

JOB RETENTION SCHEME FOR TOURISM BUSINESSES WEBINAR

This webinar was delivered as part of Tourism NI's Tourism Enterprise Development (TED) Programme by Michael Black, head of the Employment & Business Immigration team at Cleaver Fulton Rankin Solicitors.

Following the session Michael kindly provided responses to a number of industry questions received during the webinar – detailed below.

Questions and Responses

1. Is it possible for someone currently on maternity leave getting SMP to end the maternity leave and be placed on furlough?

If a return date from maternity leave has been agreed with the employer the parties are required to observe this. An employee who wishes to return early must provide 8 weeks' notice to end the maternity leave before the agreed time. However, as the end date of the original leave in this case is in July it appears that there is no point in the employee serving 8 weeks' notice now. It's up to the employer to allow an earlier return if both parties are in agreement. It is likely to be financially beneficial for the employee to return and the employer has the option of placing them on furlough but all of this needs to be discussed and mutually agreed.

Please note that an employer can delay the early return of an employee who hasn't given the 8 weeks' notice.

2. What is the position of an employee aged over 70 years, should they be furloughed?

The furloughing of the employee is at the discretion of the employer. Employers must be careful to not discriminate based on the grounds of age when handling this situation.

As anyone over the age of 70 would be classed as being at high risk during the COVID-19 outbreak according to the government, it would be crucial for an employer to undertake a risk assessment for such a case. If work can be done from home with no issues then remote working should be implemented. In this case there would need to be a discussion between the employer and the employee and an agreement must be made on any further action. It is important to note that you cannot compel an employee to be furloughed but it's also important that the employee isn't treated differently just because of their age.

3. Are all staff categories entitled to accrue holidays while on furlough?

Yes. Full time and Part time staff are all entitled to accrue holidays while on furlough. For part time staff, this will be based on the hours they would work. It doesn't matter what category an employee fits into, all employees will accrue holiday entitlement when on furlough.

4. What can furloughed workers do in the business if anything? Can they do work such as planning for reopening?

No work can be done for the company while on furlough; only training and voluntary work can be done. Even planning for the company reopening is strictly prohibited for employees who have been furloughed.

5. If someone started two weeks before furlough, do they accrue holiday entitlement when on furlough and redundancy terms?

Yes they will accrue holiday leave while on furlough. In Northern Ireland, redundancy pay is only applicable once somebody has served the company for 2 years. If an employer wishes to make someone redundant before they have had 12 months service for the company they must ensure they follow the correct redundancy consultation procedure otherwise it could lead to a claim of

unfair dismissal. Where an employee has less than 12 months service, the employer must follow the 3 step statutory dismissal process. First, they must invite the employee to a meeting to discuss the termination of their employment. The second stage is the formal meeting. Finally, the employer must provide the employee with a right of appeal and must ensure they are also following their contractual obligations in terms of notice entitlement and so on.

6. Is it right that there is still no system in place for reclaiming COVID SSP from HMRC?

The government did announce they would have a rebate scheme put in place. Unfortunately there have been no details released as to how and when this will be put into place. *(NB details of the SSP Rebate Scheme has since been announced with the online application system going live on 26th May).*

7. Are online training courses for staff subject to full pay?

Yes – furloughed staff are entitled to take part in training courses, however any time spent on training should be reflected with full pay where appropriate. This depends on the length of the training period. The minimum obligation is that furloughed employees who are training must get at least the national minimum wage. Furlough scheme will still cover 80% with the other 20% paid by the employer.

8. We have sent emails to employees compelling them to take some Annual Leave – 2 out of 300 plus have come back with issues? Can we go ahead and process this AL?

It's necessary for the employer in question to consult with the 2 staff members directly and discuss their concerns about this. There may be genuine reasons as to why they do not wish to take Annual Leave at this moment in time. Even though employers are limited as to what they can do, employers must follow government guidelines and question if the employee will benefit from

taking a period of annual leave. For the vast majority who have agreed to this, yes it is perfectly fine to go ahead and process this. However, this must be parked for those employees who reject taking this period of leave where the concerns are genuine and they cannot, for instance, enjoy the period of leave for medical reasons concerning themselves or a member of their household.

9. Can directors be furloughed during loss of operational business of a tour operator or a travel business? If so can managerial duties continue to engage with staff and monitor cancellations with suppliers?

Yes, directors can be furloughed and they can still engage in the administrative legal functions that arise from their role as a director. Unfortunately, there is a narrow definition around this and HMRC will potentially challenge any JRS payment if the director was involved in providing services while on furlough.

*Delivered as part of the Tourism Enterprise Development (TED) Programme
on behalf of Tourism NI by:*

