

# TRANSITIONAL HR Limited



News article for DBN Newsletter

The extreme and exceptional circumstances we find ourselves in now are having an immense impact on us all both personally and professionally. Whilst we would all agree that our health is a priority the reality is that things don't just stop, and we having to seek solutions to problems and adapt. Transitional HR provides outsourced HR support to small and medium sized business. Our clients are geographically spread as far south as London, west to Liverpool and up to the borders as well as in and around the north east. We are used to reacting, responding and being adaptable to meet the challenges faced by our clients. COVID-19 represents a challenge like no other.

## *Furloughing.....*

### **What even is furloughing...?**

Furloughing is an agreed altered state to the employment relationship. The person must be an employee (legal definition is applicable) and they must agree to be furloughed. Furloughing cannot be imposed. Until now furloughing did not exist in English employment legislation. It is a commonly used strategy in America.

### **What if my employee(s) does not agree to be furloughed....?**

The point of Coronavirus Job Retention Scheme (furlough) is to protect and retain employment where the effects of the coronavirus would cause employment to be lost due to financial difficulties. If an employee refuses to be furloughed the alternative may well be redundancy, short time working or lay off.

### **Do I need to put anything in writing.....?**

Absolutely!!!! This is essential. The reason it is strongly advised to get the furloughing agreement in writing is because you are changing the status of the employment relationship which could include a reduction in pay. The basis of any employment contract is for the employer to provide work and the employee to complete that work to an agreed standard. Furloughed employees may not do any work during the furlough period and may be subject to a pay reduction of 20%. If you cannot demonstrate that this was agreed you are vulnerable to a breach of contract and unlawful deduction of wages claim.

### **Can my employee(s) work while they are furloughed.....?**

To qualify a successful claim with HMRC employees may not do any work during the furloughed period. Work is defined as activity that provides a service to the employer or is revenue generating. They can however engage in training or CPD.

### **Can my employee(s) work for anyone else while they are furloughed from my company...?**

They may do "other work" subject to your agreement and what is written into their contract. They must however remain available for work for their primary employer or complete training is requested so any other work must allow for that.

### **How long can I furlough my employee(s) for.....?**

The minimum period is 3 weeks there is no upper limit other than the Government has only extended the scheme until the end of June for now.

### **Can my employee(s) take holiday while I have furloughed them...?**

Yes, holiday may be taken but it must be paid at their normal rate of pay so you cannot only pay 80% during the holiday period. The Working Time Directive has been amended to allow for a maximum of 20 days holiday to accrue and be carried forward for up to two year to ensure that employees do not miss out on their proper holiday. An employee who takes leave while furloughed will not be able to enjoy a full holiday as they normally would due to the wider restrictions for travel and leisure. Employers have a duty of care to ensure that their employees take their holiday appropriately.

### **Can my employee(s) be off sick whilst furloughed....?**

Yes. An employee who is furloughed must remain available for work. If they are no longer available due to ill health then they move to sick leave and are paid SSP plus any occupational sick pay if appropriate. Employers must pay SSP for Covid-19 from day 1 and can reclaim the first two weeks back from the Government.

### **Do I have to furlough all my employees, or can I choose just a few....?**

The objective is to retain and protect employment and every company / business is different. Whilst some companies can do no work safely others will have a reduced workload or be working as normal. Each case must be dealt on its own merits. In the case where a company has reduced revenue and therefore reduced financial resources to meet its payroll it will be prudent to furlough some employees at least to protect their employment. Care must be taken to ensure the selection of employees for furloughing is done objectively and fairly and does not inadvertently disadvantage any groups. Advice should be sought as making a mistake with this decision can lead to grievances and claims.

### **What about rights and entitlements...?**

All rights and entitlements accrue and continue throughout the period of furloughing. For example, holiday accrues, and pension continues.

### **Am I obliged to put an employee back on my payroll who has resigned recently....?**

You can if you chose to, but you are not obligated. Originally, anyone employed on or before 28 February could be furloughed. This meant that anyone who had resigned and started a new job in March was unable to be furloughed. This date has since been changed to anyone employed on or before March 19. The cut off point was intended to avoid fraudulent claims from unscrupulous employers inventing fictitious employees and adding them to their payroll and claiming a salary for people that don't exist from the taxpayer.

### **Is there a limit and is the value gross or net...?**

The maximum that can be claimed monthly for each employee is £2,500 and this is a gross figure. The payroll should run as normal with all the usual deductions for tax, pension and national insurance being made.

**Do I have to reduce a furloughed employees wage to 80%.....?**

No. You can choose to top it up to 100% if you wish but that is an employer's prerogative. Decisions about this should be made according to reasonableness and affordability.

**If you have any queries not covered here or would like to discuss this or any other matter in more detail then please contact:**

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Kimberley is a senior HR generalist with over 20 years' experience in the management of people and employment law. Kimberley runs Transitional HR Ltd, supports Beacon365 Ltd and is a non-executive director of Optimum Skills and Education Village Academy Trust. Kimberley is L7 qualified in HRM and employment law but also holds an advanced designated safeguarding lead qualification and specialises in the management of people within regulated activity and child protection.

