

Q&A from an HR COVID-19 online surgery.

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1. Can furloughed staff volunteer for the organisation that has furloughed them? What are the limitations of this (including number of hours) and how will this be checked?

The guidance states that they can volunteer so long as they do not make money for or provide services to their employer. They can also attend training courses. There are no limits in the guidance or information about how this may be checked. We think it is likely that you will have to certify this yourself and take note of the fact that your claim may be audited by HMRC.

2. Can furloughed staff fill in the government furloughing portal or does that count as work?

I think this must be possible otherwise you cannot access the scheme if you have completely closed through the furloughing guidance.

3. Looks from your FAQs this is possible but just checking for any problems if worker is furloughed for 3 weeks, work for 1 week then furloughed for a further 3 weeks etc, work for 1 week and so on?

This is permitted.

4. Do we need one person to keep working in order to apply for the government help? Does doing that application count as work?

See 2 above.

5. Minimum wage changes tomorrow, we would have been giving a pay rise is the 80% on the new rate or the old rate

80% will be on the old rate for people who have 12 months service. If they have less service, you can use average pay since they started. The government guidance states you do not have to pay NMW/NLW whilst people are furloughed so it is open to you to seek to agree with employees that they will only receive what you can claim back.

6. As I understand it we are in a process of restructuring and TUPE will not apply in regards the Jobs Retention Scheme Grant. Third Party rights.

TUPE is not excluded in Government guidance. We think it will apply because all rights, obligations and liability move with an employee under TUPE.

7. How should we treat employees who ask to stay at home even if they can't work from home because they live with someone who is in the vulnerable or extremely vulnerable group where they can't be furloughed?

If we cannot offer them a safe workplace, then they could be furloughed.

8. As people taking dividends are exempt from support, my understanding is that only the PAYE part of any income can be furloughed. Are there any other options for directors paid in this way?

Dividends appear to be excluded. We cannot see other options other than the other business support options which have been published.

9. Can Directors be furloughed and if so, do they still have decision making powers if remaining members of the co-op hold meetings to discuss important topics (i.e. restructuring) in their absence?

Directors can be furloughed. They can attend to governance elements of their roles as a Director.

10. Can you confirm if the max £2500 gross or net pay?

This is gross pay. You will be able to reclaim employers NI and auto-enrolment level pension contributions in addition.

11. Can we furlough staff on a rotational basis.? E.g. Lay off 4 members of staff for 3 weeks, then after 3 weeks bring them back in, and lay off another 4 members of staff for the next 3 weeks and carrying on doing this until the scheme ends.?

Yes.

12. Employees need to agree to be furloughed. If they withhold agreement so the employer is forced to make them redundant, are they entitled to full pay for the delay and consultation period?

Yes.

13. We're unsure what to do about holiday. We noticed the guidelines for Key Industry are relaxed, but we're not in that category. Can we still carry holiday over? We're trying to work out approach to how we use holiday.

The working time regulations have been relaxed, you can carry over 4 weeks leave into the next 2 holiday years and the additional 1.6 weeks statutory leave into the following year.

14. Is there a minimum number of hours that can be furloughed? e.g. someone on 1 day a week. What proof of contracted hours will we need? How does it work with dates/timing. Do we start on 1st on month/a Monday/It doesn't matter?

An employee cannot be partly furloughed but there is no minimum contract hours requirement. You can start at any time during the scheme. The scheme does not state you need proof of contracted hours. The scheme relies on past pay levels to determine what you can claim.

15. If a worker signed a contract a month ago (to begin on April 1st) can that staff member still be furloughed if Covid-19 has resulted in all work being cancelled by clients?

No, they must have been in work on payroll on 28 February 2020.

16. We are in the unfortunate position in that our Coop has no cash reserves, no trade, and no income and no likelihood of obtaining a loan. It seems likely we would not be able to furlough our workers. Is it possible to either lay people off or make them redundant until the situation changes even if not mentioned in their contracts?

It should be possible to lay people off and state they will be paid when the scheme delivers payments to employers.

17. Anything from the new COVID-19 Legislation we need to be aware of and could we have a quick summary about the SSP section?

The SSP rules are explained in our FAQs on the website. The new Coronavirus Act contains details about volunteering for the NHS or Social Services but the rest are enabling provisions and we will need to wait for subordinate legislation. Again, see our website FAQ's:

<https://www.uk.coop/hr-news/coronavirus>

18. As I understand it, staff whose fixed term contracts end today can be furloughed as long as we extend their contracts today. Is that correct?

Yes, provided all the other criteria are met.

19. What evidence can we ask for from tenants of a housing co-op who say they cannot pay their rent?

You could ask for any reasonable evidence given that unless the lease provides otherwise, you are not obliged to offer a rent holiday etc.

20. If someone is furloughed and then goes sick, do they remain on furlough pay or sick pay? Some colleagues get enhanced sick pay so would get 100% pay if sick.

Once someone is furloughed they remain furloughed until the employer and employee agree return to work. They would need to return to work to receive other forms of pay.

21. Can we carry over annual leave (half of our staff's holiday year will end in June and a lot of people want cancel leave right now)?

You can do this, there is nothing to prevent it.

22. Can we require/encourage staff to do training while on furlough?

Yes.

23. As I understand it, we cannot furlough a staff member who is currently unwell. Is that correct? We have an instance of a staff member who is unwell and in hospital. Unfortunately, their fixed term contract also ends today. We would like to provide some financial support for that staff member. As I understand it, the only thing we can do is to extend their contract and pay them SSP. In this instance is there any way we could reclaim SSP?

This is correct. They would remain on SSP until they return to work.

24. Can we furlough staff on purely medical reasons, i.e., because they are shielding due to an ongoing medical condition?

You would need to take advice to ensure you are not adopting discriminatory criteria in choosing which employees to furlough. But if an employee is looking to be furloughed because they are shielding and you cannot offer them a safe place to work, then they could be furloughed.

25. As a housing co-op, are we allowed to cancel pre-agreed contracts for routine maintenance and repairs to retain money within the business?

This would be subject to the terms of the contracts you have entered.

26. Surely members are directors?

Members are not always directors. It varies from one organisation to another.

27. Our multi-purpose building has stopped all normal trading activities but we are now a Community Response Hub working with Council delivering food etc - if we furlough staff can they have a role in this, particularly if the Council funds this service?

If the council fund wages you must continue to use those funds to pay people rather than furlough people.

28. Have I understood it correctly that we can continue to pay all staff 100% of pay while they are furloughed and that 80% of this should then be reimbursed under the scheme? So we don't have to stop direct debits?

You can pay more than you can reclaim under the scheme if you are able to do so.

29. If you're a small business currently liable for business rates, is it safe to assume you will definitely be able to claim the £10k grant? What would affect this?

If your business currently receives Small Business Rates Relief it will be getting the £10k Small Business Grant.

If it meets the rateable value criteria for Small Business Rates Relief (>£15k rateable value) , but gets the Charitable Rate Relief instead, it is far less clear cut. You can argue with your local authority that you are eligible for the grant, citing paras 16, 17 and Annex 1 of the MHCLG Guidance, but I don't know how that will play out. We'd help you argue the case if you wanted to.

Our take and advice for co-ops on all government schemes is here:

<https://www.uk.coop/coronavirus/government-support-business>

30. Furloughing Volunteering. We are a Community Benefit Society and have a trading subsidiary (CLG). Employees being furloughed are employed by the CBS. Can they volunteer for the trading subsidiary? i.e. If a bar manager is furloughed and then volunteers to help develop policies and material not part of their normal job can they do this via the subsidiary as support they wish to give to the Community Benefit Society?

You may need to take more detailed advice on this. The starting point would be to determine whether or not, under their contract with the CBS, they can be required to undertake work for the CLG. If they can be required, then this is likely to be deemed to be volunteering for the CBS even though it is for the benefit of the CLG. In which case, voluntary work is permitted so long as you are not making money for or providing services to your employer. Policy development may be deemed 'providing services'.

31. Is there a minimum threshold for claims? Can we claim for a staff member who is only contracted for 8 hours per month?

There is no minimum threshold.

32. How do we distinguish between "Full time and part time employees" and "Employees whose pay varies"?

If your employees work a fixed pattern of work for a fixed amount of pay each month, they are salaried. It does not matter in that case whether or not they are salaried full or part time. If they work variable hours and pay varies in accordance with how much they work, you will need to use either their earnings in the same month in the previous year, or a 12-month average, or where they have less than 12 months, their average earnings since their employment began.

33. When calculating furloughed pay, if someone is furloughed in May, is pay still based on the 19-20 tax year or the last 12 months?

For a salaried employee, use 28 February pay. For variable pay employees, use the higher of May 2019 or 12 months to May 2020.

34. We cannot afford to pay our workers until they can receive a furlough payment. Any advice?

See 16 above.

35. As a zero-hour contract with varied hours, does the employer make ongoing payments, based on the average. Or is it this just a one-off payment?

The scheme provides using either the higher of their earnings in the same month the previous year, or average pay for the last 12 months, or where they have less than 12 months' service, average pay since they began. You can therefore fix a regular payment with the employee based on what you can reclaim.

36. We rely on seasonal trade, especially in the summer. much of our summer trade has been cancelled, so the loss of income is down the line. How does this relate to furloughed workers if it's not from immediate loss of trade?

The scheme does not state you must establish a particular financial situation now. It could be accessed to protect the business later down the line.

37. We meet the criteria for the small business grant, do you know the likelihood of getting 'up to £10,000'? When will we have more information regarding this?

This is actually far trickier to answer at the moment than it should be, because the government's info on this is a bit contradictory.

If a business is a business rates payer and receives either the Small Business Rate Relief or the Rural Rate Relief on 11 March it is very safe to assume it will get the £10k Small Business Grant from its local authority.

However, if a business ratepayer receives Charitable Rates Relief, the situation is rather less clear-cut. Arguably, if the premises has a rateable value under £15k (the Small Business Rate Relief threshold) then it should be eligible for the Small Business Grant, as per paras 16 and 17 and Annex 1 of the MHCLG guidance to local authorities. However, the line from central government to businesses is that you have to be receiving the Small Business Rates Relief, not just be eligible for it. If one of these businesses had the time/energy/need to argue the case with their local authority, we'd be happy to help and to know how it goes!

None of the above applies if the business/premises get the £10k/25k Retail, Hospitality and Leisure Grant though - they don't get the Small Business Grant as well, it's one or the other.

38. We have 3 new employees who started on 1st March 2020. Are we right in thinking we can't furlough them?

Yes.

39. If an employee does not currently pay tax, would we not be able to furlough them and claim through the job retention scheme?

If they are set up on PAYE, they can be furloughed. It would not matter that the PAYE doesn't require a PAYE tax payment because of the level of their earnings.

40. Can you continue to accrue annual leave whilst on furlough leave?

Yes.

41. Could Co-operatives UK coordinate collecting a list of co-ops who can't afford to pay wages until they can claim back the Furlough Scheme money, so that those of us with better cashflow could offer short-term solidarity loans to keep them afloat?

We are undertaking a member questionnaire, which can be accessed via <https://uk.coop/coronavirus>

42. Do furloughed staff still accrue holiday whilst off?

Yes.

43. Do you think it's likely that the furloughing scheme will last more than 3 months?

It is possible it will but we cannot comment on the likelihood.

44. Can Co-operatives UK produce a simple process checklist and template letters be available to help to furlough employees?

Yes, see our website for future updates: www.uk.coop/coronavirus

45. If there is no clause in the employment contract to allow the employee to be laid off are they entitled to their full pay regardless of whether they can work from home or not?

Yes, if they refuse to be furloughed. This may mean that they become redundant and their employment terminated that way, subject to the usual requirements of a fair redundancy process.

- 46. What is an example of a contractual obligation to lay off staff?**

An example is "We reserve the right to lay you off work without pay subject to the needs of the business".

- 47. Can you furlough an employee who can't and doesn't want to work because of new childcare responsibilities related to COVID-19 nursery/school closures?**

Anyone who is not sick and receiving SSP could potentially be furloughed.

- 48. Do we need agreement in writing from our employees that they accept furlough conditions?**

You must write to them to confirm what is agreed. You do not need anything in writing from them although it may be better to obtain this.

- 49. Can co-ops volunteer for each other?**

Yes.

50. Do you know when employers are likely to receive their first grant payment from HMRC?

HMRC appears to suggest that once open they will be making BACS payments.

51. Is there a limit to the length we can furlough workers? Will this scheme end and do we know when this will be?

The scheme will run until the end of May. It may be extended; we will need to wait and see. So long as the scheme exists, people can be furloughed and you can reclaim wages within the parameters that were announced.

52. Can they request volunteer even if they would have work if they came in?

See our website for volunteering scheme details: <https://www.uk.coop/hr-news/coronavirus>

53. Would it be problematic to select people for furloughing based purely on their 'at risk' status if we were making their pay up to 100% of their usual wage?

It could be if you are formally selecting people and use this as criteria. But if you enter dialogue with people and cannot offer them a safe workplace, then they may agree furloughing is the best approach.

54. Any recommendations about 'consultation' with everyone in isolation and communications often just via phone?

Any means of communication available could be utilised.

55. If an organisation's income comes mostly from grants, so they are not losing income, but they are unable to undertake the work as well as they would have been for which the grant was given, can they furlough employees?

Yes, so long as those grants are not from public funds. If the grants are from public funds, then they should be used to pay wages rather than the furloughing scheme.

56. We are in a situation where we need to furlough our entire staff team because the nature of our business cannot operate during lockdown. We would still have minor admin to do over the course of the next few weeks - would this come under the responsibilities of directors in an unpaid capacity, i.e. can directors still carry out a few hours of admin here and there to keep the business 'in operation' whilst shut or would that count as work?

See 1 and 9 above.

57. How do you calculate holiday leave for people on furlough who are usually contracted on variable hours?

Accrue based on the averages you base your claim upon.

58. If a furloughed employee is on 80% of earnings, what is the position for future entitlements which are earnings related e.g. future sick pay, holiday pay. Is this based on the reduced salary/pay?

You must look at how the contract states those benefits are calculated and follow the contractual provisions.

59. Presumably furloughed pay is subject to tax and NI?

Yes, but employers NI can be reclaimed along with employer pension contributions up to minimum auto-enrolment levels on top of the 80%.

60. Do we have to reapply every 3 weeks or can we claim for the whole 3 months in one go?

You can claim for longer periods, but cannot claim more than each 3 weeks.

61. I've already had an email from my local authority requesting a bank statement to process small business grant.

This could be due to their due diligence requirements in ensuring the payment is made to the appropriate organisation and not another person or organisation.

62. What about the pay rise that was due for minimum wage tomorrow [1 April 2020]?

Government have stated you do not have to pay the NMW/NLW whilst staff are furloughed because they are not working. You can seek to agree the 80% you can reclaim or pay an additional amount if you choose (but cannot claim that additional amount back).

63. Can profit sharing (dividend payments) made quarterly be included in the wage calculations if a member is furloughed?

No, dividends are excluded.

64. Can furloughed workers volunteer?

See 1 above.

65. What are sensible selection criteria for selecting furloughed workers?

See redundancy guidance which is available in the HR section of the website. You could also focus on the area where work has reduced and / or the skills needed in the business areas that continue.

66. When can you apply and when will we see reimbursed wages?

The scheme should be running by the end of April and you can claim as soon as it is open. HMRC has stated BACS payments will then quickly be made but has not specified a timescale.

67. Is there any firm eligibility criteria apart from considering laying off due to COVID-19. E.g. Do you have to be 50% down in takings?

There is no firm eligibility criteria for the organisation's financial situation.

68. HMRC talks of retrospective audit to confirm eligibility – any more info on this?

No. Given HMRC have PAYE data this is likely to be selected where they receive claims that are unusual based on PAYE records.

69. Can furloughing be rotated among staff in order to spread the workload and prevent staff burn out

Yes, see 11 above.

70. We are two separate units, shop and warehouse, can workers in one side of the business be furloughed but not the other?

Yes.

71. How do you managed someone who's on SSP to furloughed, or furloughed to self-isolating and therefore SSP?

Once someone has returned to work and has completed their self-isolation for the relevant 7 or 14 day period, you could discuss furloughing as you would have done with someone in work. It is unlikely a furloughed employee will notify you if they become unwell during furlough. If they do, they would need to come off furlough and return to work before they are paid another form of pay during leave.

72. Are we able to back date furlough to 1 Mar if staff have been working throughout the month of March?

Not if they have been working. If they were laid off earlier, you can claim back to the date they were laid off up to 1 March.

73. Can directors be furloughed and can they still have decision making powers, votes, if members hold meetings about crucial things such as restructuring etc.

See 9 above.

74. Can furloughed directors still contribute to running of org?

See 9 above.

75. We had two part-time members join us on 2 March. If 29th Feb was on a Monday instead of Saturday they would have been eligible for furloughing. Can we challenge HMRC?

No. The rules clearly state they must have been on PAYE on 28 February.

76. Can we furlough for three weeks and then have staff working for one week, then three weeks and one week?

Yes, see 11 above.

77. For the self-employed, applying for Government support, they have to have been self-employment for a year or more. How can we secure a wage for them?

The guidance does state that someone who has been self-employed for less than a year can claim and can 'send what they have'. If they are able to produce income and expenditure for a period, they can probably calculate profit and try to claim.

Access the latest COVID-19 guidance and advice via:
<http://www.uk.coop/coronavirus>