

## Furlough and pay when on family leave

**The government has provided further clarity on how eligibility for statutory maternity pay, and other statutory pay for family leave, should be assessed for furloughed employees. We take a closer look below:**

- Entitlement to Statutory Maternity Pay (SMP) is calculated by assessing an employee's average earnings over a specific eight week period.
- Employees who have been furloughed as part of the Job Retention Scheme, and are receiving 80% of their pay, may therefore have seen earnings over that eight week period reduce which may then affect their SMP entitlement.
- The Government has now announced that furloughed employees planning to take maternity leave should have their usual earnings taken into account instead of their reduced furlough pay during the assessment period.
- This will extend beyond SMP and also apply to statutory payments during paternity, adoption, shared parental and parental bereavement leave.
- This means that reduced furlough pay will not affect an employee's entitlement to statutory payments which will now be determined as if they had not been furloughed.
- The new law only applies to employees whose period of family-related pay begins on or after 25 April 2020.

### New IR35 rules 'riddled with problems'

From April 2021, some private businesses engaging contractors through intermediary companies will become responsible for assessing their employment status for tax payment reasons. However, a House of Lords Committee has found a risk of contractors being treated like employees for tax purposes but not enjoying employment rights.

#### Did you know?

The new IR35 rules were originally set to come into force in April 2020 but were delayed due to coronavirus. They will extend the current public sector treatment of contractors to certain businesses in the private sector; a measure taken to prevent incorrect payment of tax.

### 'Skills toolkit' launched for furloughed workers

A free e-learning platform has been set up by the Department of Education (DoE) to encourage furloughed staff to improve their skills and knowledge. Courses available range from everyday maths and using basic social media at work, to more advanced topics. Whilst entirely optional, the courses have been selected to meet the needs of business.

#### Did you know?

Whilst furloughed staff should not work for their employer, they can do training but should be paid at least National Minimum Wage for the time they spend on this. If employers require their furloughed staff to do the DoE training above, this would qualify for payment.

### Race discrimination due to 'kung fu' noises

A Chinese employee, who was subjected to racial harassment from his colleagues, has been awarded £28k by an employment tribunal. In its ruling, the tribunal held that the company did discipline the perpetrators, but was critical of its argument that the employee reacted 'over sensitively'.

#### Did you know?

Employees can bring a successful discrimination claim even in situations where the perpetrators do not 'mean' their comments to be discriminatory. The tribunal will take into account the personal feelings and perspectives of the claimant; what may seem harmless to some could be offensive to others.

Guidance on the Job Retention Scheme, and what employers should bear in mind when furloughing staff, is subjected to regular reviews. For the latest developments, and information on how our furlough navigator can help you to manage the process, 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.