**WHAT IS FURLOUGH LEAVE?**

From Friday the 20th of March 2020, the chancellor, Rishi Sunak, announced a raft of measures to protect businesses, including unprecedented government support in the shape of the [Coronavirus Job Retention Scheme](https://www.gov.uk/government/publications/guidance-to-employers-and-businesses-about-covid-19/covid-19-support-for-businesses), allowing employer to ‘Furlough’ Staff, rather than lay them off or make them redundant.

This includes limited companies, sole traders, LLPs, Partnerships, charities etc., allowing them to access financial support to continue to pay part of their employees’ salaries. This would enable employers to retain their employees for at least the short term, without having to worry about possible redundancies, also giving employees comfort around their ongoing status and pay, for the short term.

Affected employees would be classed as furloughed workers. These employees would have to be notified of their changing status which would remain subject to existing employment law and depending on their contract, may be subject to negation. It’s crucial for an agreement to be made between the employer and employee as to whether the employee becomes ‘furloughed’.

**HOW CAN THIS BE IMPOSED?**

Employer’s must check to see whether they have a contractual right to lay off workers, if so, they can instead furlough workers, in an effort to safeguard the business and the individual’s long term employment. This should then be confirmed in writing.

Where there is no temporary lay-off or short time working clause in place, the employer would need to seek the agreement of each individual employee to amend them to ‘furloughed workers’.

**HOW MUCH DOES THE GOVERNMENT PAY, AND HOW DO THEY PROCESS THIS?**

Although full details of the scheme are yet to be released, what is known so far is that under the scheme, if someone is designated as a ‘Furloughed worker’, employers will be able to register and can look to be reimbursed up to 80% of an employee’s wage, based on a salary cap of £2,500 per employee per month. These payments can be backdated from the 1st of March.

**PROCESS:**

* The employer would need to submit information to the HMRC about the employees that have been furloughed, about their earnings through a new online portal, which has not been set up as of yet. HMRC will provide further details on this.
* HMRC will reimburse 80% of ‘Furloughed workers’’ wage costs, up to a cap of £2,500 per month. HMRC are urgently working to set up this system. This is broadly, £30K per annum which is roughly the national median salary. It is not clarified as to whether this is Net or Gross pay, however, from guidance, this states it is to cover all employment costs, such as pensions and national insurance contributions.
* An employee classed as a ‘Furloughed worker’ should not undertake work for their employer while they’re ‘Furloughed’.
* The scheme was initially set up for 3 months, however it has recently been extended for an additional month to the end of June.
* Employees must remain on the payroll
* The 80% relates to Gross Pay, CJRS payments will be classified as employment earnings and therefore PAYE/NIC etc. apply and other deductions such a pension contributions.

**QUESTIONS TO BE ANSWERED**

Full details of the scheme are yet to be released and this has left a lot of unanswered questions, such as:

* If employees have already received a P45, how are they ‘re-employed’ to then be ‘furloughed’?
* What will the online HMRC portal look like?
* How will the 80% be calculated for employees on variable hours and those who receive overtime, bonuses or commission?
* Will the system be in place for the next pay run for Weekly Staff?
* How will temporary staff be affected and is there a cut-off date for ‘employed’ workers at the time of a business shut down?
* Will Optional Remuneration Arrangements continue for furloughed employees?
* What are the implications for National Minimum wage? ([BEIS](https://www.gov.uk/government/organisations/department-for-business-energy-and-industrial-strategy) have now issued some guidance around loans and advances)
* What are the implications for apprenticeships (although some [guidance](https://www.gov.uk/government/publications/coronavirus-covid-19-apprenticeship-programme-response) has now been released)?

**CAN THE EMPLOYER TOP UP TO 100%?**

There is no guidance on whether the employer needs to top up the 20%, as this would be optional to the employer. The employer has the option whether to top up the extra 20% or not.

**HOW DOES THIS AFFECT THE SELF EMPLOYED?**

Proposals have been put forward which would protect the income of self-employed and freelance workers to a set level, and an announcement is expected at some point today (26th March) about self-employed individuals.

The amendment of the COVID-19 bill, entitled Statutory Self-Employment pay, appears to propose the government will guarantee earnings of 80% of monthly net earnings, averaged over the last three years, or £2,917 a month, whichever is lower.

**WHAT CAN YOU DO AS A BUSINESS?**

There are still many unknowns, however, you can start to prepare by undertaking the following:

1. Review your employment contracts to establish whether you have lay-off or short-term contract provisions.
2. If you do not have lay-off or short-term contract provision, you will need consent to change employment status to ‘furloughed’ – **Tysers Risk Services are able to assist you with a letter to do this.**
3. Be aware that changing the status of employees is subject to existing employment law. Criteria are needed for selecting which employees are affected. Failure of an employee to accept a change could lead to a redundancy, so we recommend using similar criteria to redundancy selection.

**STATUTORY SICK PAY**

**What we know so far:**

* Coronavirus related SSP starts from day 1 of sickness or self-isolation. This applies retrospectively from the 13th March 2020. Waiting days do not apply.
* If self-isolating because you have the virus or someone in the household has symptoms or has the virus, SSP is payable covering a maximum of 14 days.
* The first 7 days of isolation/sickness are self-certificated, following 7 days’ virtual certification from [NHS 111 online](https://111.nhs.uk/).
* Certificates must be in place by law to account for not only coronavirus related sickness, but all sickness.
* For an employee working from home but not self-isolating, SSP does not apply, it’s not payable or recoverable.
* Pregnant women are covered by the same 14 days coronavirus sickness regime. If they are concerned and cannot return to work, a doctor’s certificate is required.
* Employers can only recover SSP up to a maximum of 14 days, and only sickness relating to coronavirus.