

UK: Get ready for flexible furlough

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How do you furlough an employee part-time from 1 July? We summarise the key points you need to know about flexible furlough.

On 12 June, the government published its much-anticipated guidance with further details on how to furlough employees flexibly from 1 July. Flexible furlough applies to employees whom you previously furloughed for at least three consecutive weeks at any point between 1 March and 30 June.

From 1 July, you can bring these employees into work for any amount of time and on any work pattern while still claiming under the scheme for unworked hours. As you will know, that is currently not possible – it is either furlough or work, it cannot be both.

You must pay employees who are flexibly furloughed for the hours they work. You will be able to claim the furlough grant for any hours those employees do not work. These unworked hours will be based on the hours they would normally have worked in that period.

Unsurprisingly, you need to agree flexible furlough with the employee (or on a collective basis with a recognised trade union). You must:

- keep a written agreement that confirms the new furlough arrangement;
- keep a written record of the agreement for five years; and
- keep records of how many hours flexibly furloughed employees work and the number of hours they are furloughed.

It is not clear if the employee has to provide a written response. For now, we assume that they do not, in the same way that they do not need to provide a written response to an agreement to furlough them for the first time. However, the safest approach is to ask employees to send an email to confirm they agree to the flexible furlough terms. Where they work the hours set out in the agreement, it will be difficult for them to argue they did not agree. You can enter into a flexible furlough agreement with an employee more than once. This means you can change the proportion of hours they are working/furloughed or the work pattern.

Flexible furlough agreements can last any period of time. The three-week minimum period will no longer apply. However, the three-week minimum period still applies to any periods of furlough that start before 1 July (e.g. if you furlough someone on 29 June, they must remain on furlough until 19 July).

If you are not ready to start bringing furloughed employees back to work, you can continue to furlough employees for all of their normal working hours.

The existing restrictions continue to apply to what an employee can/cannot do during the hours they are flexibly furloughed. This means during the hours they are furloughed, they:

- cannot do any work that makes money for their employer or provides a service;
- can take part in training;
- can volunteer for another employer or organisation; and
- can work for another employer (if contractually allowed).

Whilst flexible furlough can last any length of time, the period you claim for must be a minimum of seven consecutive calendar days.

HMRC has published a worked example of how to calculate the amount you can claim for an employee who is flexibly furloughed. Before making a claim, as well as deciding on the length of the claim period and what to include when calculating wages, you will also need to work out your employees' usual and furloughed hours.

From 1 July, you cannot claim for more employees in a single claim than the maximum number you claimed for in any claim up to 30 June. This means if you have made three claims, for 50, 40 and 70 employees, the maximum number you can claim for in any single claim starting on or after 1 July is 70 employees. This appears to be the case even if the 50 employees you furloughed in the first claim were different employees to the 70 furloughed in the third claim. This means you would not be able to furlough all 120 (flexibly or full-time) at the same time, even if they have all been furloughed before. This cap does not apply to any employees returning from family leave (where the leave started before 10 June and ended after 10 June). We published an update on this exemption last week.

After 1 July, you cannot make a claim that crosses calendar months. The first day you can claim for periods in July is 1 July. The last day for submitting claims ending on or before 30 June is 31 July.

If you plan to make use of flexible furlough, we recommend you start planning now and ask employees to agree to the new part-time work pattern you propose. Bear in mind that some employees will still have childcare issues and others may be shielding, or live with someone who is shielding. The government expects employers to be understanding and flexible with employees in these situations.

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