

## **Factsheet: Coronavirus – Frequently Asked Questions**

**1. If an employee does not have the virus but is living with someone who does, should they be signed off sick?**

They certainly should stay at home. If they are not ill but can work from home then there is no need for them to be treated as being on sick leave. If they cannot work at home then the Statutory Sick pay scheme has been amended to make it clear that the time they spend self-isolating will count as a period of incapacity for work. However rather than place them on sick leave the employer may choose to take advantage of the Government's proposed job retention (furlough) scheme.

**2. What evidence can I ask for that an employee is genuinely ill or required to self-isolate?**

The normal practice of obtaining a fit note from a GP is clearly no longer a feasible option. The Government has introduced an online scheme through NHS 111 under which an employee, after answering a series of questions can be emailed an 'isolation note' indicating that they should remain at home either because they have coronavirus symptoms or because they should be self-isolating. This note will be deemed to be adequate evidence of their inability to work for the purposes of SSP – essentially equivalent to a fit note.

**3. Can an employee refuse to come to work for fear of contracting the virus?**

If the workplace is not one that the Government has ordered to close then the position remains that employees can be required to work. The strong advice from Government is that the employee should work from home whenever this is possible. But where homeworking is simply not an option the advice is that employees can still travel into work.

This means that in most circumstances the employer can still require the employee to come to work as normal. This assumes of course that the employer has, as far as is possible, put in place the appropriate social distancing measures so that the workplace is as safe as it can be. If the employee reasonably believes the employer is instructing the employee to work in unsafe conditions and refuses to come into work, and is dismissed as a result, that will be an automatically unfair dismissal (and the normal two years' service is not required).

Employers will want to be sensitive to employees who have good reason to be particularly cautious because of an underlying condition or because of their contact with vulnerable people. In these circumstances – and where home working is not an option – the employee is probably best treated as either being off sick or 'on furlough' (see below).

**4. If I am required to close my premises, am I still obliged to pay employees?**

That depends on the terms of their contracts. Salaried employees will be entitled to full pay if you close the workplace unless there is a clause in the contract allowing you to lay them off for a temporary period without pay. The same goes for hourly paid employees with a minimum number of guaranteed hours. Where there is no set obligation to provide a minimum number of hours then the employer will not be obliged to pay for hours that the employee is not actually asked to work.

**5. When is the Government's 'Coronavirus Job Retention Scheme' and when does it come into effect?**

The Government has announced a radical job retention scheme that will cover 80% of the wage costs of employees who are 'furloughed' by their employer – up to a maximum of £2,500 per month. We now have some detailed guidance of how the system will operate but it is not yet up and running. The Government plans to have it in place in time for the April payroll (although we think that is optimistic), and it will be backdated to cover the period from 1 March 2020.

**6. What does furlough mean and how is it different from being laid off?**

Furlough means 'temporary leave of absence' and it is not a term that has been used in UK employment law – until now. It seems that an employer will be asked to designate an employee as being 'furloughed' meaning that they are being kept on the payroll, but not being given any work to do. This is in reality no different from a 'lay-off' but the Government seems keen not to refer to it in that way. This may be because the term 'lay-off' is sometimes used (inaccurately) as though it is interchangeable with 'redundancy' – even though they have distinct and separate meanings in employment legislation.

If your employee has more than one employer, they can be furloughed for each job. Each job is separate, and the cap applies to each employer individually.

**7. Are payments under the Scheme a loan or a grant?**

Under the Coronavirus Job Retention Scheme, all UK employers who would otherwise have dismissed employees during this crisis can access payments for part of the employees' salary. This is a grant which employers do not have to pay back. The scheme will run for three months (but may be extended as necessary).

**8. Can furloughed employees get another job?**

Yes. Employees may be needed e.g. by the NHS, the care sector, supermarkets, agriculture and so on, so furloughed employees are allowed to go and get temporary jobs. Note: if they clauses in their contracts that stop them working for competitors, for example, those will still apply.

**9. Do employees have to agree to be furloughed?**

Yes, employees must be consulted and agree to being furloughed. Changing the status of employees always is subject to existing employment law.

Depending on the wording of the employment contract there may be an ability to lay-off workers. Although lay-offs under the Employment Rights Act 1996 are a different legal concept the wording in contracts may enable some employers to impose a furlough period.

If there is no lay-off provision in the existing contract the employer will need to agree with the employee that they going to become furloughed because no work is available. Inevitably most employees will agree to this, since the alternative probably would be dismissal by reason of redundancy with the possibility of a delayed redundancy payment or no redundancy payment (for employees who have worked for less than two years). In most cases employees will agree where the alternative is redundancy.

In some cases, the unions may join in a collective consultation process to agree the furlough change to the existing terms of employment.

As normal employment laws apply when furloughing employees, the equality and discrimination laws will apply. For example choosing a disproportionate amount of men or women could lead to discrimination claims later on.

#### **10. Which employees are covered by the scheme?**

Potentially, any employee who was on the employer's PAYE system by 28 February 2020 is covered. This does leave any employees who were in the process of changing jobs and who joined their new employer at the beginning of March in some difficulty. It could also mean that employees who are transferred under TUPE (the Transfer of Undertakings (Protection of Employment) Regulations 2006) are left out. Although they will be deemed to have been continuously employed by their new employer, this will not alter the fact that they were not actually on the PAYE scheme at the relevant date. This is the sort of issue that HMRC may be asked to revisit when, for example, recently transferred canteen staff find that they may not qualify to be furloughed.

#### **11. Does the scheme apply to zero-hours contracts?**

It seems clear that the scheme will apply to anyone who is on the employer's payroll. This means that zero-hour staff will be included provided they are paid through PAYE. Those who are not on the payroll will not qualify under the furlough scheme but could benefit from a separate scheme aimed at the self-employed. This is something that they will need to pursue directly with HMRC.

#### **12. Does the scheme apply to agency workers?**

It appears that it does. An agency worker who is on the PAYE system of the agency will qualify for furlough provided that he or she is not working. That would seem to mean that the end user can terminate the assignment of a particular agency worker and the agency would then be able to place that worker on furlough. Importantly the pay that the agency worker would qualify for would be calculated based on either the earnings in the corresponding month of 2019 or on the basis of average earnings in the last tax year. It would not be dependent on the pay the worker was receiving in the most recent assignment.

#### **13. Can company directors be furloughed?**

Company directors owe duties to their company which are set out in the Companies Act 2006. Where a company (acting through its board of directors) considers that it is in compliance with the statutory duties of one or more of its individual salaried directors, the board can decide that such directors should be furloughed. Where one or more individual directors' furlough is so decided by the board, this should be formally adopted as a decision of the company, noted in the company records and communicated in writing to the director(s) concerned.

Where furloughed directors need to carry out particular duties to fulfil the statutory obligations they owe to their company, they may do so provided they do no more than would reasonably be judged necessary for that purpose, for instance, they should not do

work of a kind they would carry out in normal circumstances to generate commercial revenue or provides services to or on behalf of their company.

This also applies to salaried individuals who are directors of their own personal service company (PSC).

**14. Can we choose which employees to place on furlough and which to ask to come into work?**

The guidance published so far suggests that it will be for the employer to designate an employee as furloughed in which case the choice of who to place on furlough will be essentially one for the employer to make. It would be sensible when making the choice to take into account the personal circumstances of individual employees. Those with caring commitments for example might find it much harder to continue working - even from home – than those without. Ultimately however the employer will be able to make its decision based on the needs of the business ensuring that it retains access to the skills and experience that it needs to continue operating as best it can.

**15. What are the limits to work conducted by “furloughed workers”?**

To be eligible for the subsidy, a furloughed employee cannot undertake work for, or on behalf of, the organisation. This includes providing services or generating revenue.

A furloughed employee can take part in volunteer work or training, as long as it does not provide services to or generate revenue for, or on behalf of your organisation. However, if workers are required, for example, to complete online training courses whilst they are furloughed, then they must be paid at least the NLW/NMW for the time spent training, even if this is more than the 80% of their wage that will be subsidised.

Please note that if a pattern arises showing that an employee’s duties under the employment contract are carried out by the employee while being furloughed, then there could be risks and liabilities for the employer in terms of the worker not having been furloughed. Instead, the employee could perhaps, for example, be deemed to have been working part-time.

**16. What wages will it cover? How will pay be calculated?**

The scheme covers 80 per cent of wage costs to a maximum of £2,500 per month, plus the associated Employer National Insurance contributions and minimum automatic enrolment employer pension contributions on that subsidised wage. Commission, discretionary bonuses and tips are not recoverable.

The amount payable will be based on the employee’s normal salary. Where the pay is variable then the employer can claim for the higher of either the same month’s earnings from the previous year or the average monthly earnings from the 2019-2020 tax year. Where the employee has been employed for less than a year, the employer should take an average of their earnings since they started work.

While on furlough, the employee’s wage will generally be subject to usual income tax and other deductions.

**17. Will employers just have to submit one claim for all employees being furloughed?**

Initially there will be one claim for all furloughed employees, backdated to 1<sup>st</sup> March for any who did no work after that date. It is anticipated that such submissions will need to be made every 3 weeks as employees go in and out of furlough.

**18. Could we temporarily increase the pay of employees so that they can recover more under the scheme?**

It would be surprising if the scheme - when it is published in full detail – contained a loophole to allow this. Guidance already indicates that where pay is variable, the amount covered by the scheme will be based on past payments. Where the employee is on a fixed salary the scheme is likely to require some evidence from the employee's PAYE records showing how much the employee earns. Increases agreed after March 1 (the date to which the scheme will be backdated) are highly unlikely to be covered.

**19. Does it only apply if we don't pay the wages – or will be able to recover wages that we have already paid?**

The scheme is intended to help those employers who have chosen to keep employees on the books rather than make them redundant. We can certainly expect that it will refund employers who have already been paying employees from March 1st provided that the employees have not been doing any work in that period.

**20. Can I bring back employees who have already been made redundant?**

The Government is encouraging employers to reemploy staff that were dismissed for redundancy after 1 March 2020 but before the scheme was announced. It seems that the employer will be able to claim in respect of such employees even in respect of the time they were unemployed. There will, however, be no obligation to take this step.

**21. What do I have to do to bring employees within the scheme?**

The guidance published by the Treasury says that employees will need to designate affected employees as 'furloughed workers' and notify them that you have done so. The online portal through which claims will be made is still being developed. But essentially the employer will simply need to give its PAYE reference number, specify the number of employees being furloughed, the period over which the claim is being made and the total amount being claimed.

The guidance emphasises that HMRC will retain the right to retrospectively audit all aspects of an employer's claim.

To be eligible for the subsidy employers should write to their employees confirming that they have been furloughed and keep a record of this communication and the employee's written acceptance of the position.

If sufficient numbers of staff are involved, it may be necessary to engage collective consultation processes to procure agreement to changes to terms of employment.

To apply for the Coronavirus Job Retention Scheme on HMRC's online portal (once this goes live) a submission of the following information will be needed:

- a list of the employees who have been designated as “furloughed workers” (the employees will need to have been notified of their designation as such);
- a calculation of the amount you are claiming (with the minimum length of furloughing of 3 weeks);
- the employer’s ePAYE reference number;
- the claim period (start and end date);
- a UK bank account number and sort code; and
- the name and phone number of the employer’s contact person.

## **22. How should employers calculate the relevant salary?**

Employers claim for the higher of either:

- the same month’s earning from 2019; or
- average monthly earnings from the 2019-20 tax year.

If the employee has been employed for less than 12 months before the claim, then the employer has to use an average of the actual monthly earnings since the employee’s start date.

For employees who only started during February 2020 the employers will have to use those earnings on a pro rata basis.

## **23. What happens with tax and NI?**

Employers are still liable for employer NI and employer pension contributions on behalf of their furloughed employees.

The reimbursement from HMRC covers wages equal to the lower of 80% of the employee’s regular salary or £2,500 per month, plus the associated employer NI and pension (minimum automatic enrolment) contributions.

If employers choose to top-up the 20% of salary above the 80% grant, then employer NI and pension contribution on the top-up amount will not be funded through the coronavirus job retention scheme.

HMRC will issue more detailed guidance on this before the scheme is online.

## **24. Do I have to place all of my employees on furlough, or can I be selective?**

It is clear that the Treasury does not envisage an all or nothing approach. Some employers will need to maintain a skeleton staff even if the majority of their operations are shutting down. Some will only need to send a relatively small proportion of their employees home while other parts of the business carry on almost as normal. It is clear that employers and employees will be able to benefit from the scheme in either scenario.

Employees on unpaid leave cannot be furloughed, unless they were placed on unpaid leave after 28 February. Employees on sick leave or self-isolating should receive Statutory Sick Pay (“SSP”) but can be furloughed after this. Employees who are shielding in line with public health guidance can be placed on furlough.

A worker must be furloughed for a minimum of 3 weeks for their employer to be eligible to claim under the Scheme. As such, it is not possible to furlough for 1 week only and then re-activate an employee. However, it is our understanding that an employee may be furloughed more than once under the Scheme, which means that an employee could potentially be furloughed for 3 weeks at a time with a review of the status at the end of each three-week period.

**25. Can employees be partially furloughed?**

No - if an employee is expected to work at all during furlough leave, even if on reduced hours or for reduced pay, they will not be eligible for the Scheme.

**26. Can we backdate the payment to 1<sup>st</sup> March for all employees, since work was already slowing down?**

No. The scheme is only backdated to 1 March to cover employees who have already been made redundant as a result of the coronavirus restrictions.

Employers are only eligible to claim the reimbursement once they have agreed the furlough with employees and they have stopped working.

**27. Can we change which employees are furloughed at any one time – can an employee be furloughed, brought back to work and then furloughed again?**

The guidance makes it clear that the minimum period for which an employee may be furloughed and take advantage of the scheme is three weeks. However there is nothing to suggest that an employer cannot rotate staff in and out of the furlough scheme provided that each rotation is at least three weeks long. This not only allows the employer to focus on those areas of the business that need attention at any one time, but also allows a fair distribution of work and leave among employees.

**28. Can we place sick employees on furlough or do we have to keep paying them SSP?**

The guidance says that an employee on sick leave – or any other form of unpaid leave – will not qualify for furlough. However, once the leave ends the employer will be free to designate the employee as furloughed. Indeed the employer would also benefit from no longer having to pay sick pay. This is something of an anomaly because it means that someone who is actually off sick with coronavirus will actually be worse off financially than a healthy employee who is sent home on furlough. We may see employees declaring themselves fit for work in order to be placed on furlough by their employer. Obviously it is important in such cases that the employee in question does not attempt to actually come into the workplace.

**29. What if a furloughed employee becomes sick?**

It is unlikely that an employer would be obliged to notify HMRC if a furloughed employee becomes ill. Indeed as long as the furlough lasts there is unlikely to be any reason for the employee to even tell the employer that they have developed symptoms.

**30. Could someone return early from maternity or adoption leave to benefit from the furlough scheme?**

It seems that they could. The operation of maternity and other forms of family-based leave is unaffected by the furlough scheme. An employee on maternity or adoption leave can return to work early provided she gives the employer eight weeks' notice of the early return (or shorter, if both sides agree). The employer would then be free to place the employee on furlough from the date of her return. Employees should bear in mind, however, that the employer is not necessarily obliged to place them on furlough and may instead find work for them to do.

**31. The furlough scheme does not pay all of an employee's salary – do I have to top up their pay to the full amount?**

The guidance says that this is voluntary – but it is in reality a matter for the contract of employment. For most employees on a salary, or with a guaranteed minimum number of hours the employer remains obliged to pay the employee in full if it is not in a position to offer work. To that extent the furlough scheme subsidises the employer's wage cost but does not replace the obligation to pay wages.

If there is a clause in the contract allowing the employee to be laid off without pay then the payments made under the furlough scheme will be in addition to the employee's contractual entitlement and there will be no obligation to top up the employee's pay to the full amount.

This means that even with the benefit of the furlough scheme the employer may be facing a substantial contractual obligation to employees for whom it can provide no work. One option is to agree a temporary reduction in salary so that the amount paid by the furlough scheme represents the full amount to which the employee is entitled. The employer could make the employee's consent to such a change dependent on the employer designating them as furloughed rather than making them redundant.

**32. Can I reduce the hours that employees work?**

This depends on the terms of the contract. The more important question (see below) is likely to be whether an employer is able to reduce the pay of an employee who has been given fewer hours to work. Very few employees will actually have a contractual entitlement to work a full working week provided that the employer is prepared to pay them as normal. Where the employee's reward package is dependent on commission or a bonus paid on output then there may be an argument that the employer is in breach of contract if they do not give the employee the chance to work a full week. In the circumstances of the current crisis however, there must be a strong argument that it would not have been possible to earn much commission anyway.

**33. What does a reduction in hours mean for pay?**

A salaried employee whose hours are reduced will still be entitled to be paid in full unless he or she agrees otherwise – perhaps as an alternative to redundancy -



**34. Can I instruct employees to take annual leave if I cannot offer them work?**

Under the Working Time Regulations an employer can instruct a worker to take annual leave by giving notice that is at least twice the duration of the leave that must be taken. So if the employer wants the employee to take two weeks' of annual leave entitlement then it must give the employee four weeks' notice of this. There is of course nothing to stop employers and employees from agreeing that any given period without work should be treated as annual leave – although the terms of the furlough scheme will reduce the incentive to reach agreements of this sort.

**35. Will employees accrue holiday whilst on furlough?**

Yes, as employees remain employed during furlough leave statutory holiday will accrue during the furlough period.

The statutory minimum holiday of 5.6 weeks per year will accrue, but the precise amount of holiday left will depend upon how much holiday the employee has already taken. If the employer provides contractual holiday, above the statutory amount, employers can ask the employees to agree this will not accrue during furlough. However, the right to accrue annual leave under the Working Time Regulations will continue unless the employee books part of the furlough period as leave.

**36. Can I instruct employees to take annual leave while they are on furlough?**

Nothing the guidance so-far published by the Government would seem to prevent this. However an employee forced to take annual leave would normally be entitled to be paid in full for that period rather than at the capped figure provided for in the job retention scheme.

**37. What about if they are off sick or self-isolating?**

It is well established that a worker cannot be forced to take annual leave while off sick.

**38. How do I stop too many employees taking what is left of their annual leave later in the year?**

The Government has amended the Working Time Regulations to allow employees who have been prevented from taking their basic four-week annual leave entitlement to carry over that leave for up to two years. Where it is not reasonably practicable for employees to take their full entitlement this year, therefore, they will be able to defer their remaining leave to next year. The additional leave of 1.6 weeks must still however be taken in the current holiday year.

The Regulations also make it clear however that the employer can only defer the employee's request to take annual leave where it has 'good reason' to do so. While a rush in demand for leave towards the end of the year may well satisfy this requirement, the employer should make every effort to accommodate requests for leave where possible.

**39. Does the prospect of the furlough scheme make it unfair to make employees redundant?**

It will certainly be a relevant consideration. There may well be circumstances in which any reasonable employer would conclude that the job retention scheme means that there is no need to make employees redundant. The extent to which the employer could recover its wage costs by placing employees on furlough will certainly affect the reasonableness of any decision to proceed with redundancies.

The job protection scheme does not in itself protect employees against redundancy. Nor does it cover all of the costs associated with employing somebody. In the absence of an agreement from an employee to accept the sum provided by the scheme for the duration of the furlough, and depending on the terms of the contract, the employer of furloughed employees could still be facing considerable costs.

It would seem likely however that an employment tribunal would take the view that a reasonable employer would at least explore the options presented by the scheme and whether an employee would accept the associated drop in pay for the duration of the furlough before concluding that employees should be made redundant. While the scheme itself does not require employers to take part, it is difficult to see why an employer would refuse to at least consider doing so and discuss the matter with employees who would otherwise be made redundant.

**40. Can employees be furloughed during their notice period?**

There is nothing in the scheme to prevent this.

**41. Can a furloughed employee still claim a redundancy payment if laid off for four weeks or more?**

No. There is an incredibly complicated procedure under which an employee who is laid off without pay can claim a redundancy payment after four weeks when there is not likelihood of a return to normal working within the next four weeks. To qualify, however, the lay-off in question must be unpaid. Since furloughed employees will be paid up to 80 per cent of their wages, their period of furlough will not count as a lay-off under the statutory procedure for claiming a redundancy payment.

**42. What if we furlough staff but there is no market recovery and the 3-month period ends?**

It is likely that the Scheme will be extended beyond the initial 3-month period, perhaps for another 1 or 2 months. However, if the Scheme ends and there is no immediate market recovery, it would be possible to seek a variation of the current contractual agreements, either by agreeing reduced hours or reduced pay with all or specific sections of staff.

It is clear from the further guidance that an employer will be able to make an employee redundant while they are on furlough, or immediately after the furlough period.

**43. If we need to reduce salaries across the board, how should this be done?**

Implementing a reduction in salaries is only possible with the agreement of each individual affected by the implementation. Should a worker not agree, then the employer cannot put into effect a reduction in their salary, unless the employer undertakes a consultation process

with a view to bringing existing contracts to an end and immediately offering to re-engage staff on the new terms. We would strongly recommend seeking HR advice before doing this.

#### **44. What support is available to employers to help them cope with coronavirus?**

The support available for employers and individuals to cope with the coronavirus pandemic is changing almost daily. Keep checking the [Government website](#) for the latest information.

As part of their coronavirus planning employers should allocate members of senior management to monitor and apply for the measures available to support them including:

##### ***All sectors***

- Statutory Sick Pay relief for SMEs
- The Coronavirus Job Retention Scheme whereby certain employers can claim 80% of 'furloughed' employees' salaries for the next three months.
- A small business grant funding of £10,000 for all business receiving small business rate relief or rural rate relief.
- A Coronavirus Business Interruption Loan Scheme offering loans of up to £5 million for SMEs through the British Business Bank.
- A new lending facility from the Bank of England to help support liquidity among larger firms, to bridge coronavirus disruption to cash flow.
- Deferral of VAT and Income Tax payments.
- The HMRC Time To Pay Scheme.

##### ***Retail, hospitality and leisure businesses***

- A 12-month business rates holiday.
- Grant funding of £10,000 for relevant businesses with property with a rateable value of under £15,000.
- Grant funding of £25,000 for relevant businesses with property with a rateable value between £15,001 and £51,000.

##### ***Self-employed***

Self-employed individuals or members of partnerships can also claim support, provided their trading profits are less than £50,000. See question below.

#### **45. What help is available for self-employed people?**

On 26 March the government announced help for the self-employed which is similar (but not identical) to the coronavirus job retention scheme.

Self-employed people can claim taxable income support worth 80% of their average monthly income, capped at £2,500 per month if they are adversely affected by the coronavirus pandemic.

Their income will be calculated by taking the average of their income over the last three years. Income is based on PAYE salary, not dividends, which do not count towards the average income. This coronavirus self-employment income support scheme will be open for at least three months.

The eligibility criteria are that:

- The self-employed person must have submitted a tax return for 2018-2019\*;
- The self-employed person must have trading profits in 2018-2019 of under £50,000;
- Self-employed people who earn more than £50,000 p.a. do not qualify;
- The self-employed person must make more than half of their income from self-employment;
- Employees who work for an employer but have some separate self-employed work on the side which is less than half their income will not be eligible.

\*Self-employed people whose tax return has not been submitted and is still due after the 31 January 2020 deadline, can still submit a late tax return for 2019 for a further four weeks from 26 March.

**46. Can a self-employed person continue working and still claim income support payments?**

Yes, the self-employed can claim the new income support payments and continue working for their business. This is in complete contrast to furlough leave under the coronavirus job retention scheme for employees - under that scheme the employees must not continue to work for the employer.

The self-employed person or partner must have lost trading profits due to COVID-19 which presumably will be assumed if profits fall over this period.

Eligibility for self-employment income support depends upon the individual's income being under £50,000 on average for the last three years; no equivalent restriction applies to employees on furlough under the coronavirus job retention scheme.

**47. When will payments under the coronavirus self-employment income support scheme be made?**

Self-employed people do not have to initiate the application. It is understood that HMRC will contact them with instructions and then the grant will be paid directly into their bank account in one lump sum payment. Effectively, the self-employed who are eligible will get their 80% of March, April and May's money as a lump sum in June.

Self-employed income support is unlikely to be operational before the end of June. So self-employed people may need to borrow money to help with cash flow over the next few weeks until their income support application is processed. There are also business interruption loans available and the July self-assessment tax payments can be delayed for six months.

**48. What happens with people who only became self-employed recently?**

People who first became self-employed in the tax year 2019-2020 (and do not therefore quite have a full year of accounts) will not be able to claim under the scheme.

Those who are ineligible for the Self-Employed Income Support scheme may be able to claim Universal Credit although those with more than £16,000 in savings may be restricted in what they are able to claim.

**49. Do we have to allow our employees time off for emergency coronavirus volunteering?**

Yes, provided that the volunteering meets the criteria and time limits below, employers do have to give employees time off for emergency coronavirus volunteering. Over 750,000 people have volunteered so far to help in the coronavirus pandemic, volunteering to help the NHS or elderly in the community. Special legal provisions have been brought in to help this volunteering effort. More information is available on the government website.

***Employees on furlough leave***

These employees can volunteer as long as they do not provide services to or generate revenue for their own employer. Furloughed employees can volunteer to help (e.g. the NHS) or elsewhere subject to current movement restrictions.

***Employees and workers not on furlough leave***

Employees and workers can take special leave to volunteer to help organisations such as the NHS and social care providers. A full list of other organisations will be issued by the government.

Those working for small employers with fewer than 10 employees, civil servants and those working in the legislature, and police officers are excluded.

***Length of leave***

Emergency volunteering leave is taken in blocks of two, three or four weeks within a 16-week period. An employee or worker can take a maximum total of eight continuous weeks of voluntary leave in two consecutive 16 week periods.

***Volunteering certificate***

Emergency volunteering certificates are issued by the Department of Health, the NHS, or local councils. The employer must be given the certificate three working days in advance of the emergency volunteering leave.

***Payment***

The volunteer can be compensated by the body they are volunteering for but during the period of leave employees are not entitled to their normal salary. They remain entitled to all normal terms and conditions of employment which apply when he or she is not absent from work.

**50. What happens with employees who have been unable to take their annual leave, either due to the lockdown or because they have been needed at work?**

Workers who have not taken all of their statutory annual leave entitlement by the end of 2020 due to COVID-19 have a new legal right be able to carry it over into the next two leave years. Employers' leave years will vary - in some cases this year long period aligns with the calendar year, in other cases the financial year, the academic year, or the anniversary of when the employee started employment.

UK workers are usually entitled to 28 days holiday per year including bank holidays. This entitlement cannot normally be carried forward into the next leave year unless the employee:

- agrees this with the employer; or
- is on long-term sickness absence; or
- is on maternity leave and unable to take all of her entitlement as a result.

Payments in lieu of holiday are usually disallowed unless the worker is leaving the employer.

### **New provisions**

To prevent workers losing their holiday, and to enable key workers to keep working, the normal rules on carrying over annual leave have been modified. This will support provision of staff in key sectors (such as food and healthcare) during the pandemic without them losing out on holiday entitlement.

Employers can now allow up to four weeks (not the full 28 days) of unused leave to be carried into the next two leave years. The rules say that it must be 'not reasonably practicable' for the worker to take some, or all, of the holiday to which they are entitled due to the coronavirus. If so they can carry four weeks forward for two years. The remaining 1.6 weeks of holiday can be carried forward by one year by agreement.

These amendments to the Working Time Regulations 1998 apply to all employees. Workers who do not have employee status such as agency workers, and some casual and zero-hours contract workers, are also included (see [Working Time \(Coronavirus\) \(Amendment\) Regulations 2020](#)). The only exceptions are those covered by regulations other than the Working Time Regulations 1998 (including some merchant seamen, fishermen, and civil aviation staff, some armed forces staff and doctors in training) to whom special rules apply.

The normal obligations on employers to ensure workers take their statutory entitlement in one year or incur a financial penalty are also lifted.