



This Week in Employment Law

30-03-2020

## Government guidance on employee furlough

Last week, we reported on the introduction of the Job Retention Scheme, introduced by the government to help employers retain staff during the coronavirus outbreak. They have now released further guidance for employers, which we take a closer look at below:

- Employers should agree with employees that they will be placed on furlough and be subject to reduced pay.
- Employers will be able to recover 80% of their wage costs up to a monthly cap of £2,500 per person.
- All PAYE staff are eligible to benefit from the Scheme, including those on zero-hour or temporary contracts, however, they must have been on the company's payroll on 28 February 2020.
- Furlough can be for a minimum of three weeks up to a maximum of three months, however this may be extended. The grant will cover the period from the start of furlough and can be backdated to 1 March 2020.
- Those who are on sick leave, or are self-isolating in line with government guidance, can be furloughed once they 'return'.
- Employees should not undertake any work for their employer whilst on furlough that amounts to making money for it or providing services to it.
- HMRC are working on an online portal for employers to use to access the grant, and it is hoped that the first grants will be paid by the end of April 2020.

### Workers will be able to carry over untaken annual leave

The changes, implemented as part of the emergency coronavirus legislation, mean employees can carry up to four weeks of unused leave into the next two leave years where it is not reasonably practicable for them to take some, or all, of the holiday to which they are entitled in their leave year due to the coronavirus.

#### Did you know?

Workers are entitled to a minimum of 5.6 weeks leave. Usually, employers should ensure that staff are provided opportunity in which to take this leave. As many individuals are now working 'around the clock', this change can help prevent a bottleneck of leave requests later in the year.

### Lay off may still be needed if furlough is not an option

The restrictions on furlough mean that some employees may not be able within scope of the scheme. This is likely to be those who have newly joined a company meaning that they do not meet the criteria of being on the payroll on 28 February 2020. Employers who have had to close down or cannot now offer work to some employees need to seek an alternative to furlough for the employees.

#### Did you know?

One option would be lay off. Employees who have a lay off clause in their contract to send employees home on no pay can use this here. Importantly, statutory guarantee pay only applies to those with at least one month's service.

### Middlesbrough FC unlawfully deducted wages

The Employment Appeal Tribunal (EAT) has found that deducting pay from employee wages in order to pay for football season tickets was unlawful as it put wages below the minimum wage. This was despite the fact that staff agreed to the deduction and a tribunal had previously deemed it legally acceptable.

#### Did you know?

National minimum wage law outlines that voluntary payments to an employer to buy goods or services not connected with employment do not result in an unlawful deduction. However, the EAT confirmed in this case that the law cannot be interpreted to mean deductions made by an employer.

The government remains hopeful that grants will be available by the end of April and states that employers will be able to claim back amounts, to the stated limit, they have paid up until that point. To keep up-to-date on all developments with the Job Retention Scheme, and coronavirus implications for businesses, call our 24 hour Advisory Service.

Please contact the 24 Hour Advice Service for advice on your specific situation before acting on the information in this publication.