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U.K. Government Publishes Details of the Extended Coronavirus Job Retention Scheme

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Information, guidance, and the potential response to COVID-19 are changing rapidly. The below reflects the position and related guidance as of 1 June 2020.

This communication constitutes the next instalment of our Client Alert series considering the legal and business impacts of the 2019 Novel Coronavirus ("COVID-19"), commonly referred to as the "Coronavirus". This communication focuses on those issues facing U.K. employers with respect to their workforce. For issues involving other operations in the U.S., please contact Elena Baca.

It is now estimated that around 1 million U.K. employers have used the Coronavirus Job Retention Scheme (the "Scheme") providing approximately 8.4 million employees and workers with support, at a cost that is reported to be £15 billion. Unsurprisingly, the U.K. Government is now looking to curtail that support and shift the burden for payroll costs back to the employer. We set out below the proposed changes that the U.K. Government has now announced and the latest guidance on the tricky issue of holiday pay under the Scheme.

It is obvious that the Scheme will not save the jobs of all U.K. employees and workers. Therefore, we also address the issue of the redundancy process during a period of furlough and the latest announcement for the similar scheme for the self-employed.

Proposed Changes to the Coronavirus Job Retention Scheme

On 29 May 2020, Chancellor Rishi Sunak announced that the Scheme in its current form will end on 30 June 2020 and set out a number of changes which will take effect over the next few months.

The Scheme, which has been in place since 1 March 2020, currently provides that HMRC will reimburse U.K. employers for 80% of furloughed employees' pay up to £2,500 per month (further details are set out [here](#)). However, from 1 August 2020, the level of grant provided by HMRC will be gradually tapered to reflect that employees should be returning to work.

The key changes to be introduced and dates to be aware of are as follows:

- The Scheme will close to new entrants on **30 June 2020**. This means that the final date by which an employer can furlough an employee for the first time is **10 June 2020** (as the minimum period of furlough is three weeks).
- From **1 July 2020**, employers can bring furloughed employees back to work on a part-time basis ("flexible furlough"), subject to the employee's agreement (which should be confirmed in writing). Employers are free to decide the hours and shift patterns that employees will work and will be responsible for paying employees' their normal wages for



the hours worked. The balance of the wages due for contractual hours can still be claimed through the Scheme. The minimum furlough period will also reduce to one week from this date. Employers will be required to submit data to HMRC in respect of the hours the employee would normally be expected to work and actual hours worked under flexible furlough. Further guidance on flexible furloughing is expected to be published by the U.K. Government on 12 June 2020.

- From **1 August 2020**, employers will be required to cover the cost of employers' national insurance contributions at a rate of 13.8% of employment costs and employer pension contributions at a rate of 3% and will no longer be able to reclaim these costs through the Scheme. If the relevant thresholds for employers' national insurance and pension contributions are not met, then employers will not be expected to cover these payments.
- From **1 September 2020**, HMRC will reimburse 70% of furloughed employees' wages up to a maximum of £2,190 per month and employers will be required to contribute 10% of wages.
- From **1 October 2020**, HMRC will reimburse 60% of furloughed employees' wages up to a maximum of £1,875 per month and employers will be required to contribute 20% of wages.
- The Scheme will close on **31 October 2020**.

As U.K. employers will be aware, currently furloughed employees cannot carry out any work that makes money for or provides services to an employer's organisation (or for any linked organisation). Employees can take part in volunteer work or training, provided that it does not provide services to or generate revenue for their employer. Directors can still perform a limited range of statutory duties and pay salaries to employees on behalf of their company, and employees can still carry out their duties as manager or trustee of an occupational pension scheme, so long as they do no more work than is reasonably necessary for those purposes.

As noted above, the revised Scheme amends some of these rules and allows part-time working from 1 July 2020, but employees must have been furloughed by 10 June 2020 to be eligible for flexible furlough.

Holiday Entitlement and Pay During Furlough

Guidance published by the U.K. Government in relation to holiday entitlement and pay during COVID-19 has confirmed that furloughed employees continue to accrue statutory holiday entitlements and any additional holiday provided for under their employment contracts. Employers and employees can agree to reduce the employee's enhanced contractual holiday (in excess of the statutory minimum of 5.6 weeks per year) to reflect that they have been placed on furlough leave (although, in practice, the employee may be reluctant to agree such a reduction). Employers can require employees to take holiday or can refuse a request for holiday during furlough, subject to the usual minimum statutory notice periods. Furloughed employees who usually take bank holidays as annual leave can either take the bank holiday as annual leave and receive holiday pay in accordance with their employment contract, or agree to defer the day of annual leave until a later date, if this arrangement is agreed with the employer.

In terms of holiday pay, furloughed employees should be paid their normal salary for days spent on annual leave, not furlough pay. Employers will continue to receive the grant covered by the Scheme, but will be required to top-up holiday pay themselves to ensure that employees receive 100% of their normal salary during the period of annual leave.



Redundancies During or After the Furlough Period

With employer contributions increasing from August and the Scheme set to close at the end of October 2020, employers may look to implement redundancies if their operations have been severely affected by COVID-19 and the current workforce cannot be maintained. Guidance from the U.K. Government confirms that employees can be made redundant while on furlough or afterwards, but redundancy pay cannot be claimed through the Scheme.

Collective consultation obligations are triggered where an employer proposes to dismiss 20 or more employees at any establishment within a 90-day period. Employers are required to inform and consult with any recognised trade union or, if there are no other appropriate representatives, with employee representatives who have the authority to be consulted about such matters. Consultation must begin in good time to allow the relevant discussions to take place and for a minimum period of 30 days (or 45 days, if 100 or more redundancies are proposed). Employers must also file form HR1 with the Secretary of State at least 30/45 days (depending on the number of proposed redundancies) before the date the first dismissal takes effect. Failure to do so may amount to a criminal offence. In addition to collective consultation, employers should also carry out a lawful individual consultation process with the affected employees prior to reaching any dismissal decision.

If fewer than 20 redundancies are anticipated at one establishment within any 90-day period, the employer is not required to collectively consult but must still carry out a lawful individual consultation process.

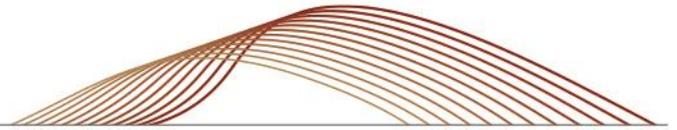
Employee representatives (union or non-union) can undertake duties in relation to a collective consultation exercise while they are on furlough, which suggests that individuals must also be able to take part in consultation in relation to any proposed redundancies during this period. If employers are anticipating having to reduce headcount after 31 October 2020, it may be sensible to start the collective consultation process early in order to be in a position to implement any necessary redundancies once the Scheme comes to a close, rather than having to wait a further 30/45 days.

The current circumstances present various practical and logistical challenges in relation to the consultation process, given that large numbers of the workforce may currently be on furlough leave or working remotely. Employers will need to think of practical solutions to these challenges (e.g. digital election of representatives, virtual consultations) and prepare for longer timescales in order to complete a lawful process.

Failure to carry out a lawful collective consultation process can expose the employer to a penalty of up to 90 days' pay (uncapped) for each affected employee. In addition, employers may be exposed to unfair dismissal claims if they fail to carry out a lawful individual consultation process. Compensation for an unfair dismissal claim is currently capped at 52 weeks' gross salary or £88,519, whichever is lower (plus a basic award, calculated in the same way as a statutory redundancy payment).

Extension to Self-Employment Income Support Scheme

On 29 May 2020, Chancellor Rishi Sunak also announced that individuals who are eligible under the Self-Employment Income Support Scheme will be able to claim a second and final grant in August 2020. The grant amounts to 70% of the individual's average trading profits and will be paid out in one instalment covering three months' worth of profits (capped at £6,570). An individual does not need to have claimed for the first grant in order to receive the second grant.



A Look Ahead

Over the next three to four months we expect U.K. employers to be busier than ever, trying to strike the balance between the increasing relaxation of the lock-down measures and the practical and legal challenges arising from a return to the workplace and the thorny question of the workforce to return.

If you have questions about your U.K. workforce, or your workforce in other non-U.S. jurisdictions, please contact the International Employment Team and we shall provide you with the latest updates from the various jurisdictions.

Click [here](#) to read more from our Coronavirus series.



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