

NEU Yorkshire and Humber Region

Furlough Leave Scheme and Supply Teachers



What is 'Furlough Leave'?

This scheme has been set up by the Government in response to the Coronavirus emergency. It is designed to help employers who are struggling to pay their staff whilst the nation is on lockdown or self-isolating.

Under the scheme, the Government will pay 80% of the wages of any employee if an employer applies. It is not clear yet whether this payment is paid directly by the Government to the employee or whether it is something an employer will claim back from the Government.

The aim of the scheme is stop employers dismissing staff and large numbers of the population becoming unemployed.

Who can apply for it?

The scheme is payable to all **employees**. It is backdated to cover pay from the 1st March 2020 and employers who have recently dismissed staff can choose to take them back and claim under the scheme for their pay.

There are no rules as to whether the employer needs to top up the 80% so that the employee suffers no reduction in their pay. However, there would need to be an agreement between employer and employee in writing that the employee is happy to stand the difference, as otherwise there are grounds for the employee to pursue an unlawful deduction from wages claim.

It is likely however that most employees will accept the reduction as it avoids the alternative of being dismissed.

Are supply teachers eligible for it?

In order to determine whether a Supply Teacher member has any rights, we must first work out what their **employment status** is.

The first type are Employees. Employed Supply Teachers would be directly engaged to work for a school under a contract of employment (albeit usually for a short fixed term). There may have been an agency involved who did the initial introduction but that is all their involvement was. After that, the Supply Teacher takes all instructions from the school directly and is paid by them.

Supply teachers who are **employed** would be eligible for Furlough Leave. If they have recently had their posting terminated because of the lockdown, they should contact their employer – normally the school – and explain about the Furlough Leave scheme.

The second type would be **Workers**. These would potentially on the face of it look very similar to Employees, but the agency is involved in the relationship on a continuing basis. More often

than not, a Worker is paid directly by the agency (who receives a payment from the school) and works under an agency agreement with them.

Workers **would not be** eligible for pay under the Furlough Leave scheme unfortunately.

Are there any other rights for Workers?

If a worker has been engaged for a fixed term and the posting has been terminated before the end of that, they **may** have a claim for **breach of contract**. They would be, in those circumstances, entitled to the pay they would have received had they continued in the post to the originally agreed end date.

However, it is likely that most agreements with an agency will include a **clause allowing them to terminate early**, for any reason, without any penalty or pay being due. If the member is unsure, ask them to check their original agreement with the agency. If there is no such clause, the agency would potentially be liable for the lost pay.

There **may** also be some circumstances where a worker could be determined to be an Employee and therefore be entitled to employment rights, including the right to pay under the Furlough Leave scheme. This would usually be where a Supply Teacher has been engaged at a school for a long period of time and is being treated exactly the same as employed staff. **If you consider a member may qualify as an Employee, you should raise this with the employer and ask them to consider paying under the Furlough Leave scheme.**

However, it isn't clear as to what the penalty will be if an employer incorrectly claims for a worker under the scheme and some employers may not be willing to take the risk. In those circumstances, you should liaise with the Regional Office to get further advice as to how to advance the member's rights.

What is the NEU doing?

As discussed in the 'Town Hall call' on 23rd March, the Joint General Secretaries are **urgently raising the issue of supply and agency** workers directly with the Secretary of State for Education Gavin Williamson. They are also raising this with the TUC and the Public Sector Forum.

What can NEU Reps and Local Officers do?

Ask the member for their contract with the agency, umbrella company or school so that we can determine what their employment status is. The Regional Office will be happy to help with this if you are unsure. If you believe that the member is an **Employee**, you can contact the school directly and ask them to consider the **Furlough scheme**. If you believe that they are a Worker, try and determine whether there is a fixed term clause in the contract, or an early termination clause. You may want to refer to the Regional Office for an assessment on **Breach of Contract**. You could also argue that the school should retain the member as there will still be need for work to be done when the situation improves and certainly the member should be retained 'on the books' and ready to return when schools are fully reopened. In this circumstance, the member would not receive any pay from the school but would be free to work elsewhere in the interim.