

UK Furlough Leave

EMPLOYEE Q&A

(there is a separate FAQ for Managers)

1. What is the UK Coronavirus Job Retention Scheme or “Furlough Leave”?

The Coronavirus Job Retention Scheme is a temporary scheme open to all UK employers for at least three months starting from 1 March 2020. It is designed to support employers whose operations have been severely affected by coronavirus (COVID-19).

CBRE will use a portal to claim for 80% of furloughed employees’ (employees on a leave of absence) monthly wage costs, up to £2,500 a month, plus the associated Employer National Insurance contributions and minimum automatic enrolment employer pension contributions on that wage. CBRE can use this scheme anytime during this period.

2. What are the monthly wage costs?

Monthly wage costs means basic pay plus contractual allowances.

3. Which employees can CBRE place on the scheme?

Furloughed employees must have been on CBRE’s PAYE payroll on (or before) 28 February 2020, and can be on any type of contract, including:

- full-time employees
- part-time employees
- employees on agency contracts – note, the employment agency rather than CBRE would place these employees on furlough
- employees on flexible or zero-hour contracts
- apprentices (note that we must pay apprentices at least the Apprenticeship Minimum Wage, National Living Wage or National Minimum Wage (AMW/NLW/NMW) as appropriate for all the time they spend training. This means CBRE must cover any shortfall between the amount it can claim for their wages through this scheme and their appropriate minimum wage).

Employees hired after 28 February 2020 cannot be furloughed or claimed for in accordance with this scheme. Please note that there is additional guidance below on employees that transfer into CBRE in a TUPE situation (and therefore have a “hire date” after 28 February 2020).

CBRE does not need to place all employees on furlough. However, those employees that CBRE does choose to place on furlough cannot undertake work for CBRE. It is CBRE’s choice who to select for furlough, subject to equality and discrimination laws.

It is CBRE’s decision who to place on furlough leave – this could be because a client has requested it, or because CBRE is unable to operate (e.g. site closure) and/or CBRE has no work for the employee to do. CBRE may select an employee for furlough if the crisis means the role needs to be performed from home (e.g. site closure) but the employee cannot work from home; if the employee falls into a vulnerable group and cannot perform their role from home; or the employee has to take care of dependants and cannot work from home. Again, it is CBRE’s choice whether or not to place an employee on furlough – the employee cannot insist that they are placed on furlough.

Note that for employees who are shielding in line with public health guidance (or need to stay at home with someone who is shielding), these employees can be furloughed but only if they are unable to work from home and we would otherwise have to make them redundant.

Who can’t be placed on furlough:

- employees on sick leave (although they could be placed on furlough after sick leave when they return to work). Note that employees who are shielding in line with public health guidance can be placed on furlough (subject to the above conditions);
- employees on unpaid leave, unless they were placed on unpaid leave after 28 February 2020;
- employees that are working but on reduced hours or reduced pay.

4. Can an employee insist on going onto furlough leave?

No. It is CBRE’s decision and CBRE can choose whether or not to implement furlough leave and, if implemented, which employees it will apply to. If CBRE wants to implement furlough for a particular employee, the employee’s manager will get in contact with the employee to explain the proposal and seeking their agreement to furlough. CBRE will then write to the employee attaching a Furlough Agreement.

5. How does CBRE decide which employees could potentially be placed on furlough leave?

CBRE follows certain principles:

- The individual should be a CBRE employee and not for example a self-employed contractor or agency worker.
- The employee should not fall into one of the categories identified above (Employees who can't be placed on furlough).
- The employee should have started continuous employment on or before 28 February 2020. Please note that employees that TUPE transfer into CBRE after 28 February will be eligible for the furlough scheme if their "start date of continuous employment" is on or before 28 February 2020.
- It is CBRE's choice who to select for furlough, **subject to equality and discrimination laws:**
 - Some roles will select themselves: if there is no work to do of a particular kind in a particular location, all of the employees doing that work in that location will be asked to accept furlough.
 - However, where there is an element of selection to be done, we will consider volunteers or rolling people on and off furlough.

6. How is CBRE intending to place me on Furlough Leave?

CBRE is "seeking agreement" from the employees to place them on furlough leave. CBRE is NOT requiring an employee to be placed on furlough leave.

Where there is a formal recognition agreement with a Trade Union, we will look to consult with the Union before seeking agreement with an employee.

7. Doesn't a lack of work mean the employees are redundant?

In normal times, reduction in work or closure of workplace would result in redundancy. But CBRE want staff to stay on with reduced pay so that they are in post when things start to return to normality. This is a better situation for the employee, CBRE and where relevant, the client.

8. I am employee who is on notice (either because they were given notice by CBRE or submitted notice themselves). I am asking that notice is rescinded so that I can be placed on furlough. Can I do this?

CBRE has chosen not to permit notice to be withdrawn in these circumstances

9. What happens on furlough leave?

When on furlough, **an employee cannot undertake work** for or on behalf of CBRE. This includes providing services or generating revenue. While on furlough, the employee's wage will be subject to usual income tax and other deductions.

10. What does an employee's "wage" comprise of?

As stated above, monthly wage costs means basic pay plus all contractual allowances but excludes any variable pay elements such as overtime, call out, bonus, fees or commission.

11. Can employees do the odd bit of work for CBRE while furloughed?

Definitely not. Employees cannot undertake work for or on behalf of CBRE during furlough.

It is important that they don't do anything that could jeopardise CBRE's ability to claim the government grant and so during furlough leave, employees should not do any work for CBRE.

12. How long will furlough leave last?

The government scheme runs from 1 March 2020 to 31 May 2020 and may be extended. The scheme is also retroactive, meaning that an employee's furlough period could be backdated to 1 March – it should be noted however that any reduced pay arrangements under the Furlough Agreement do not apply to a GWS UK employee's March pay (although CBRE may claim for reimbursement from the government for the month of March, depending on tax advice).

Furlough Leave will run until 31 May 2020 but we will keep the situation constantly under review and will notify you if there is any change to Furlough leave or pay, or there is work for you to do and we need to bring you off Furlough Leave. The minimum amount of time you will spend on Furlough Leave will generally be 3 weeks.

13. What notice do we need to give if we are bringing an employee off furlough before 31 May?

There is no defined notice period that we need to give an employee if we want to take them off furlough. In a situation where the return to work involves a different site or client, then we will give the employee reasonable notice.

14. Is there any ability to take someone out of furlough in less than the 3 week minimum the government have stipulated, for example in response to unforeseen sickness levels or need to support new critical sites such as the temp hospitals?

Yes, as above, furlough can be less than 3 weeks but if it is, then the Company cannot claim reimbursement for that period. So in the circumstance that we want to end a furlough period for an employee in response to sickness levels, we can bring the employee off furlough but we will not be reimbursed by the government if the period they spent on furlough is less than 3 weeks.

15. What are the arrangements if an employee is on unpaid leave?

Employees on unpaid leave cannot be furloughed, unless they were placed on unpaid leave after 28 February 2020.

16. What happens if an employee is on Statutory Sick Pay (SSP)?

Employees on sick leave or self-isolating should get Statutory Sick Pay, but can be furloughed after this. Employees who are shielding in line with public health guidance can be placed on furlough (subject to the conditions set out in Q3 above).

17. If an employee has more than one job (i.e. works for another employer other than CBRE in addition to their role with CBRE)?

If an employee has more than one employer, they can be furloughed for each job. Each job is separate, and the cap applies to each employer individually.

18. If an employee does volunteer work or training?

A furloughed employee can take part in volunteer work or training, as long as it does not provide services to or generate revenue for, or on behalf of CBRE.

However, if workers are required to for example, complete online training courses whilst they are furloughed, then they must be paid at least the NLW/NMW for the time spent training, even if this is more than the 80% of their wage that will be subsidised.

19. What if an employee is on Maternity Leave, contractual adoption pay, paternity pay or shared parental pay?

Individuals who are on or plan to take Maternity Leave must take at least 2 weeks off work immediately following the birth of their baby. This is a health and safety requirement. In practice, most women start their Maternity Leave before they give birth.

If an employee is eligible for Statutory Maternity Pay (SMP) or Maternity Allowance, the normal rules apply, and they are entitled to claim up to 39 weeks of statutory pay or allowance.

Employees who qualify for SMP, will still be eligible for 90% of their average weekly earnings in the first 6 weeks, followed by 33 weeks of pay paid at 90% of their average weekly earnings or the statutory flat rate (whichever is lower). The statutory flat rate is currently £148.68 a week, rising to £151.20 a week from April 2020.

If an employee is entitled to enhanced (earnings related) maternity pay on Maternity Leave, this is included as wage costs (subject to the cap) claimed through the scheme. The same principles apply where an employee qualifies for contractual adoption, paternity or shared parental pay.

20. Does annual leave continue to accrue during furlough leave?

Yes, statutory annual leave will continue to accrue as normal during a period of furlough. This is because the contract of employment will continue to be in existence during this period.

Contractual annual leave in excess of the statutory minimum will also continue to accrue, unless the contract of employment specifically provides otherwise.

21. What happens if an employee already has an approved period of leave which falls during the furlough leave period?

An employee who has approved leave should still take it and this will be paid at the usual rate (and will not be subject to any cap).

22. Can employees top up their furlough period with annual leave paid at the usual contractual rate?

“Yes” – if an employee wants to take annual leave during furlough leave, this will be paid at the usual contractual rate. There will be an option on the Furlough form to record this. As there are four bank holidays in the period from now until 30 April, this means that (where relevant) employees would have to take two days of annual leave to “top up” an 80% wage to 100%.

23. What about bank holidays, for example Good Friday and Easter Monday or the May Monday Bank Holidays?

All bank holidays will be paid at the usual contractual rate (i.e. full pay).

24. How are the National Living Wage/National Minimum Wage taking into consideration?

Individuals are only entitled to the National Living Wage (NLW)/National Minimum Wage (NMW) for the hours they are working.

Therefore, furloughed workers, who are not working, must be paid the lower of 80% of their salary, or £2,500 even if, based on their usual working hours, this would be below NLW/NMW.

However, if workers are required to for example, complete online training courses whilst they are furloughed, then they must be paid at least the NLW/NMW for the time spent training, even if this is more than the 80% of their wage that will be subsidised.

25. What about benefits such as health insurance etc?

All existing benefits will be maintained during furlough leave, apart from enhanced contractual sick pay – please see above for further detail.

26. What are the rights of employees that have been furloughed?

Employees who have been furloughed have the same rights as they did previously apart from the entitlement to enhanced contractual sick pay. These rights therefore include Statutory Sick Pay entitlement, maternity rights, other parental rights, rights against unfair dismissal and to redundancy payments.

27. What are the arrangements for the Income tax and Employee National Insurance?

Wages of furloughed employees will be subject to Income Tax and National Insurance as usual. Employees will also pay automatic enrolment contributions on qualifying earnings, unless they have chosen to opt-out or to cease saving into a workplace pension scheme.

CBRE will be liable to pay Employer National Insurance contributions on wages paid, as well as automatic enrolment contributions on qualifying earnings unless an employee has opted out or has ceased saving into a workplace pension scheme.

28. Will employees continue to accrue continuous service during furlough?

Yes, the underlying relationship will continue if a worker is furloughed, so their period of continuous employment will continue to accrue throughout and will be recognised in full once the furlough comes to an end.

29. What happens if an employee is on probation during furlough?

Any probationary period will be suspended during furlough leave and re-started when the employee returns to work.

30. What happens at the end of the furlough?

The idea is that employees will be able to come back to work.

31. Are foreign nationals with visas eligible for the furlough scheme?

We believe it will cover all workers so long as they are UK workers on UK contracts, working in the UK and paying UK PAYE and have commenced employment on or before 28 February 2020.

32. What happens if an employee's visa is due to expire during the furlough period and they cannot return to their home country – can they still be placed on furlough?

“Yes” - the UKVI has now updated its guidance and confirmed that those in the UK with visas expiring between 24 January and 30 May 2020 will be eligible for an extension (which they can request) until 31 May 2020 if they are unable to leave the UK due to the situation. They have stated that such individuals who are extended will not be treated as overstayers in the UK or penalised and that the conditions of their visa will remain the same.

The precise legal basis for these extensions, and the legal status of the individual (and, therefore, immigration conditions attached to them) during such extensions remains unclear. It would seem the Home Office intends to honour this position though. On the face of it, the employee should be able to continue working during such an extension if so entitled at the moment. Given that in a furlough situation, the employee is “not working”, then by implication, the ability to be on furlough during such an extension is also applicable.

However, our advice to those affected remains that if they are unable to leave the UK prior to the expiry of their visa they should, ideally, whether working or if they are on furlough and not working, still seek to extend their current visa or seek to switch to another immigration category (if required) in the normal way instead of relying upon these special extensions. Their legal status, and rights whilst such applications are pending, will be much clearer.

V1.0

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