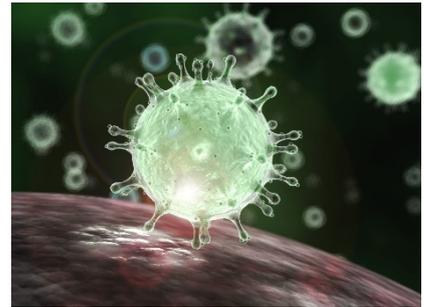


## **Employment Law Update – Coronavirus**

**29 October 2020**

### **New Government Support Schemes for Employers**

*The furlough leave scheme is due to end on 31<sup>st</sup> October 2020 and will be replaced by the Job Support Scheme (JSS) on 1 November. The JSS was initially intended to provide limited financial support for viable jobs for businesses facing lower demand during the winter months. However, with the introduction of the tier system, it has recently been changed to provide support similar to the furlough scheme for businesses forced to close in tier 3 areas (JSS Closed) and will provide a higher contribution for businesses which are operating with restrictions in tiers 1 and 2 (JSS Open) than that which was originally proposed. Employers will also be entitled to a £1,000 bonus (per employee) if they take employees back from furlough leave and continue to employ them until 31<sup>st</sup> January 2021 including on the JSS. The schemes are aimed at avoiding redundancies. Details are set out below but further guidance is due to be published shortly.*



### **Job Support Scheme (JSS)**

The JSS will be open for applications from 1 November 2020 and now comprises 2 schemes: JSS Open and JSS Closed. The JSS will run for six months from 1<sup>st</sup> November 2020 although JSS Closed will be reviewed in January. The JSS will apply to all small and medium sized businesses. Larger businesses (250 or more employees) will have to meet a financial assessment test and will only be eligible if their turnover has fallen during the pandemic and they are not making any capital distributions.

#### **JSS Open**

This applies to businesses which are legally open for business but have seen demand drop due to corona virus restrictions, particularly the hospitality industry.

Under JSS Open an employee will need to work and be paid for at least 20% of their normal hours i.e one day per week for a five-day week. For the remaining hours not worked, the government will provide up to 61.67% of wages for hours not worked up to £1,541.75 per month and the employer will contribute 5% up to a maximum of £125 per month. This means the employee will receive at least 73% of their normal wages where they earn £3,125 per month or less.

The government contribution under the JSS Open is considerably more generous than the original scheme both for employers and employees.

### **JSS Closed**

This applies to businesses which have been legally required to close their premises by one or more of the four governments in the UK due to corona virus restrictions. In this situation the government will pay two thirds of their employees' salaries up to a maximum of £2,083.33 per month.

Businesses will only be eligible to claim the grant while they are subject to these restrictions and employees must be off work for a minimum of 7 consecutive days.

For both schemes, employers remain liable for National Insurance and pension contributions and can top up wages to 100% at their discretion.

### **General requirements for both schemes**

- The JSS is open to eligible employers throughout the UK with a UK bank account and a UK PAYE scheme regardless of whether they have previously used the furlough scheme. Employers will not be able to claim for employees who have been given notice of redundancy.
- Employers will be able to claim the JSS support scheme grant for employees who were on their PAYE payroll between 6th April 2019 and 23<sup>rd</sup> September 2020. Employers can only claim for employees that were still in their employment on 23<sup>rd</sup> September 2020. If they ceased employment after 23<sup>rd</sup> September but were subsequently re-hired then employers can claim for them. The employee does not need to have been furloughed at any time to benefit from the JSS.
- Government payments are claimed in arrears on a monthly basis starting on 8<sup>th</sup> December 2020 so the employer has to pay the employees in order to claim reimbursement.
- To be eligible for the grant, employers must have a written agreement with their employees (or reached a written collective agreement with a Trade Union if recognised). For JSS Closed, the agreement must state that employees have been instructed to and agreed to stop working for a minimum of 7 consecutive calendar days. For JSS Open, the agreement must state that employees have been offered a temporary working agreement. The temporary working agreement must cover at least seven consecutive days. Any changes to the employment contract must be by written agreement. The employer must also keep records of how many hours the employees worked and the number of usual hours they are not working. Employers are required to maintain these records and the agreements for each employee for 5 years. These must be made available to HMRC on request.
- There will be a written register of companies which have claimed for the JSS. Employees will be able to check if their employer has made a JSS support claim relating to them by their personal tax account. This is, presumably, to help prevent fraud.
- It is possible to claim under both schemes for different employees but an employer cannot claim for a single employee under both schemes at the same time.

### **Coronavirus Job Retention Scheme (CJRS) – Job Retention Bonus**

The CJRS/Furlough Scheme will end on 31<sup>st</sup> October 2020. Provided employees who have been furloughed remain employed until 31<sup>st</sup> January 2021, HMRC will pay a bonus of £1,000 to the

employer for each eligible employee. This was intended to avoid redundancies before the current restrictions were introduced.

The main points are as follows:

- The Job Retention Bonus is available to employers in respect of each employee who
  - (a) has been on furlough at some point (not just until 31<sup>st</sup> October) and
  - (b) remains employed and not under notice on 31<sup>st</sup> January 2021 whether or not on the JSS.
- HMRC will make a payment of £1,000 to the employer for each eligible employee. This is a bonus to the employer and not the employee.
- To receive the bonus, the employer must have paid a monthly salary of at least £1,560 to the employee between 6<sup>th</sup> November 2020 and 5<sup>th</sup> February 2021.
- A claim for the bonus needs to be presented in a six week window between 15<sup>th</sup> February and 31<sup>st</sup> March 2021. Further details of how the claim is to be made will be published in due course.

### **Comment**

The current JSS scheme is far more generous than that which was originally proposed. The requirement for written agreements and records of hours' worked as well as a public register which employees can access will address some of the criticisms of the furlough scheme resulting in fraudulent claims. These applied where employees were working as normal unaware that their employer was claiming their wages under the furlough scheme.

### **Back to working from home for office workers**

*Having previously encouraged employees to return to the office to support the economy, the Government has now issued new guidance stating that, to help contain the virus, office workers who can work effectively from home should do so over the winter. Public sector employees working in essential services should continue to go into work where necessary and anyone else who cannot work from home should go to their place of work.*

### **Consultation and Risk Assessment**

The previous health and safety measures required to ensure social distancing in the office still apply. However, the new guidance, imposes a requirement on employers to consult with their employees (or trade unions or employee representatives) to determine who needs to come into the workplace safely taking into account a person's journey, care and responsibilities, protected characteristics and other individual circumstances. Employers are also required to carry out a covid workplace risk assessment which should address these issues as well as any support for vulnerable individuals.

The guidance states that it is vital that employers engage with workers to ensure that they feel safe returning to work and they should not force anyone into an unsafe workplace. Further, if an employee remains concerned that the employer is not taking all practical steps to promote social distancing, then they can report this to the Local Authority or Health and Safety Executive who can take a range of actions including, where appropriate, requiring the employer to take additional steps. However, employers and employees should come to a pragmatic agreement about their working arrangements.

The guidance can be viewed here:

<https://assets.publishing.service.gov.uk/media/5eb97e7686650c278d4496ea/working-safely-during-covid-19-offices-contact-centres->

### ***Criminal Penalties***

By law from 28<sup>th</sup> September, employers must not knowingly require or encourage someone who is being required to self-isolate to come to work. Penalties could be imposed ranging from £1,000 to £10,000.

### ***Comment***

The onerous requirements of consultation are sufficient to deter employers from bringing their employees back to the office and many companies have now put their return to work plans on hold. Alternatively, there will be a minimal number of people in the office at any one time. However, some companies which have already brought staff back to the office appear to be undeterred by the new guidance.

### **Contact details:**

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