

FURLOUGH LEAVE

This update is written and posted on Saturday 21st March 2020 and will quickly become out of date. We will endeavor to update it as soon as information becomes available.

On 20th March the Government announced a series of measures to assist employers and employees in the coming months during the current virus crisis. Very little detail is available at this point except that the measures outlined below will be available for backdating to 1st March.

What is Furlough Leave

Furlough is an American word used as we might use "leave", or "sabbatical".

To be classed as on Furlough, the employee must be sent home, it is not available to employers where the employee continues to work.

Which employers can claim it?

Any employer, whether a sole trader, partnership, Ltd Company or LLP. The only criteria is that you have employees, and you send them home.

Can an employer insist on putting someone on Furlough

If the employer has a clause in the contract which allows for the employer to either introduce lay off, or short time working, then the answer is Yes. No consent is required.

If the employer has no lay off clause in the contract, technically consent will be needed. However, if an employee refuses to consent to be sent home on Furlough, then they risk being made redundant. The employer could make an employee redundant if they refuse provided they have selected for it fairly.

How do you select for Furlough

We advise that you use a shortened version of a redundancy selection. i.e. Some form of objective criteria. It might be from productivity records, or previous appraisals, or managers filling in a scores matrix based on skills.

The reason for this is that if an employee refuses Furlough, the employer could then select them for redundancy and the basis would already be on a fair footing.

Can we put people on Furlough part time, and have them work Part time?

At the time of writing, we simply don't know.

Does the employer have to top up the 80% wage to 100% for a Furloughed employee?

No. It can choose to do so but is not compelled.

However, there is a future risk of a claim for deduction of wages, we think it is small, and the chance of the employer losing such a claim also small, but to avoid the risk, the employer should attempt to get written consent from an employee to the terms of the Furlough. We suspect it won't be hard given the alternative will be redundancy.

If an employee refuses Furlough can we make them redundant.

Yes. See above.

What will be the process for getting the money back?

The government are setting up a portal. It is not up and running yet.

Summary

- Select your employee for Furlough
- Gain written consent to 80% pay
- Send the employee home
- Register for the Furlough Pay using the online registration portal (when up and running)

Are there other limits

Furlough pay will be 80% of normal wages

There will be a cap of £2500 per month, which is the figure being paid to the employee, not the normal wage.

The cap will include pension and NI contributions.

