

Statutory Sick Pay (SSP)

HMRC will bring forward legislation to allow small and medium-sized businesses and employers to reclaim Statutory Sick Pay (SSP) paid for sickness absence due to COVID-19. The eligibility criteria for the scheme will be as follows:

- This refund will cover up to 2 weeks' SSP per eligible employee who has been off work because of COVID-19.
- Employers with fewer than 250 employees will be eligible - the size of an employer will be determined by the number of people they employed as of 28 February 2020.
- Employers will be able to reclaim expenditure for any employee who has claimed SSP (according to the new eligibility criteria) as a result of COVID-19.
- Employers should maintain records of staff absences and payments of SSP, but employees will not need to provide a GP fit note. If evidence is required by an employer, those with symptoms of Coronavirus can get an isolation note from [NHS 111 online](#) and those who live with someone that has symptoms can get a note from the [NHS website](#).
- Eligible period for the scheme will commence the day after the regulations on the extension of SSP to those staying at home comes into force.
- The government will work with employers over the coming months to set up the repayment mechanism for employers as soon as possible.
- You can get £94.25 per week statutory sick pay (SSP)

Eligibility

You are eligible for the scheme if:

- Your business is UK based.
- Your business is a small or medium-sized and employs fewer than 250 employees as of 28 February 2020.

How to access the scheme

A rebate scheme is being developed. Further details will be provided in due course once the legalisation has passed.

The Self Employed

If you are not eligible for SSP – for example if you are self-employed or earning below the Lower Earnings Limit of £118 per week – and you have COVID-19 or are advised to stay at home, you can now more easily make a claim for the new style employment and support allowance through the Job Centre direct.

If you are eligible for new style Employment and Support Allowance, it will now be payable from day 1 of sickness, rather than day 8, if you have COVID-19 or are advised to stay at home.

Coronavirus Job Retention Scheme (Furloughed workers)

Under the Coronavirus Job Retention Scheme, all UK employers will be able to access support to continue paying part of their employees' salary for those employees that would otherwise have been laid off during this crisis.

Eligibility

All UK businesses are eligible.

How to access the scheme

You will need to:

- Designate affected employees as 'furloughed workers,' and notify your employees of this change - changing the status of employees remains subject to existing employment law and, depending on the employment contract, may be subject to negotiation.
- Submit information to HMRC about the employees that have been furloughed and their earnings through a new online portal (HMRC will set out further details on the information required).

HMRC will reimburse 80% of furloughed workers wage costs, up to a cap of £2,500 per month. It is to be confirmed, but the wording of the wage cap of £2,500 per month would point to total wage costs, inclusive of employer NI contributions and, where applicable, employer pension contributions. HMRC are working urgently to set up a system for reimbursement. Existing systems are not set up to facilitate payments to employers.

Extra information

- It does not apply to subcontractors or freelancers.
- It is understood that only the salary element of director pay will be considered under the scheme. Dividends paid to directors will not be covered.
- It is believed it applies to employees on the payroll, in work, under contract at the end of February 2020. It is possible they will assess wages for some period prior to determine an average.
- The scheme will be backdated to 1 March 2020 that will initially last 3 months.
- An employee cannot undertake any work for the employer whilst they are classed as a 'furloughed worker'. If the employee returns to work before the scheme ends, they are no longer entitled and will not be classed as a 'furloughed worker'.

What is a 'furloughed worker'?

'Furloughed worker' is not a recognised term in UK employment law, although it is commonly used in the USA. Government guidance says someone is furloughed if they remain employed but are not undertaking work (in the UK the legal term would be 'laid off'). Importantly, this suggests that the scheme does not cover employees who have agreed to work reduced hours.

Employees generally have the right to be paid their full wages if they are willing and able to work, even if their employer cannot provide them with any. Some employers will have a contractual right to lay off workers without pay but this is rare in practice.

As a result, most employers will need the consent of their employees if they are to put them on furlough with reduced pay. To do so unilaterally could be a breach of contract and an unlawful deduction from wages. However, as the alternative will likely be redundancy, obtaining the employee's agreement may not be difficult.

There is some uncertainty as to how this will apply to those on zero-hours contracts, as an employer may seek to simply reduce their hours. The same could be true for many agency workers who have no assignments.

It is also currently unclear whether an employee can come on and off furlough leave.

How will employers select employees to put on furlough?

Where employers operate with reduced capacity, they may need to select which employees to ask to go on furlough.

Employers must ensure they do not discriminate in asking particular employees to go on furlough. If an employee refuses to go on furlough and is made redundant, it is also possible that the selection criteria for furloughing could be a factor in any subsequent unfair dismissal claim.

If the alternative to furlough is redundancy, and an employer is seeking to furlough more than 20 employees, it is possible that collective consultation obligations could apply.

Just as employers cannot normally unilaterally lay off workers, employees likewise cannot demand to be put on furlough.

PAYE Payments

If you are struggling to make your PAYE payments these can be deferred by contacting HMRC directly.

Please keep up to date with the Whiting and Partners website (www.whitingandpartners.co.uk) which is continually being updated with further support available to businesses. The payroll department are working from home but can be contacted on payroll@whitingandpartners.co.uk or you can ring our usual number on 01353 662595 and you will be diverted through to someone who can assist. We will aim to keep you updated with any information as soon as we can.