

Webinar – Responding to Covid-19: **HR and Furlough Update**

The Webinar will start at 1pm.

PLEASE NOTE: to ensure optimum connection quality, microphones and video connections will be muted.

Generic questions can be asked in the chat function.
Specific questions should be directed to sbwenquiries@wales.coop

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HR and Furlough update



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Useful Links

- **Wales Cooperative Centre:** <https://wales.coop/covid-19/>
- **Social Business Wales:**
<https://businesswales.gov.wales/socialbusinesswales/covid-19-support-your-social-business>
- **UK Government Information on Coronavirus Job Retention Scheme**
<https://www.gov.uk/guidance/claim-for-wages-through-the-coronavirus-job-retention-scheme>

Introduction

- Review the Coronavirus Job Retention Scheme (the Furlough Scheme) and update what we know about recent changes
- Managing approaches to furlough and ending furlough
- Managing a return to work / safe working practices
- Dealing with redundancies
- Questions

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Coronavirus Job Retention Scheme

- Announced 20th March 2020 to 'support employers whose operations have been severely affected by coronavirus'
- Offered employers the chance to retain employees – to 'furlough' them – on 80% of their wages (to a limit of £2500 per month)
- To date 6.3million jobs in the UK have been furloughed by 800,000 businesses. Claims amount to £8bn (3rd May 2020)
- Originally due to end on June 30th, it has been recently announced that the scheme will be extended until October 2020 with no changes to its current format until the end of July.

Possible changes to the scheme from August

- Employees will be able to return to work on a part time basis
- Employers may be required to pay a percentage towards the salaries of the furloughed employees
- The employers payments will substitute the 80%/£25,00 contribution under the CRIS

Guidance updated on 14th May confirms that the scheme will continue until end of July in its current form and 'from August, employers using the scheme will have more flexibility to bring their furloughed employees back to work part-time whilst still receiving support from the scheme.

Possible changes to the scheme (continued)

- New approach will run for three months from 1 August to end of October.
- Employers will be asked to pay a percentage towards the salaries of their furloughed staff
- Employer payments will substitute the contribution the government is already making ensuring staff continue to receive 80% of their salary up to £2,500 per month
- More specific implementation details will be made available by the end of May

Will new furlough agreements be required if employees are to be furloughed after the end of July?

- A properly drafted furlough agreement entered into since the start of the scheme will prohibit employees from carrying out any work for their employer during the furlough period.
- It may be necessary for the furlough agreement to be amended by a side letter, or fresh agreement, which permits employees to work during furlough and addresses the circumstances in which the employer can require the employee to work.
- Full details of the changes have not yet been announced. It will be important to ensure that employees consent to any variation is obtained before the changes take effect and any new requirements of the scheme addressed.

Can an employer rotate furlough between its employees?

- The *Employers' CJRS guidance* states that employees must be furloughed for a minimum of three weeks. The *Treasury direction* clarifies that three weeks means 21 calendar days (*paragraph 6.1(b)*).
- Since employers are likely to receive many requests or volunteers to be placed on furlough, it is likely to assist employee relations for employers to be able to move employees on and off furlough, subject to that minimum three week period, so that no employee feels that they have been unfairly denied the opportunity to take furlough. The guidance confirms that employees can be furloughed multiple times, subject to the minimum three consecutive week period.

Is there a specific amount of time an employee has to work before going back on furlough?

- Currently, no guidance requiring an employee to return to work for a minimum period of time before being furloughed again.
- However, if an employer is rotating furloughed employees, those returning to work are likely to be back at work for at least three weeks (given that the minimum furlough period is three weeks).
- Bear in mind the anti-abuse provisions relevant to the CJRS. A claim must not be made under the CJRS if it is abusive or otherwise contrary to the "exceptional purpose" of the CJRS.
- Abuse of the scheme is open to scrutiny.

How does an employer decide who to put onto furlough or come off it?

- Employer could initially ask for volunteers. May receive more volunteers than it wants and will then have to consider selection approaches. Which should be based on non-discriminatory criteria.
- If the employer needs to very urgently furlough employees or make them redundant in order to be able to continue to trade, a limited selection procedure carried out on an urgent basis is likely to be acceptable.
- If the employer does not have any immediate financial concerns, it is likely to be more reasonable for it to follow a more comprehensive procedure. Employers could draw up a matrix of objective criteria in a similar way to redundancy scoring. Equality and discrimination laws apply in the usual way in this context.

What information should an employer provide when it notifies an employee that their furlough leave is due to end?

- In addition to the date of the end of the furlough leave the employer should consider whether the following information will need to be provided:
 - Steps taken by the employer to ensure that it is safe for employees to return to work
 - Any temporary contractual changes the employer is required to impose due to government restrictions. E.g. different working hours and break times
 - Any potential temporary or permanent contract changes the employer wants to impose. E.g. temporary reduced hours and / or pay; new lay-off/short time working provisions; changes to job descriptions, duties and mobility clauses
 - Any policy changes the employer needs to make due to the pandemic. E.g. Annual leave
 - Continuing terms and conditions. E.g. Health and Safety and sickness policy

What information should an employer provide when it notifies an employee that their furlough leave is due to end? (continued)

- temporary different ways of working that the employer needs to impose to comply with government requirements. This will vary depending on the employer and the industry concerned. However, these may cover:
 - minimising the use of public transport to travel to and from work;
 - measures to comply with social distancing requirements in the workplace;
 - measures to reduce the spread of the virus in the workplace;
 - minimising work-related travel and social contact;
 - the responsibilities of staff to those entering the workplace.

What information should an employer provide when it notifies an employee that their furlough leave is due to end? (continued)

- Special provisions the employer is making for shielding / vulnerable employees, how an employee notifies their employer if they fall into this category and what steps the employer will then take.
- Any allowances that will be made for time spent on furlough in relation to performance reviews, performance and capability procedures, and application of redundancy selection criteria.
- Where the employee has been on furlough for an extended period, it will be useful to remind the employee of their remaining annual leave entitlement for that holiday year, and, where appropriate, of their right to carry-over annual leave from the current holiday year to the next two holiday years.

Employers should remember to also notify employees who have continued working on site throughout lockdown of the above matters where relevant.

How should an employer select which employees should return to work from furlough ahead of others?

Acas guidance states that employers should regularly review furlough agreements to decide when to bring furloughed staff back to work. Employers should consider:

- Which job roles and skills are needed in the workplace.
- If all furloughed staff are needed back at the same time.
- If any staff might be kept on furlough because they're temporarily unable to work, for example if they're caring for someone or are shielding.

When selecting which employees to return to work from furlough and which employees to keep on furlough, an employer should ensure that no discriminatory criteria are applied, except where this can be justified.

From a health and safety and well-being perspective, what are the employers obligations about managing a return to work?

Employers have a contractual duty to take care of employees' health and safety and other statutory duties too including:

- Implied duty to protect the health and safety, of all employees.
- Duty to look after the mental health, as well as physical health, of employees.
- Duty to protect members of the public, clients, customers and contractors.
- Duty to manage the health and safety risks from the workplace itself including equipment. Other workplace issues to consider may include cleanliness and washing facilities.
- Provision of safe systems of work possibly including provision of PPE subject to availability.
- Information and training (reminding employees of their health and safety responsibilities).

When the time comes, how can employers plan and manage a safe return to the workplace?

Before restarting work, you should ensure the safety of the workplace by:

- carrying out a **risk assessment** in line with the [HSE guidance](#)
- **consulting** with your workers or trade unions
- **communicating** the results of the risk assessment with your workforce and on your website
- **ensuring staff well-being**
- **Developing** safe working practices

What is the legal and moral position on encouraging vs mandating return?

Employers have to undertake a balancing act taking into account:

- managing the health risks employees face in the workplace and travelling to work
- financial pressures of their business
- the furlough scheme may shortly have reduced payments before coming to an end
- the safety risks that new working practices may present to employees and others
- problems faced by those needing childcare

The CIPD is urging businesses to consider three key tests before bringing people back:

Is it essential?

Is it sufficiently safe?

Is it mutually agreed?



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Redundancy and Social Business

- These are difficult times for all businesses and whilst redundancy is not something most businesses will want to consider it may be necessary to do so.
- Social businesses benefit from working with their stakeholders to deliver social aims that benefit their communities and their employees and these should be considered throughout these processes.
- Transparency is often ingrained within the way social businesses are run. Employees have a sense of ownership and are often highly engaged with the businesses aims and values.
- Formal and informal consultation could be more beneficial in social businesses and could be used in a positive way. Can you work with staff to look at meaningful alternatives and approaches? ie reduced hours or difference working patterns rather than forced redundancies ?

What if I need to consider making employees redundant?

Redundancy is a potentially fair reason for dismissing an employee. However, an employment tribunal will not treat a dismissal as a redundancy dismissal unless it is caused by:

- the closure of a business;
- the closure of a particular workplace; or
- diminished need for employees to carry out work of a particular kind.

Collective Consultation

If an employer is proposing to dismiss as redundant 20 or more employees at one establishment within a period of 90 days or less, it will be under an obligation to consult with appropriate representatives of the affected employees. The duty to consult collectively is in addition to the employer's obligations to consult individually with each of the potentially redundant employees.

What if I need to consider making employees redundant? (continued)

When should an employer begin collective consultation?

- For 100 or more affected employees at the same establishment, the consultation must commence at least 45 days before the first dismissal is to take effect.
- If 20 or more employees are affected, consultation must commence at least 30 days before the first dismissal.
- No obligation to consult collectively arises where 19 or fewer employees are affected.
- The collective consultation should be completed before the employer serves any notices of termination of employment.
- The relevant definition of redundancy for the purpose of collective consultation is a "*dismissal for a reason not related to the individual concerned*". This includes the situation where an employer proposes to dismiss and re-engage employees who do not agree to a proposed variation of their contract.

What if I need to consider making employees redundant? (continued)

What must consultation include?

Consultation around:

- Avoiding the dismissals (considering other options)
- Reducing number of employees to be dismissed (suspending recruitment, redeployment, reduction in overtime etc)
- Mitigating the consequences of dismissal (severance payments, counselling etc)

The employer is required to disclose certain information to the appropriate representatives in writing. It must disclose:

- the reasons for its proposals;
- the numbers and description of employees it proposes to dismiss as redundant;
- the total number of employees of that description employed at the establishment in question;
- the proposed method of selecting the employees who may be dismissed;
- the proposed method of carrying out the dismissals, including the period over which the dismissals are to take effect;
- the proposed method of calculating the amount of any redundancy payments
- the number of agency workers working temporarily for and under its supervision and direction

What if I need to consider making employees redundant? (continued)

Can an employer make furloughed employees redundant?

The *Employees' CJRS guidance* confirms that an employee can be made redundant while on furlough or afterwards, and that an employee's redundancy rights will not be affected by being furloughed. However, an employer cannot claim reimbursement of redundancy payments under the scheme *

- *It is worth checking the terms of any grant or loan funding that has been received during this period and what the conditions of those awards say about redundancy.*

Employee and trade union representatives, who may need to be consulted on redundancy during furlough, can perform their duties without breaking their furlough.

- The usual obligation to consult staff about any redundancy proposals and allow them to comment on these before they are finalised, and rules about what a fair consultation should entail, will continue to apply irrespective of whether staff are furloughed or not.
- There will be the obvious logistical issues as to how to consult with staff remotely. Employers may need to build extra time into the consultation process to allow for logistical issues which may arise.

Questions?

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Get in touch

By Phone: 0300 111 5050

Websites : <https://wales.coop/covid-19/>
<https://businesswales.gov.wales/socialbusinesswales/covid-19-support-your-social-business>

Email: sbwenquiries@wales.coop



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