employed Income Support Scheme. The final date for applying for this grant is 13 July 2020.
 - Applications for a second grant will be open in August 2020 and individuals will be able to claim a taxable grant worth 70% of average monthly profits, capped at £6,570.
 - The Self-Employed Income Support Scheme will be available for self-employed individuals or members of a partnership with: (i) trading profits / partnership profits of up to £50,000; or (ii) average trading profits / partnership profits for the previous three years of less than £50,000, provided in both cases that these profits constitute more than half of total taxable income.
 - To be eligible for this scheme, self-employed persons or members of a partnership must: (i) have traded in the previous tax year; (ii) be currently trading when an application is made (unless unable to as a result of COVID-19); and (iii) have submitted a tax return for 2019. Those who missed filing their tax return in January 2020 must have filed it by 23 April 2020 or they will not be eligible. HMRC will contact those eligible and invite them to claim through an online service on a specified date. Self-employed persons can check their allocated date using HMRC's online checker [here](#).
 - Those who receive the grant can continue to work and/or take on other employment, which can include volunteer work.
-

White & Case means the international legal practice comprising White & Case LLP, a New York State registered limited liability partnership, White & Case LLP, a limited liability partnership incorporated under English law and all other affiliated partnerships, companies and entities.

This article is prepared for the general information of interested persons. It is not, and does not attempt to be, comprehensive in nature. Due to the general nature of its content, it should not be regarded as legal advice.