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Questions and answers on furloughing

Find below a summary of questions asked in the furloughing webinar on Thursday 2nd April 2020. Answers supplied by Shakira Joyner of HCHR.

Information offered in good faith and was accurate at the time of writing. However, the situation is changing regularly and it is advised that businesses check government advice and updates on this subject regularly.

1	Can employees choose redundancy if they want?	The Employer would have to determine if the post is redundant. Not forgetting it is the post not the individual that is made redundant. An employee can request voluntary redundancy but the employer is not obliged to accept.
2	Is there any minimum notice period regarding notifying employees and can furlough be backdated?	There is no notice as such only that employees are consulted. This is due to the speed in which things are rapidly changing. The scheme can be backdated to the 1st March 2020.
3	So, is there a time frame on the notice to any employee?	There is no notice as such only that employees are consulted. This is due to the speed in which things are rapidly changing.



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4	We've had to furlough all but one of our staff at the venue but many of the staff have said they would like to volunteer to work – maybe paint walls or clear the archive – all the jobs we never get done when we're open or even respond to social media or email. But when you're furloughed it's clear that you aren't allowed to continue to work. Can the team volunteer? How would anyone find out if they did?	The guidance is clear that that any volunteer work undertaken by a furloughed employee cannot generate income for their employer or provide a service for their employer. That would likely be regarded as fraud and the government has explicitly identified the right to retrospectively audit all aspects of the scheme with scope to claw back fraudulent or erroneous claims. Staff on furlough can undertake training or volunteer for other organisations (subject to public health guidance).
5	Will employees pay their pension contribution too	Do you mean Employer? In addition to salary costs employers can claim the associated Employer National Insurance contributions and minimum automatic enrolment employer pension contributions on that wage.
6	Can employees work for other employers?	This will depend on the contract of employment and whether there are any employment restrictions in place on doing this. There is nothing in the scheme to say no other than a furloughed employee cannot work for their employer.
7	Is there a minimum or max period for being furloughed?	The minimum is 3 weeks, the maximum in 12 weeks but this may be extended.
8	Is there a minimum about of pay that is eligible for this scheme. E.g. we have some staff who only work 4 hours per week @ minimum wage. Would they still be eligible?	Yes, they would still be eligible.

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9	Where do I stand with a recent job role where their wages increased the week before March 1st. Do I base furlough on their previous rate or the new rate?	The scheme will take into account payroll as of the 28th February 2020.
10	Can a furloughed worker for a charity then volunteer in that charity whilst furloughed?	No. The guidance is clear that that any volunteer work undertaken by a furloughed employee cannot generate income for their employer or provide a service for their employer. That would likely be regarded as fraud and the government has explicitly identified the right to retrospectively audit all aspects of the scheme with scope to claw back fraudulent or erroneous claims. Staff on furlough can undertake training or volunteer for other organisations (subject to public health guidance).
11	Where employees paid minimum wage is the furlough pay based on 2019/20 minimum wage rates or the new rates from April 2020?	The scheme will take into account payroll as of the 28th February 2020.
12	Can a furloughed worker get another part time job?	This will depend on the contract of employment and whether there are any employment restrictions in place on doing this. There is nothing in the scheme to say no other than a furloughed employee cannot work for their employer.
13	What happens if a member of staff is on minimum wage as that was due to increase from April?	The scheme will take into account payroll as of the 28th February 2020.
14	If employees have multiple contracts with one employer, can you furlough according to each contract? So for	No, as they are the same employer.

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	example furlough on 3 contracts but maintain work for one?	
15	Can we furlough somebody for three weeks and then take that person back in employment and furlough somebody else in their place?	Yes. There is nothing express in the guidance to prevent employees dipping into and out of the scheme as long as they are in the scheme for a minimum 3 weeks at a time. If this is correct, employers will be able to rota employees on furlough leave in appropriate circumstances which may make furlough selection easier.
16	If an employee has left voluntarily after Feb 28th and we choose to rehire what are the implications for them then leaving at the end of the furlough period? Do we effectively extend their notice period?	This will depend on your agreement with the individual and whether you are agreeing to an extension of notice or to re-hire.
17	I have an employee on probation ending 9th April, he is not suitable for this position what should I do extend the probation period and furlough or let him go?	Probationary review is a separate process and therefore should be kept as such. Furlough should only be used if the individuals role would be "laid off" as a result of a downturn in business.
18	Can furlough be done retroactively?	Yes it can be backdated to the 1st March 2020
19	Can we furlough staff if they can't work due to caring responsibility	It will depend on the nature of the responsibility. This would fall under time off to care for dependents/ parental leave policies.
20	Can you furlough an employee more than once?	There is nothing in the scheme to say that you can't. However until the HMRC portal is up and running we don't know the mechanics of the Scheme

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21	If employee has more than one employer and is furloughed from one, can they continue to work for the other?	Yes, they are separate Companies/ Organisations.
22	If an employee on furlough has holidays carried over can they demand payment in one lump sum?	The government has announced it is allowing workers to carry over up to four weeks (not 5.6 weeks) annual leave into the next two leave years. You also need to review the contract of employment as payment of statutory holidays is not permitted.
24	I missed the beginning of the seminar. Did you say that employers have to pay the furloughed staff and then get this back somehow from the government?	It is unlikely that the government scheme will be in a position to sanction payments in line with each business' payroll date and it is therefore expected that businesses will firstly need to pay employees themselves, with the grant not being received from the government till such later date. In the event that the employer does not have the financial ability to afford the payments until receipt of the grant from the government, it is important that you advise your employees of this position and obtain their agreement. Alternatively. Businesses may wish to consider applying for a Coronavirus Business Interruption Loan to assist with short term cash flow support.
25	Is any of this scheme based on how much money the organisation has in the bank?	There is no reference to the employer's affordability to pay wages being linked to qualification of the scheme.

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26	So with the increased pressure to keep construction sites open where will we stand if we furlough with sites still open? Would we still get the money?	You will still be eligible if the roles that are furloughed would otherwise be "laid off".
27	Can directors who have no dividend or bonus be furloughed?	Yes but they will not be able to work in the business/ Organisation.
28	Can the staff volunteer to do helpful things like painting or archiving - is that 'providing a service'	The guidance is clear that that any volunteer work undertaken by a furloughed employee cannot generate income for their employer or provide a service for their employer.
29	I was just wondering, you mentioned about staff not being eligible if we receive funding for the staff costs. We run a service on behalf of the local authority. The LA are continuing to pay 75% of the daily rate for these services, so I understand that the staff involved directly with the service cannot be furloughed. So, 2 questions really. Do we have to pay those staff 100% of their expected wages, or can we still apply the furlough rules as they are not working, and only pay them 80%? Also, staff that are not involved with running the service paid for from the SLA, can they still be put on furlough as the payment is not related to their job	1/ You cannot be furloughed and still work and so if staff are working full time they should be remunerated accordingly - unless with consultation you reduce their working time by 25%. If they are not working they can be furloughed at 80% 2/ The staff can be furloughed