

## Access to the Job Retention Scheme – the latest information

The Government has published more details regarding the Job Retention Scheme that will run for an initial three months from 1 March 2020.

The Scheme should be up and running from April 2020 and will enable furloughed employees to receive 80% of their usual wage, or £2,500, whichever is lower.

The Scheme is available to all employers with a UK bank account operating PAYE 28 from February 2020, and will be processed via BACS by HMRC.

The Government has attempted to provide greater clarity on those employers who can claim. These include:

- Businesses;
- Charities;
- **Recruitment agencies (PAYE workers);** and
- Public authorities.

Employees who can claim include:

- Full-time employees;
- Part-time employees;
- **Employees on agency contracts;** and
- Employees on flexible or zero-hours contracts.

Employers are expected to discuss this with staff and make the appropriate changes to contracts by agreement. This should be communicated to the employee, and a record kept of the conversation, so that the employee is clear that they have been furloughed.

Collective consultation may be required depending on the numbers involved.

If an employee is on unpaid leave, they cannot be furloughed – unless placed on unpaid leave after 28 February.

If an employee is on sick leave or self-isolating, they receive statutory sick pay (SSP) – or equivalent – and then they can be furloughed.

An employee with more than one job can be furloughed from each job.

If an employee undertakes training whilst furloughed, they must be paid at least the national minimum wage (NMW)/national living wage (NLW), even if this would equate to more than 80% of their wage.

Those on maternity leave, adoption leave, paternity pay or shared parental leave (SPL) are still eligible for statutory entitlements at 90% in the first 6 weeks and then 90% or statutory maternity pay (SMP), whichever is lower.

Enhanced schemes (i.e. the Burgundy Book) would be included in the wages that can be claimed.

If pay varies, there are a number of different ways in which the pay can be calculated:

- If employed for 12 months, then it would be the higher of either:
  - o Same month's earnings from the previous year; or
  - o The average monthly earnings from the 2019/20 tax year.
- If employed for less than 12 months, then they would claim the average of monthly earnings since they started working.
- If they only started working in February 2020, then they would use a pro-rata basis for earnings so far.

Employer national insurance contributions (NIC) and pension contributions only funded up to the 80% level. If an employer tops up the wages this has to come from the employer.

The Government will only fund the minimum mandatory employment contributions for pensions.

Wages paid to the employee are subject to NICs from the employee as normal.

Employers need to make the claim for 80% of an employee's actual salary before tax. They must pay all of the claim and cannot charge any fees from the money that is granted.

Employees can return to their duties or have their contracts terminated. They would still be entitled to rights in respect of SSP, maternity, unfair dismissal and redundancy.

Whilst this appears to be moving in the right direction for our supply teacher members and members in independent schools who are being furloughed, there is still the need for clarity on the following which we are pursuing.

### **The definition of employee in respect of supply teachers as agency workers**

Workers and employees are separate and distinct in respect of employment status, so the scope of those eligible needs clarity.

Issues still remain around the issue of furlough. It is not entirely clear whether PAYE workers and other workers on zero-hours arrangements will qualify for this either. This is pertinent to supply teachers as agency workers.

### **The level of government contribution for pensions**

The Job Retention Scheme may only fund the lowest level which could impact on schemes like the teachers' pension scheme (TPS) with employer contributions in excess of 3% for auto-enrolment.

The NASUWT will continue to pursue these issues.

**In the meantime, supply teachers should consult the terms of their contracts with their agency and contact their agency to see if they are accessing the job retention scheme and whether they will qualify. Contact the NASUWT if there is a problem.**



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