

How toFurlough Leave

Introduction

The Government has tonight announced a three-week lockdown. This means that we are all being told to stay home and not travel to work unless absolutely essential. This implies that if your business is not part of the critical supply chain, you probably need to have all staff working from home, on leave with full pay, on sick pay or 'furloughed'.

At this time (23rd March 2020), employers are being asked NOT to make their staff redundant. The Government have put in place a Coronavirus Job Retention Scheme giving employers access to funds from which to pay their employees.

In this document, we are providing generic information about Furlough Leave to enable you to ask the right questions of your advisors. You must ensure that whatever steps you take, you do not put yourself in breach of your contracts of employment / Employee Handbook. If you don't have clauses in your contracts of employment giving you the right to change terms and conditions unilaterally (which most contracts won't have), you do need to consult with staff and get their agreement to enable you to make the changes.

The Coronavirus Job Retention Scheme is available to business of all sizes regardless of sector or status (Ltd. PLC. LLP. Sole Trader etc.)

Please see the [Furlough Leave FAQ](#) on our website for more information about the Coronavirus Job Retention Scheme and Furlough Leave. This document focusses on the 'HOW'

Principles

We have identified some core principles which we are advising all our clients to comply with. These are:

- Clarity
- Communication
- Consistency
- Compassion

These principles are going to lie at the centre of everything you do in the coming weeks when it comes to managing your employees.

When is Furlough Leave permitted?

Furlough Leave is permitted when you have no work for some or all of your employees and would otherwise make them redundant.

23/3/2020

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How do I select employees for Furlough Leave?

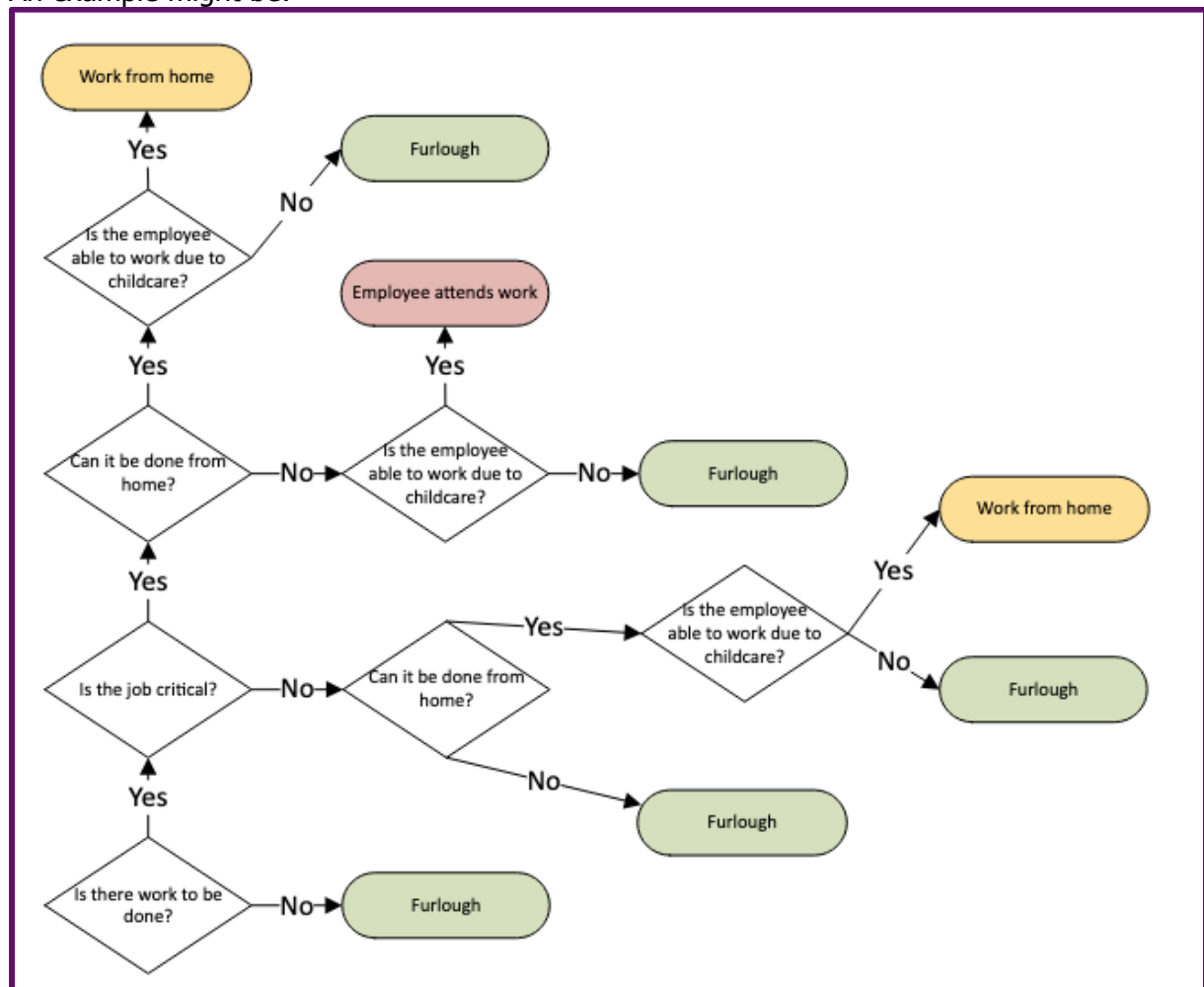
This will vary from company to company and possibly between departments and / or individuals within your business. Therefore, just like with redundancies you need to ensure that you use a fair process of selection which does not introduce any unacceptable discrimination.

You need to draw up your **criteria with clarity** so that all staff will know with minimal explanation whether they are likely to be selected for Furlough Leave.

Criteria you might use include:

- Is the employee in the 'high risk' category?
- Do they have childcare responsibilities?
- Is there work to be done?
- Do you provide a critical service as identified by the Government?

An example might be:



Decision Making

Where there is a need to continue with business, but a slow-down means that there is not enough work for everyone, a business owner is going to need to take decisions about who to furlough and who to continue to pay.

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Once you have worked through your version of the decision tree above, if you still have too many staff working, you are going to need to make deeper cutbacks.

For this you need to approach the situation a little bit more like a redundancy. The first thing you can do is ask for volunteers who would be willing and able to accept Furlough Leave. If this gives you the cost savings you need, great. If not, you are going to need to start looking at functions, roles and individuals.

An example:

A sales team with one Manager and 4 staff

Do you need your sales team at the moment?

If not, can you furlough them all?

In this instance, it is easy as the whole team is placed on Furlough Leave and receives 80% of their salary via the Coronavirus Job Retention Scheme, subject to the £2500 cap for up to 3 months (currently).

If you need some of your sales team?

What structure do you need?

How many people do you need?

The Manager plus 1.5 employees?

If this is the case, you need to reduce 4 employees to 1.5 FTE.

You can start by asking for volunteers.

If you still need to make cuts, you might want to look at the financials. Who earns what?

What would the 80% look like for each employee?

Would they be impacted by the £2500 cap?

Could 2 employees work 0.75 FTE each?

If both working 0.75 FTE, they are potentially (depending on their salary) getting less pay for working than their Furloughed colleagues are for doing nothing.

Would you pay those working full pay for a 0.75 workload?

If the financials don't produce the outcomes you need, you need to look at skills and experience. Draw up a selection grid and assess each individual against your criteria. In this way you will end up with a ranking or a score and be able to determine who to keep working and who to place on Furlough Leave.

Consistency, Clarity and Communication are going to be essential with any selection criteria you apply, to show people why they have been selected as they have.

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Communication

Group Communication

Internal **communication** has never been more important. The most senior person in your business needs to get your key messages out there to everyone, ideally at the same time and with **consistency** and **compassion**.

The best way to do this is through an all staff webinar or with a pre-recorded video message which is sent to everyone. We recommend the video as it enables all the non-verbal communication to be picked up. People are emotional and very concerned. As a Managing Director or CEO you need to set the tone, keeping it positive and informative. You need to lay out your plans for the short and medium term. You need to clarify what services continue and how. You need to explain what happens next and when further decisions will be made.

If you really can't do this by video, a well written staff memo to everyone would be acceptable.

An example script for a 'critical business' where some employees are still needed on site might be:

Good morning

I hope you are all doing ok in what can only be described as 'strange times'.

The management team and I have been carefully following the news, the Government updates and their initiatives as well as the current scientific and medical advice.

We appreciate that this is a fast-moving situation, but as a business we still need to take decisions as we have a business to run as well as having a legal and moral duty of care to every one of you.

Where possible and practical to do so, employees who are not needed onsite are to work from home.

For those who need to be in the building, we are enforcing strict social distancing. We will be working on split shifts to thin out the workforce and we are ensuring that our cleaning regime is increased using products which will provide as much protection as we can.

I would like to take this opportunity to remind everyone to stay at least 6ft away from colleagues at all times and if you are in any way unwell, DO NOT come into work, but contact your line manager in line with our normal sickness absence procedures. If you become ill while at work, distance yourself from your colleagues and contact your line manager using your mobile phone.

Anyone who is off sick with Coronavirus will, where eligible, be entitled to Company Pay Sick Pay and / or Statutory Sick Pay. Where an employee is told to self isolate by 111 for up to 14 days, they will also be entitled to Company Sick Pay and / or Statutory Sick Pay.

The simplest of messages from the Chief Medical Officer is "wash your hands". PLEASE, on arrival at work and at regular intervals during your working day, ensure you wash your hands properly and thoroughly using the soap provided.

Your line manager will be communicating specific instructions to you for safe working in your part of the business. You are required to follow these instructions at all times. If you believe that there is a

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better, safer way of working, please discuss this with your line manager and if agreed, this will be communicated to those involved. Do not just change things unilaterally.

For some of our colleagues, even being in this building is high risk. Therefore, based on the advice we have been given and the support available from the Government, we will be having conversation with specific colleagues today about furloughing them. These are colleagues who cannot work from home due to the nature of their roles, but cannot be onsite for medical reasons. This is not a decision we have taken lightly, but one which we feel is necessary.

We will be asking specific employees to accept furloughing initially until the end of April. We will review the situation in the week commencing 20th April and will update everyone at that time. We will be selecting people to furlough based on their own individual circumstances such as their health, their ability to work from home and their childcare responsibilities. Those employees who are furloughed will receive 80% of their salary in line with the Government Coronavirus Job Retention Scheme. These employees are not expected or allowed to work under the Government Scheme.

Line Managers will be contacting staff today who we have identified as needing to be furloughed. Your specific circumstances will be discussed, and your furlough will then be confirmed in writing.

If based on what I have already said, you believe you should be furloughed, but we do not talk to you before the end of today, please do speak to your line manager as a matter of urgency. As a small business we believe we are aware of all individual health issues, but we do recognise that this might not be the case.

Self-isolation will not automatically result in being furloughed and the sick pay arrangements already discussed are more likely to apply.

As for those of you who will continue working, there may be further changes required in the future and I will of course keep you updated on these. Our intention at the moment is to pay 100% of salary to everyone who is working, even if we need to reduce your hours due to lack of work. Again, in these strange times, we will keep this under review.

So, that's it from me for the moment. I am sure you will have questions and the management team and I will endeavour to get these answered for you as quickly as possible. For now the important key points are:

- You will work from home if you can
- You may be furloughed on 80% of your pay, up to £2500, as necessary
- Those people who MUST be in the building MUST socially distance themselves from others
- You MUST continue to follow Government guidelines on symptoms, self isolation, handwashing and general hygiene

Stay Safe and thank you for everything you are doing for us during this strange time.

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Individual Consultation

Following the group communication, it is essential that line managers meet with each employee to discuss and consult on exactly what is happening with them. This will include:

- a check on their medical needs
- a look at their job role
- a discussion about the practicalities of working from home
- if working at home is possible, what support do they need to do so
- an explanation of the risk assessment each employee is obliged to complete and return to their employer
- a discussion about pay based on the agreed outcome of the consultation

At the end of the discussion, a joint decision should be taken on whether the employee is working at home, furloughed or working onsite.

Confirmation

Following their meeting, they need to be given a letter which details the outcome of the consultation meeting and may include:

- When and where they are expected to work
- What they will be paid
- How long the working arrangement will be in place
- When the new arrangement will be reviewed
- What would trigger a return to normal working conditions
- What could happen if a return to normal working conditions is not possible

This letter should be issued as soon as possible following the meeting and the employee must sign and return a copy accepting the new terms and conditions of employment

Understanding and Mitigating the Risks

As soon as you start to play with people's terms and conditions of employment or to take away money, you are playing with people's emotions and exposing yourself and your business to risks. It is important that you understand these risks and take steps to mitigate them. A risk assessment for the company may be appropriate here (<http://dohr.co.uk/app/uploads/2020/03/Covid-19-Risk-Assessment.pdf>).

We are however living in 'strange times' and your staff will, if you get your communication right, understand what you are doing and why. They may not like it, but if done right, they will accept it. For some, the decisions you take now will be the difference between having no job in the future and having a job to return to. You need their buy-in, but it is not automatic and to assume it is, would be fool-hardy.

The headaches and risks are reduced with the more consistency you can achieve i.e. you have everyone working from home or you place everyone on Furlough Leave. Where you will have a challenge is where you start to treat people differently across your business.

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The risks you may face include:

- People refusing to accept a change to their terms and conditions of employment
- People refusing to accept the specific change you are recommending and wanting a different outcome – if this arises it is likely to be in the individual consultation stage
- An employee brings a claim against you for breach of contract
- An employee brings a claim against you for illegal deduction from wages
- An employee brings a claim against you for discrimination on the basis of a protected feature

If you suspect any of these instances may arise, it is essential that you get advice at the earliest possible stage and before committing to anything with the employee. Do not force them to sign anything!

A great phrase you may wish to use:

"As you will appreciate, we are in unprecedented times. Let me think about what you have said and get some clarity and come back to you before close of play tomorrow"

You are not committing to anything.

You are not digging yourself into a hole.

You are giving yourself time to seek advice.

You are managing expectations by telling the employee when you will get back to them... at the latest.

Additional Resources

There are two other 'how to' guides available at www.dohr.co.uk/covid-19 for:

- Lay-Offs and Short Term Working
- Redundancies

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