

HR FAQ Resource – updated 09.04.2020 with information for Lottery-funded organisations

This resource has been produced with the much appreciated help of an HR expert. It does not constitute legal advice in any way and is intended only to help organisations consider how the government support on furlough may be interpreted. Please seek legal / HR expertise where necessary; any specific case work should always be looked at Employment Lawyer.

We hope to soon add a draft furlough agreement, created by a barrister, which can be used (information has updated already meaning the one we would have used is already out of date!)

Furlough letter template – ACAS have produced a free-to-download [template](#) for employers to use to confirm that there is an agreement to temporarily furlough a worker or employee

Some thoughts on how Coronavirus might affect organisations with paid staff, including furloughing:

Q. If we want to change staff hours or redeploy them to other roles, is this a material change to their contract of employment?

Do we need a consultation period?

Is it potential redundancy?

Could we end up in a tribunal?

A. At the moment, generally speaking, most employment lawyers would suggest that any significant changes to the contract of employment would be considered material. For example hours/role would be considered changes, unless of course the contract has a clause on additional duties/redeployment.

Therefore, always best to:

- Get the employee to agree
- Keep open dialogue through a consultative period
- Consider all options available
- Follow internal policies (For example – grievance procedures for staff not happy)

If staff refuse, then yes redundancy could be a possibility, because the reasons for change is to limit redundancy.



Q. Can employers force employees to accept changes to contracts? Will you be taken to a tribunal?

A. An employer can force changes, however this should be an absolute last resort, this could lead to legal action. Best advice I'd always follow is [ACAS](#). There is always a risk of tribunals, but that shouldn't stop clients/business doing the right thing for the individual and business.

Q. What does 'furloughing' mean?

A. If a company is unable to operate or they have no work for staff to do during the pandemic, workers can be put "on furlough". This means they are kept on the payroll and are not made redundant.

- Furlough is an American term which is being used to describe the process whereby the government will cover 80% of an employee's wages, up to a maximum of £2,500 per month.
- Please see government information [here](#)

Q. What are the new 'furlough' arrangements and how do organisations access these? Is it an alternative to redundancy?

A. Try to look at furlough first (unless there is a genuine belief or uncertainty that a job loss is a possibility)

- It is part of the government's Coronavirus Job Retention Scheme (more details [here](#) under support for businesses: designed at avoiding redundancy)
- The initial discussion is for companies to sign up through existing government gateway accounts. Businesses etc. will pay the 80% to staff and recover the costs through the portal
- Furlough is a minimum of 3 weeks and cannot be shared by employees over 3 weeks; for example 3 staff can't share 1 week each.
- **Staff must sign and agree to the furlough**, if they don't then redundancy can more than likely take place
- If you have over 20 staff to furlough, always best to stick to your redundancy policy process, because if you do need to make redundancies in the weeks/months to come, the consultative period is done. However, at this moment in furlough, there is no need to submit the HR 1 Form



During furlough leave it is probably better to pay at 100% for now to be covered during furlough – this is one area where the new, hastily drawn up regulations are unclear.

- The government have also amended the rules on carry over leave so that workers can carry untaken leave over into the next two years. See link [here](#)
- The rules around redundancy or laying off staff remain the same and if you are looking to go down one of these routes you should follow existing procedures, but the furlough scheme is intended to remove the need for redundancies or lay-offs
- **Eligible** companies will be able to access funds through an HMRC portal (like Gov. Gateway) which will be online very soon
- **Gov.Uk information says your organisation is eligible if:**
 - You cannot maintain your current workforce because your operations have been severely affected by coronavirus (COVID-19)
 - You have created and started a PAYE payroll scheme on or before 28 February 2020
 - Enrolled for [PAYE online](#) - this can take up to 10 days
 - Have a UK bank account
 - Any entity with a UK payroll can apply, including businesses, charities, recruitment agencies and public authorities.

There is further guidance on eligibility, including for public sector organisations: The government expects that the scheme will **not** be used by many public sector organisations because:

- Many public sector services are even more essential during Covid-19 pandemic and should continue if possible
- Where employers receive public funding for staff costs, and that funding is continuing, the government expects employers to use that money to continue to pay staff (and not to furlough them). **This also applies to non-public sector employers who receive public funding for staff costs**
- Organisations who are receiving public funding specifically to provide services necessary to respond to COVID-19 are not expected to furlough staff
- There may be a small number of exceptions to this where organisations are not funded mainly but the government and who can't reemploy their staff to help respond to COVID-19. The furlough scheme may be



appropriate for some staff. The main message seems to be, if your staff are publically funded, then on the whole, you are unlikely to be eligible

- **Some** Lottery-funded organisations are eligible: the Lottery have released [this statement](#) regarding eligibility of organisations which they fund

Q. How do organisations make quick decisions if you can't get the required attendees to a meeting – and what happens if those decisions are subsequently challenged?

A. Generally tribunals suggest that any delays should be documented to show the delay was reasonable, proportionate to the action. Therefore, significant changes to the business, that would need a virtual meeting/phone call etc. to discuss should go ahead, but not rush the outcome because of the distance. If an employee challenges any changes, again they can follow the internal policies such as grievance etc. There's no set list on what is good in court, general good business practice is to keep good evidence, such as chronology/minutes/figures and statics – and quite important reasons for reaching the conclusion. This keeps everything documented to ensure an audit trial can be found.

Q. Can an organisation use any ability and flexibility (aims, objects and funding permitting) to repurpose its staff and what needs to be considered? E.g. keeping volunteering separate from paying employees to do other/different work?

A. This would depend highly on the business and how you could avoid 'job substitution'.

- Most people would normally have certain job roles classed and defined as paid
- If you asked staff to volunteer to 'take over other roles' it could lead to losing staff and potential legal risks
- Likewise, existing staff would still be entitled to that role once they have returned from furlough, or if you're making a role redundant, typically the role shouldn't exist, therefore you could not incorporate parts of the role in to other paid staff/volunteer roles
- However, given the climate, if the business can (funding/objectives etc permitting) redefine/create certain new roles as 'volunteering roles' and specify the reasons why, then that that would be advisable.



- Likewise, trying to 'carve up' duties of the paid staff across volunteers could be another avenue

Another helpful [link](#)

**Q. What are the rules around reducing staff hours /delivery temporarily?
What's needed to do this/what should be considered/ in place?**

A. Similar to question 1, if you're making changes it would need agreement, however you can force staff to take annual leave, although this would be required to paid (if in their contract). Generally you need to give twice as much notice as the annual leave you are asking staff to take, so if you want someone to take 5 days' leave, you need to give 10 days' notice.

Q. Rules around unpaid work? (or should staff be made redundant –is that the only option?)

A. If there is work then staff should be paid, if there isn't enough and commercially redundancy or furlough is an option these should be followed. This is a little risky, for example - opportunistic employees claiming for unpaid wages or unlawful deductions.