

Everything you need to know about

# **Returning to Work and Flexible Furlough**

# EVERYTHING YOU NEED TO KNOW ABOUT RETURNING TO WORK AND FLEXIBLE FURLOUGH



## EMPLOYER FAQs

### Can I still put staff on furlough?

The final date for placing staff on furlough has now passed.

From 1 July employers can only furlough employees that they have previously furloughed for a full three-week period prior to 30 June.

### Do I have to pay the tapered contributions in August, September and October?

Yes, to remain eligible for the government grant you must pay furloughed employees 80% of their wages, up to a cap of £2,500 per month for the time they are being furloughed.

For July, the government will pay 80% of wages up to a cap of £2,500 for the hours the employee is on furlough, as well as employer National Insurance Contributions (ER NICs) and pension contributions for the hours the employee is on furlough. You will have to pay employees for the hours they work.

Throughout August, the government will pay 80% of wages up to a cap of £2,500 for the hours an employee is on furlough and you will pay ER NICs and pension contributions for the hours the employee is on furlough.

In September, the government will pay 70% of wages up to a cap of £2,187.50 for the hours the employee is on furlough. You will pay ER NICs and pension contributions and top up employees' wages by 10% up to £312.50 to ensure they receive 80%



## EMPLOYEE FAQs

### Can my employer force me to take my holiday leave during furlough?

Yes, under government guidance your employer can ask you to take your holiday leave by giving you the necessary notice (twice the length of the leave being requested). You will be paid your full wage for your holiday days.

### Can my employer cap my furlough wages to just the tapered government contribution?

No, in order for your employer to be eligible for the furlough grant payment, they are required to top up your furlough wage to the 80% cap. If your employer does not pay you your full 80% furlough wage, you can report them.

### If I return under flexible furlough how much will I be paid for the hours I work?

From 1 July, employers can bring furloughed employees back to work for any amount of time and any shift pattern. Employees will be paid their full salary for the hours worked alongside receiving the furlough allowance pro-rata for the hours that they remain furloughed.

For example, a full time (5 day week) employee who works 2 days and remains furloughed for the remaining 3 days would be entitled to 2 days full pay and 60% of the £2,500 cap.

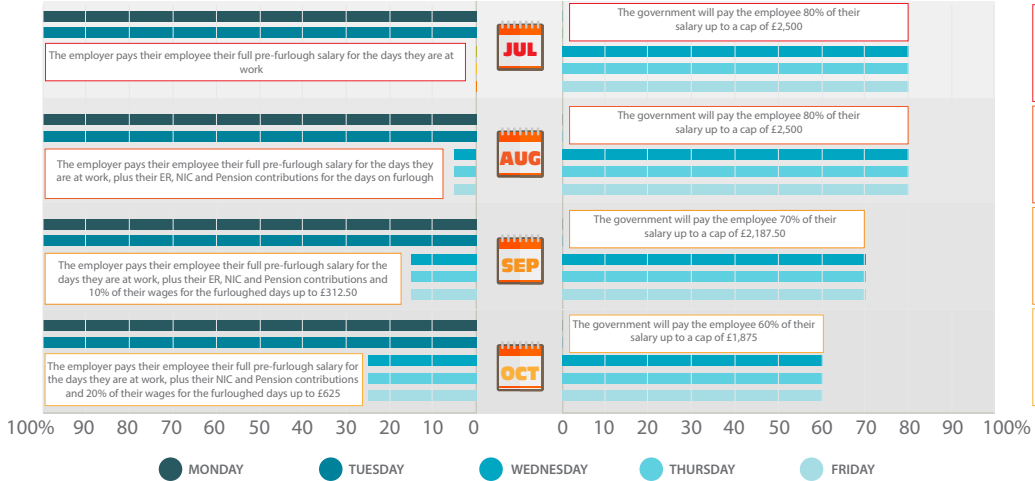
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Employee  
Joe earns £2,000 per month and worked full-time, 5 days a week, before he was furloughed in April 2020. His employer has asked him to return to work under the Flexible Furlough scheme 2 days per week. He is returning to work on Monday's and Tuesday's but will remain furloughed on Wednesday's, Thursday's and Friday's.



Based on Joe's £2,000/month salary

EMPLOYER: £800  
GOVERNMENT: £960

EMPLOYER: £860  
GOVERNMENT: £960

EMPLOYER: £980  
GOVERNMENT: £840

EMPLOYER: £1,100  
GOVERNMENT: £720

of their wages up to a cap of £2,500, for time they are furloughed.

During October, the government will pay 60% of wages up to a cap of £1,875 for the hours the employee is on furlough. You will pay ER NICs and pension contributions and top up employees' wages by 20% up to £625 to ensure they receive 80% of their wages up to a cap of £2,500, for time they are furloughed.

### How much do I have to pay my staff who return to work under flexible furlough?

From 1 July, employers can bring furloughed employees back to work for any amount of time and any shift pattern, while still being able to claim CJRS grant for the hours not worked.

The CJRS grant caps are proportional to the hours an employee is furloughed. For example, a full time (5 day week) employee who works for 2 days is entitled to 40% of their full wage as paid by you, and as they remain on furlough for 3 days a week they will also be paid 60% of their furlough entitlement which you will continue to be paid as the CJRS grant.

Operating flexible furlough is more complicated than running a standard furlough process. You

### Do I have to return to work?

Guidance remains that if you can work from home you should continue to do so. In circumstances where you are required to return to the physical workplace as your job cannot be carried out remotely, if you do not return to work when your employer asks, you should not expect to get paid.

Whilst you have the right to protect yourself if you reasonably believe that you are in imminent danger in the workplace, providing your employer has taken the necessary steps to secure your place of work, and has followed the government guidance to ensure your safety, it is fair and reasonable that you should return to work.

Employers must follow a strict code of measures, which can include:

- Observing the 1m rule of social distancing
- Introducing one-way systems to minimise contact
- Frequent cleaning of objects and communal areas
- Storing returned items for 72 hours before returning them to the shop floor
- Table service only in indoor pubs and restaurants

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should familiarise yourself with the government's guidance on preparing claims for flexible furlough before negotiating new working arrangements with your staff.



### **Can I keep my employees on furlough after October 31st?**

The Coronavirus Job Retention Scheme is due to end on 31st October. However, employers are entitled to keep staff on a mutually agreed furlough scheme but must understand that they would need to shoulder the cost, with zero contribution from the government.

If you wish to keep staff furloughed beyond October 31st you will need to check your furlough letter to individual employees to see if it included a specific end date and a specific percentage salary payment. If you wish to continue their furlough on the same terms, you may need to reach further agreements with staff to accept the continuance of furlough.

It would be sensible to write to employees to explain that you are considering continuing furlough for them, including your best estimate of how long you would envisage this furlough lasting, as many will expect the changes of government advice and amendments to the scheme to mean a return to normal working.

If your furlough letter did include an end date or linked furlough to the original CJRS, you will need to seek a new agreement from staff to continue being furloughed.



### **Can my employer make me redundant or terminate my employment if I don't return to work?**

Depending on why you are refusing to return to work, the answer technically is yes.

If your employer has carried out the necessary checks, has put the required safety measures in place, and has ensured that you can carry out your job with limited risks, then unless you can demonstrate a reasonable belief of an imminent danger in the workplace, you should return to work when asked.

If you have any concerns about your return to work, you should raise these with your employer, and attempt to keep an open line of communication whilst you discuss any issues you may have.

### **What do I do if my place of work is not safe?**

If you are unhappy with the safety of your workplace you should first raise this with your employer. If you remain concerned, and you don't feel your employer has addressed your concerns, you should contact your local authority or the Health and Safety Executive, who can force firms to take action.

The Trades Union Congress (TUC) says companies should publish risk assessments, so employees know what safety measures are being taken. Ask your employer to see what they have put in place.

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## Can I force my furloughed staff back to work?

You should encourage employees to continue to work from home wherever possible.

If an employee needs to return to the physical workplace as there is no option to work from home, you should try to remain sensitive to their concerns about the return to work. It is advisable that you 'consult' with your staff and consider their views to try and reach an agreement about their return to work. You should try to be as flexible as possible to accommodate childcare and health needs.

Some people might be anxious about their safety and returning to the workplace. You should encourage staff to talk to you about any concerns they have, and try to resolve them together. Try to look for compromises where possible. Make sure you are proactive in speaking to the employee to determine their specific issues and concerns and then work together to look at alternative options.

Ultimately, if someone refuses to attend work without a valid reason, you would be entitled to take disciplinary action.



## If employees refuse to return to work what are my options?

Many employers are grappling with whether a furloughed employee who refuses to return to work because of a stated fear of catching coronavirus can be dismissed.

The key issue in employment law is what is reasonable, and this will vary depending on the facts of the individual case. You should carefully consider potential consequences before taking any disciplinary action for failure to attend work.

## Can I request to remain on furlough?

Whilst you can request to remain on furlough your employer does not have to agree to this.

Employers are being encouraged to be flexible and fair, so if you have either medical or childcare concerns and there are other members of your team who could return ahead of you, you might consider making that suggestion.

Talk to your employer to raise any concerns you have and ask to discuss the options that are available to you.

## I am clinically extremely vulnerable, do I have to return to work?

Whilst there is no explicit guidance on this currently, shielding within England will be paused from August 1st, and people who remain vulnerable are being advised that they will be able to leave their home whilst taking necessary and reasonable precautions.

In practice, this means that from August 1st 2020 you can return to work, if you cannot work from home, as long as the business has taken the necessary steps to be COVID-safe.

Employers must be especially careful and take extra steps for anyone in their workforce who is in a vulnerable group. You should talk to your employer as soon as possible about their plans to help you return.

If you can continue to work from home, your employer should support this.

If you are being asked to return to work, and you believe you are unable to follow guidance on social



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Under Section 44 of the Employment Rights Act 1996, workers have the right to walk off the job to protect themselves from “serious and imminent” danger. It would be difficult for a tribunal to conclude that an employee did not see coronavirus as a serious or imminent danger. So it is advisable that you take steps to change the employee’s perception.

For the purpose of unfair dismissal claims and for claims under s44 for detriment claims, an employee does not need to demonstrate that a danger actually existed, but whether they reasonably believed that attending work would put them in danger. You can take steps to prevent your employees holding this view by offering PPE where required, providing measures for home working, offering parking facilities to avoid public transport, and carrying out continuous risk assessments. You should make sure that these measures are visible and well communicated to all employees.

If someone still does not want to return to work, you could suggest that they take the time off as holiday or unpaid leave. You do not have to offer this.

If someone refuses to attend work without a valid reason, you could choose to take disciplinary action, which I would only recommend as a last resort.

Any termination of employment based on a refusal to return is likely to result in claims of unfair dismissal. Ultimately you want to avoid being subject to employment tribunal claims and the costs associated with them, especially given that tribunals appear to be leaning in the employees’ favour.

### **What is the Job Retention Bonus?**

As part of the plan to support jobs, a Job Retention Bonus will be introduced to help firms keep furloughed workers. UK Employers will receive a one-off bonus of £1,000 for each furloughed employee who is still employed as of 31 January 2021.

To qualify, employees must be paid at least £520 a month on average in each month from November to January - the equivalent of the lower earnings limit in National Insurance.

distancing at work or during travel to work, you should tell your employer you need to follow the government advice and stay at home.

You are protected by law against unfair treatment or dismissal if it is based on pregnancy, age or a health condition that’s considered a disability under the Equality Act.

It does not matter how long you have worked for your employer.

It could be unlawful discrimination if your employer either unreasonably tries to pressure you to go to work or unreasonably disciplines you for not going to work based on one of these factors.



### **If I am made redundant whilst on furlough, how much will I be paid for my notice period?**

The answer to this depends on your contractual notice period.

If your notice is the same or less than your statutory notice would be, your employer should pay you 100% of your regular pay during your notice period.

If your notice is at least 1 week more than your statutory notice would be, your employer can keep you on 80% pay during your notice period.

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