



DMH Stallard

Employment Law Webinar

Coronavirus and Furlough: The Next Chapter

Contents

- 1 Review of the CJRS Bonus Scheme
- 2 Overview of JSS and Extension
- 3 Other options post 31 October 2020

Scenario

- Techie Techs is an IT business providing outsourced IT support and software sales to SMEs across London and the South East
- Jacquie works in the first line support team. She and her partner are expecting a baby in December. Her maternity leave started on 7 September 2020. Techie Techs does not pay any enhancement above the statutory scheme

Scenario (2)

- James and Dev work in the events team. There have been no events for the last few months and James and Dev asked for and were granted an unpaid sabbatical until the end of March 2021.

Scenario (3)

- Aysha and John are a couple. They both work part time (six hours per day) in the sales team, as they share child care at home. The sales support team operates from 8am to 8pm, Mondays to Fridays. After the initial hiatus of March 2020, sales are flat and so in August 2020 Techie Techs agreed with the sales team that rather than being made redundant, members of the team would work 40% of their normal hours. For Aysha and John that means they reduced from 30 hours per week each to 12, working six hours on each of Monday and Tuesday

The end of the CJRS

Abigail Maino

CJRS as we have known it

- Winding down this month
- To be replaced with the Job Support Scheme
- Additional targeted help for businesses forced to close
- Any mistakes in relation to CJRS grants must also be notified to HMRC by 20 October 2020

**30 November 2020 –
final date for CJRS
claims**

Coronavirus Job Retention Bonus

Do you intend to make use
of the Coronavirus Job
Retention Bonus scheme?

Poll

Headlines

- £1,000 one off taxable bonus per “qualifying employee”
- You do not have to pass on to employees
- You must be a ‘qualifying employer’
- Claims must be made between 15 February and 31 March 2021



Who is a qualifying employer?

In order to be eligible, employers must have

- A PAYE scheme registered on HMRCs real time information system for PAYE
- Have made a claim under the CJRS in respect of the employee
- Have provided the required information to HMRC



Who is a qualifying employee?

The employee must

- Have been furloughed at some point under the CJRS
- Have been continuously employed from the end of their furlough period to 31 January 2021
- Not be under notice (n.b. resignations)
- Have earned a minimum of £1,560 in the relevant three month period



Relevant three month period

The three month periods for the purpose of assessing minimum earnings are:

- 6 November 2020 - 5 December 2020
- 6 December 2020 - 5 January 2021
- 6 January 2021 - 5 February 2021

Employees must have received at least one payment in each of these months

- The amount can vary
- Must be at least £1,560 over the three months period
- Minimum earnings apply even were other leave e.g. unpaid leave, sickness, reduced hours)



Some other points

- Watch out for deductions that reduce taxable pay, such as pensions
- You can still apply if you inherit employees under TUPE – but only if you inherited them prior to 31 October 2020 and you furloughed them



Scenarios

Jackie on maternity leave

- Employer claimed under the CJRS for her
- She has been continuously employed
- She will be earning SMP of £151.20 per week throughout the relevant three month period
- SMP counts as taxable earnings so she will be paid something in each of the relevant three months
- The total taxable earnings in the relevant three month period will be in excess of £1,560

Scenarios (2)

James and Dev who agreed to a sabbatical

- Employer claimed under the CJRS for them
- They have been continuously employed
- They would not have received any taxable earnings in the relevant three month period
- Employer could top up – is that attractive?

Scenarios (3)

Aysha and John working reduced hours

- Employer claimed under the CJRS for them
- They have been continuously employed
- They each work 12 hours per week, reduced from 30 hours, earning £9 per hour
- £54 per day, £108 per week
 - 6 Nov – 5 Dec = £432
 - 6 Dec – 5 Jan = £540
 - 6 Jan – 5 Feb = 432
- They will receive a payment of taxable earnings in each of the relevant months
- Overall taxable pay will be £1,404 – lower than the minimum income threshold

Job Support Scheme (and Extension)

Rustom Tata

- **Job Support Scheme**
 - ongoing wage support for those in viable jobs

- **Extension Scheme**
 - support businesses who are legally required to close premises as part of local or national restrictions

Job Support Scheme

- Targeted approach
- Support for viable jobs
- Minimum 1/3 of usual hours must be worked
- Paid as normal for those hours worked
- Remaining hours split into three – e'er, e'ee, taxpayer
- 6 month scheme to end November, review in February 21

Hours worked	33%	40%	50%	60%	70%
Hours not worked	67%	60%	50%	40%	30%
Employee earnings (% of normal)	78%	80%	83%	87%	90%
Gov't grant (% of normal)	22%	20%	17%	13%	10%
Employer cost (% of normal)	55%	60%	67%	73%	80%

JSS Expansion

- All employers can claim
- Those businesses legally required to close premises
- NB. Not if closure is due to a workplace outbreak
- Employees who cannot work (at all) for the employer
- Minimum period of seven consecutive days
- Reimburse 2/3 of normal pay, maximum £2,100 pm
- Six months to April 2021, review January 2021

	JSS	Extension for lockdown
Any sector?	Yes	Only businesses order to close - ?sector or geography
Minimum hours requirement?	Yes – at least 33% of usual hours.	No
Amount of Govt contribution	£697.92/month	£2,100/month
NI and pension	Employer to pay	Employer to pay
Need to show trading impacted?	Unclear, probably not for SMEs. Larger employers subject to a financial assessment showing reduced turnover	Not – but premises closed
Employee condition	On payroll on or before 23/9	On payroll on or before 23/9

	JSS	Extension for lockdown
Previously on furlough?	Not necessary	Not necessary
Ban on giving notice for redundancy	Yes	Yes
Ban on using money for notice pay?	Yes	Yes
Other financial constraints	? Employer must not be able to top up pay Employer must not make capital distributions or pay dividends	JSS can be used to help pay employee's wages
Work for others	?Probably	?Probably

Pros and cons of JSS

Pros

- Maintains employment (of many)
- Some financial support
- Enables part time furlough
- Avoids redundancy and notice pay crystallising
- Avoids difficult unfair dismissal selection

Pros and cons of JSS (2)

Cons

- Requirement that employee works at least a third of normal hours
- Limited amount of Government Contribution
- Extra cost for hours worked
- Prohibition of placing on notice
- ? whether collective redundancy consultation can start

To what proportion of your staff might the JSS be applied?

- 75% or more
- 50%-74%
- 25-49%
- 10%-24%
- Less than 10%
- None

Poll

Scenarios

Jackie who is on maternity leave

- Not eligible for JSS while on maternity leave so not working
- But, can return from work before the end of maternity leave, subject to requisite notice
- Can work 1/3 hours for double pay (78%) as an alternative to a flexible working request
- Extension scheme – can ‘return’ to work and potentially receive up to £2,100/month
- Employer cost of NI and pension

Scenarios (2)

James and Dev who agreed to a sabbatical

- Not eligible for JSS unless a return to work is agreed – working at least 1/3 of usual hours
- Satisfy 'qualification' date of 23/9
- Extension scheme – start date of 9/10

Scenarios (3)

- Aysha and John working reduced hours
 - JSS – providing 6/12 hours is at least 1/3 of usual hours, they will qualify.
Possibility of 'roll on roll off'
 - NB. Qualifying date and method of calculation
 - Assume 12 hours per week, reduced from 30 hours
-
- Work $12 \times £9 = £108$
 - Balance $18 \times £9 = £162$
 - Govt $£54$
 - E'er $£54$
 - E'ee (foregone) $£54$
-
- Employee is paid £216 (rather than £270) = £18/hr

Other options post 31 October

Greg Burgess

Alternatives to JSS

- Tech Tech's Event business
- James and Dev are on unpaid sabbatical leave
- The rest of the Events team were placed on furlough
- Some virtual events from January 2021
- Real events back from Spring 2021 (hopefully)
- Do you keep the talent and, if so, how?

Redundancies

- Put Events team at risk and go through consultation process
- Consider issues including:
 - Pooling and selection
 - Include James and Dev?
 - Invite volunteers from elsewhere in the business?
 - Be mindful of inadvertently triggering collective consultation obligations

Lay off / short time working

- Do you have contractual right?
- How long to lay off for?
- Be aware that Eee can claim SRP if laid off or on short time working (or combination of both) for:
 - Four or more consecutive weeks; or
 - Six weeks (of which no more than three are consecutive) in any period of 13 weeks
 - Eer can serve counter-notice if return within 4 weeks
- Can Eee force an enhanced redundancy payment using this mechanism?

Private furlough

- Potential structure
 - Eer pays x% of base salary for days not worked
 - Eer uses employees for some days in any part of business – Eee paid 100% for these days
 - Annual leave – accruing, but require “furloughed employees” to use annual leave
 - Length of scheme period – kept under review
 - Part-funded by Job Retention Bonus

Unpaid leave

- Seek consent
- Consider cost in terms of
 - Annual leave
 - Benefits
- Keeping in touch
- IT access

Re-skilling

- Meet increased demand elsewhere in business
- Temporary or permanent
- Seek consent
- If this involves investment cost will you want to tie them in for minimum period?

Questions

Speakers



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