



Macc webinar: What you need to know about the end of furlough and the new Job Support Scheme

20 October 2020

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Webinar was delivered by Wrigleys Solicitors Alacoque Marvin and Michael Crowther

Please note, all information within this resource pack and accompanying slides were correct at the time of the presentation which took place on Tuesday 20 October 2020.

Since then, important changes have been made to the Job Support Scheme.

Here is a link to an article written by Michael Crowther which outlines these changes and provides the most up to date information.

<https://www.wrigleys.co.uk/news/employment-hr/changes-to-the-job-support-scheme-announced-by-the-treasury/>

Q&A

Can employers top up the salary for employees who are doing only part of their hours, on top of the government paying one third and the employer paying one third - or does the employee have to lose one third?

There is a specific paragraph in the JSS fact sheet that explains there is an expectation that employers using the scheme will not be in a position to top up wages. It seems to be an expectation rather than a legal prohibition.

On the one hand we know that the Coronavirus Job Retention Scheme (CJRS) permitted employers to top up salaries above the level of support being provided by the government and indeed many employers did this. It would therefore be in a similar spirit for the JSS to allow this.

However, it might be that the JSS marks a turning point in the government's attitude towards providing support, in that it will only do so to ensure workers get a minimum income that their employer cannot provide on their own.

Unfortunately, we have not had clarity on this point yet.

This question highlights the grey areas in the fact sheets and unfortunately 'we don't know' is the honest answer and please keep an eye on this.

The best way to keep informed is by following key twitter accounts which will put out the breaking news. You can follow us, ACAS or Citizen's Advice for breaking news.

Wrigley's employment team twitter handle is @Wrigleys_Emp

The Job Support Scheme guidance will appear on the gov.uk website and is likely to be tweeted soon after publication by HMRC on @HMRCgovuk.



Does the Job support scheme allow businesses to recruit new staff or just existing ones?

To be eligible the individuals will have to be employed on or before the 23 September 2020, so the JSS is not available to 'new' employees. It is also important to note that HMRC will only recognise employees who their employer had submitted Real Time Information (RTI) about in respect of PAYE on or before this date. Therefore even if a new worker started for the employer on or before 23 September, they may not qualify as an eligible worker for the JSS.

If you have any queries about this, we suggest you speak to your payroll provider.

Has holiday been accruing during furlough leave and how should we deal with the backlog of holiday when staff come back?

Holiday has been accruing in furlough leave. Some employers have asked staff to take holiday during furlough, but others may not have dealt with this issue and so there will be a bit of a backlog of holiday waiting to be taken. You could ask employees to take a period of holiday leave at the end of furlough leave, but that will need to be paid on full pay. You will need to give twice as much notice as the length of holiday that you are asking people to take to comply with the statutory rules. You may need to change your holiday policy if you want to allow staff to carry over more holiday than usual into the next holiday year. Changes to the law this summer allow people to carry over a maximum of four weeks into the next two holiday years, where they haven't been able to take holiday because of the pandemic. There is some uncertainty over what this means. It might mean that employees could not take holiday because the employer was too busy to allow it, or they were covering for sick colleagues. It might mean that people were sick themselves and so couldn't take it. It is arguable that it would apply to employees who were not able to travel or to enjoy rest and recuperation (for example because of caring responsibilities). We will need to wait until this question is considered by an employment tribunal before we have a clearer idea on this.

Some charity trustees made the decision not to use the furlough scheme because it received public funding and the guidance suggested this was not really allowed. Should trustees be considering using the JSS?

Again, we do not know the details because of the guidance not yet being released.

The JRS guidance stated that organisations which received public funding which was continuing should not claim under the furlough scheme.

We had clients that did not use the JRS scheme on moral grounds or because of their charitable objects and preferred to use their own resources to pay staff wages.

However, organisations will need to consider afresh at this stage whether the JSS is suitable for them to use. They will need to check whether the guidance includes expectations about organisations in receipt of public funds. They will of course need to review their financial position. But they will also need to consider whether using the JSS is in the best interests of the charity. This might include considerations of the charity's purpose and objects, long term survival and the reputational risks of taking or not taking Government support.

[For the Job Retention Bonus Scheme] I understand that individuals have to be employed at least until 31st Jan 2021, but what if they are going to be made redundant during February -



and are entitled to a month's notice - would that mean they would be on notice on 31st Jan, and so Bonus would not be payable?

To be eligible for a bonus payment the individual whom the employer is claiming in respect of should not have been dismissed or served notice at any point up to and including 31 January. Therefore even providing notice of redundancy on 31 January will make that worker ineligible for the purposes of claiming a bonus. There is nothing to prevent employers engaging in redundancy procedures and consultation up to and including 31 January. I would suggest it is for the employer to determine if delaying the notice of redundancy is worth the £1,000 bonus payment. Employers should also be aware that they will not be eligible for the bonus for employees who have themselves given notice / resigned on or before 31 January 2021.

For more information, see the below link to the factsheet on the Job Retention Bonus

<https://www.gov.uk/guidance/check-if-you-can-claim-the-job-retention-bonus-from-15-february-2021>