

<https://neu.org.uk/advice/coronavirus-supply-members-faqs>

SCHEME SUMMARY

What is the Coronavirus Job Retention Scheme – aka furlough leave – and does it apply to me?

The Job Retention Scheme has been devised by the government, following pressure from unions, to protect the earnings of those who would otherwise be laid off during the current crisis.

Under the scheme, all employers in the UK regardless of size or sector - including recruitment agencies - can claim a grant from HMRC to cover 80 per cent of the wages costs of those who are not working but kept on the payroll ("furloughed"). The grant is capped at £2,500 a calendar month for each employee. Employers can choose to top up the remaining 20 per cent of lost earnings if they wish.

The HMRC advice refers throughout to employer and employee but confirms that agency workers on PAYE and recruitment agencies are covered by the scheme. There is currently an issue with regard to the level of pay which umbrella companies may be able to reclaim and pay; further advice on that area will be provided as soon as possible.

The supply educator and the agency must agree to put the person on furlough: so, speak to your agency about whether they can claim. You cannot apply for the scheme yourself. Once agreed your agency must write to you confirming you have been furloughed to be eligible to claim.

Any UK employer with a UK bank account will be able to claim, but you must have been on the agency's PAYE payroll on 28 February 2020. You can be on any type of contract, including a zero-hour contract or a temporary contract.

The scheme will be backdated to 1 March 2020, be open for at least three months and will be extended if necessary. The Chancellor stated that the scheme will apply in respect of everyone paid via PAYE. The legislation has still not yet been published but we are pressing for the best protections for our members. The NEU believes that all agency, supply, umbrella, home tutor and other atypical workers who are paid under PAYE arrangements should be covered by the scheme and we continue to press the government to ensure that this is the case.

ARE YOU ELIGIBLE?

I am working now on an agency engagement in a school - does the furlough scheme apply to me?

If you are able to continue to work safely as a supply worker by working at school or from home, we encourage you to continue to do this. The scheme is not designed to replace all lost earnings, only 80 per cent up to the cap is guaranteed. If your engagement is cancelled, you should be entitled to be furloughed by your agency – see below. The NEU opposes the

cancellation of engagements which would have continued if not for the CV crisis – contact us for support if your engagement is cancelled without your agreement.

I usually get work on PAYE through an agency but have no work now - does the scheme apply to me?

If you are still engaged as an agency worker and paid under PAYE (and were on the PAYE payroll on 28 February) but do not currently have work, you are encouraged to make enquiries about being designated as a furloughed worker if you have no other recourse to earnings. You will not be permitted to work via that agency while you are furloughed.

You should be consulted before being designated as a furloughed worker. It shouldn't happen without your knowledge.

If you are a supply worker on PAYE and you are not working, you can also contact your local schools to enquire about work. If there is no work available, you can ask your agency about the furloughed worker arrangements. [Please let us know by emailing AdviceLine](#) if your agency refuses to utilise the scheme or claims that it is not able to access the scheme.

The terms of the scheme will depend on your contract. Our current understanding of the scheme is that you will be kept on the payroll - rather than being laid off - but that you must not undertake work with the agency while you are furloughed. HMRC has advised that if an employee has more than one employer, they can be furloughed for each job. We are pressing for clarity on how this applies in practice to agency workers signed up with more than one agency.

Does the scheme apply to long term and short term arrangements?

HMRC advises that the scheme will apply to any type of contract including full-time, part-time, agency and flexible and zero-hour contracts; the scheme appears to apply to long term and short term including fixed term arrangements.

We believe that it applies to all staff paid under the PAYE scheme who would otherwise be laid off, or let go, because of the current crisis. In terms of supply educators, this means anyone who would not be working at this time due to the unavailability of work. Our understanding is that grants will be made in respect of actual past earnings, so there will need to be evidence of recent earnings, and that both short term and longer term supply teachers and agency workers should be covered by the scheme.

I am working on a regular part time contract but doing extra days on supply via an agency, can I be furloughed?

If the supply work is no longer available, you can ask the agency to furlough you in respect of the extra days. This applies whether the extra days are regular or ad hoc extra days. Your regular part time contract will be unaffected by that.

I have been on a long term agency assignment for over 12 weeks - do I have additional rights as a public sector worker?

Yes, the Government's advice is that public sector employers should continue to pay directly employed teachers and support staff, in the usual fashion.

If you have worked on the same assignment in the same job with the same hirer for at least 12 weeks, you are entitled to equal treatment in relation to your basic working conditions as

if you had been employed directly by the hirer to do the same job. So, if a comparable employee is continuing to be employed and paid during the school closure period, then the you are likely to be entitled to continue to be employed and paid too.

I have only just started supply and didn't get a PAYE payment in February, will I qualify?

To qualify, you have to be on the agency's PAYE payroll by 28 February. If not, you are not eligible, but you might be able to claim Universal Credit.

I haven't worked on supply since December and didn't get a PAYE payment in February.

Provided you are still on the agency's PAYE payroll, you should be able to be furloughed if you are ready willing and able to work. The questions on calculations below outline how your pay is likely to be worked out.

I am a disabled member and I am self-isolating. Can I be furloughed?

If you're self-isolating or shielding, the government says you are eligible to be furloughed i.e. you're not excluded from the scheme. If you are absent due to sickness, you might have to declare yourself fit or be declared fit for work in order then to be furloughed and receive furlough pay, which may be higher than SSP for many supply teachers.

MULTIPLE JOBS/AGENCIES

As well as teaching, I have a job stacking shelves at a supermarket. I am still stacking shelves at a supermarket. Can I furlough my teaching but carry on my other job?

HMRC advice is that if you have more than one employer, you can be furloughed for each job. Each job is separate, and the cap applies to each employer individually. You can remain working in one job while being furloughed from another.

Contracts of employment will continue during furlough leave so any enforceable restrictions on working elsewhere during employment will continue to apply. However, in the circumstances, employers may consider relaxing any such restrictions to allow employees to take up a role with a non-competing business with their prior consent. In any case, this type of job may not count as such employment.

I work for more than one agency. Do I have to furlough with each agency or do I just furlough with one agency? How will I get paid?

As each employer is required to make the claim to HMRC, you would need to be furloughed with each agency. You can do this if work with each agency has come to an end.

Each furlough is separate, but we don't yet know whether HMRC will link the records of workers who are furloughed with multiple employers. For now, you should assume that you will be paid separately for each furlough via each agency.

I get some supply work via a supply agency and some with a school directly. Do I furlough with both or just with one?

You will not be allowed to be furloughed by a state funded school, so you should seek to retain the work with the school. See the answers to the questions about directly employed supply teachers.

You can be furloughed by an independent school if you and the school agree. As each employer is required to make the claim to HMRC, if you are no longer required in both jobs, you would need to furlough both the agency and the school.

I have more than one assignment with the same agency. Can I be furloughed for one assignment but carry on working on the others?

To be furloughed, you need to have stopped working for your employer. We believe that, if you stop working in one engagement but carry on working in the other you will be treated as if your hours have reduced with the agency and because your work continues, albeit reduced, you will not be entitled to be furloughed.

DIRECT EMPLOYMENT WITH STATE SCHOOLS

I worked through agencies until Christmas. Since then I have worked directly through a state school which won't extend my contract beyond April. The agency is saying I wasn't on the payroll on 28 February.

The school still should be employing staff who would have continued to work there but for the CV crisis, at least until the end of their engagements, and should consider keeping you on as it may need you beyond April in the current situation. Please contact us at AdviceLine@neu.org.uk if the school seeks to end your contract at the end of April.

I had a permanent teaching job last year but have worked as an agency supply teacher this year. Will my earnings in that previous job count towards furlough pay?

This is very unlikely because your pay in the previous job would have been paid by a different employer, whereas furlough pay is based on earnings with the employer who furloughs you. You will need to agree with your agency that you are to be furloughed and your recent supply teacher pay is likely to be pro-rated.

I work directly for school and get paid by the local authority / academy trust. Can I still be furloughed?

If you are engaged directly and employed and paid by an LA, school governing body or academy trust, you will be treated as a public sector employee.

The HMRC advice is that "Where employers receive public funding for staff costs, and that funding is continuing, we expect employers to use that money to continue to pay staff in the usual fashion – and correspondingly not furlough them."

It goes on to say "In a small number of cases, for example where organisations are not primarily funded by the government and whose staff cannot be redeployed to assist with the coronavirus response, the scheme may be appropriate for some staff." But the NEU would expect your employer to continue to pay you as usual.

I get supply work from an LA pool / MAT pool, not an agency, where do I stand?

If you're able and willing to work, you can continue working. The NEU and Government advice is that you should continue to be permitted to work where you would have continued to do so but for the CV crisis. At present it is unclear whether local authorities and other public

sector employers who maintain supply pools can furlough supply staff – we will issue advice on this as soon as we can.

My most recent assignment was terminated; can I access the furlough scheme?

The government has stated that once the scheme is established, it will be backdated to 1 March 2020. The detail of how the backdating arrangement will work is not entirely clear but further information has been issued.

HMRC advice is that the scheme covers those who were laid off since 28 February 2020 if they are rehired. The scheme relies on agencies being willing to continue trading and rehiring agency workers who have been let go. Clarity on whether both the agency and the school would have to agree to the re-hire is being sought.

Our advice to members who have been given notice of termination but who are still on the payroll, is to ask to be put onto furlough instead if there is no other work available. We believe that it is in the interests of agencies to do this.

If your assignment has already been terminated and there is no alternative work available, we suggest that you ask to be re-engaged as a furlough worker. Contact your agency, point them to the [HMRC advice](#), ask them to rehire you and let us know by emailing [AdviceLine](#) if your agency refuses to rehire you or claims that it is not able to access the scheme.

TERMINATION

I have been given a P45 by my agency. Can I still get furloughed by the agency?

HMRC advice is that the scheme covers those who were laid off since 28 February 2020 if they are rehired. So, yes, it is still possible to be furloughed if you received your P45 after 28 February. But it appears that there is no obligation on agencies to utilise the furlough scheme. The scheme relies on agencies being willing to continue trading and rehiring agency workers who have been let go. Agency workers are still dependent on the agency to apply for the grant.

Our advice to members who have been given notice of termination but who are still on the payroll, is to ask to be put onto furlough instead if there is no other work available. We believe that it is in the interests of agencies to do this.

If your assignment has already been terminated and there is no alternative work available, we suggest that you ask to be re-engaged as a furlough worker. Contact your agency, point them to the [HMRC advice](#), ask them to rehire you, read our advice on agency refusal, and let us know by emailing [AdviceLine](#) if your agency refuses to rehire you or claims that it is not able to access the scheme.

I was in a long term placement when the schools were closed. The NEU told me in an email that I was entitled to be paid in full? Is that still correct or do I need to furlough?

Members on long term placements should continue to be paid in full until the end of a long term placement. Once the original term of the placement has come to an end you should ask to be furloughed if no further work is available.

I signed up with an agency on 2 Feb and had planned work after Easter but the school have pulled out. Can the agency put me on the Furlough scheme?

Your first step should be to press the school and agency to reinstate the contract and continue to pay you as a public sector key worker. After that, discuss furloughing with the agency.

I had been promised a booking for a job after Easter, but I have no paper trail.

Speak to your agency. If the post is still available, ask for the assignment to continue. If it is not to continue, ask to be furloughed if you were on the payroll on 28 February and let us know at AdviceLine@neu.org.uk if you need further assistance.

PROCESS AND PAYMENT

What will happen if I agree to be furloughed?

If you agree to be furloughed, the employer must submit information to HMRC through a new online portal (HMRC will set out further details on the information required). This will allow a claim for a grant of up to 80 per cent of your wage for all employment costs, up to a cap of £2,500 per month. The employer then pays the person furloughed and can, if it wishes, make the payment up to 100% of normal pay.

A furloughed person retains all their existing contractual rights other than terms relating to pay.

How will my earnings be calculated?

HMRC have clarified what earnings they will take into account when assessing claims.

If you have been employed (or engaged by an employment business) for a full twelve months prior to the claim, the employer can claim for the higher of either:

- the same month's earnings from the previous year
- average monthly earnings from the 2019-20 tax year

If you have been employed for less than a year, the employer/agency can claim for an average of their monthly earnings since you started work.

If you only started in February 2020, the employer/agency can use a pro-rata for your earnings so far to claim.

If the purpose of the scheme is to maintain basic earnings, the actual earnings of all those under the PAYE scheme should be taken into account. This will ensure that workers on zero hours contracts and other workers whose earnings fluctuate are not disadvantaged.

Will tax, national insurance and pension contributions be deducted?

The government guidance states that you'll still pay Income Tax, National Insurance contributions and any other deductions from your wage.

I receive my Teachers Pension - am I able to be Furloughed and how do they work out the payments for Furlough scheme?

You can still be placed on the Furlough scheme if you are claiming pension if you are still working for an employer. Check the HMRC and NEU guidance, to see the different methods of calculating furlough payments.

Should agencies top up our lost pay to 100%?

Absolutely, yes, we believe that agencies should top up agency workers' pay to 100%. There is no obligation on agencies to pay the additional 20% of pay to agency workers on their books but we believe that they should be pressed to do so. Once the scheme is operating, please let us know at AdviceLine@neu.org.uk if your agency does top up your pay, and let us know if the agency refuses to pay the 20%.

I no longer trust my agency after the way they have treated me. Who is overseeing what they are doing?

You should try to use this time to make sure that you have all your paperwork detailing all the assignments you have worked on in the last year – including the agency, the hirer – i.e. the school, each day worked and how much you were paid.

HMRC will be creating a portal for employers and agencies to use. HMRC has said it retains the right to retrospectively audit all aspects of employer claims.

The NEU will continue to press for a transparent fair scheme that meets its purpose.

My umbrella company says I will only receive 80% of the National Minimum Wage. Is this correct?

We understand that a number of umbrella companies **have written to members to say that their contracts provide for them to be paid basic pay at the national Minimum Wage, with all other pay treated as bonus or additional payments, and that the latter cannot be included in furlough payments. Their view s that this is unavoidable** due to the way their contracts have been drafted. The current government guidance states that a person's monthly salary, for the purposes of calculating furlough pay, does not included bonuses, commissions and fees. We will need to see what the legislation itself states in order to give clear advice as to the situation with regard to other additional payments. It may also depend on the wording of your contract with the umbrella company.

We are seeking to change this position. There is nothing to stop an umbrella company, or any employer, topping up the 80%.

EMPLOYERS REFUSING TO APPLY THE SCHEME

I am with a small supply agency. They say they are too small to furlough me. Is this true?

No, we don't think this is true. The government has announced that under the Job Retention Scheme, all employers in the UK regardless of size or sector - and including recruitment agencies and, we believe, umbrella companies - can apply to claim a grant from HMRC. They must have created and started a PAYE payroll scheme on 28 February 2020 and have a UK bank account.

My agency says I should be furloughed by my umbrella company. My umbrella company says it should be the agency. Who is correct?

The body you get your PAYE payments from can claim the payment from the government and will pass on the payment. The body must provide its PAYE reference number to HMRC when it makes a claim. The NEU believes that the umbrella company is the correct body to be making the claim. We are pressing for further clarity on how the scheme will operate in the more complicated agency supply arrangements. In the meantime, you are encouraged to ask your agency and your umbrella company to confirm why they believe they are not responsible for furloughing you.

An agency has said it is not eligible for furlough because it has cash flow problems. What options do agency workers have?

The NEU does not accept cash flow problems as a reason not to use the scheme. The agency should be asked to advise precisely why it believes it cannot take part. If the agency is concerned about a delay between paying agency workers and receiving the grant, it is possible for agencies to agree to defer their pay until the grant is paid by the government. This of course will put agency workers in a difficult position and some members will be out of pocket until the payment is made; see the other answers on further steps that can be taken if the agency refuses to furlough you.

Can my agency refuse to furlough me because I am on a zero hours contract and it says it can't predict what my future pay would have been?

No, we do not accept this argument. For individuals to qualify, they must be on payroll on 28 Feb. Grants to employers and agencies will be based on individual's past earnings not on future earnings. The government has confirmed that zero hours contract workers can be covered by the scheme.

What should we do if the agency refuses to furlough us?

Our understanding of the scheme is that it is intended to be voluntary, but we don't think this is good enough as it will leave agency workers and other precarious workers without an income. The NEU will do everything possible to persuade agencies and umbrella companies to sign up to the scheme and we will be pressing for a remedy as part of the legislation. We encourage agency, supply teachers, support workers, music tutors, home tutors and other precarious workers who are intending to rely on the scheme to ask your agencies and employers to furlough you if and when there is no work and to let us know how your agency responds by emailing AdviceLine@neu.org.uk

What if you are currently signed off sick and on SSP - can you be furloughed?

Yes, but you do need to sign yourself fit to work in order to be furloughed.

I have an NHS letter which confirms that I am extremely vulnerable. My umbrella company says it can't pay SSP but I can be under the Furlough scheme. Can I claim SSP in between getting Furlough scheme?

If you qualify for SSP, you should be paid SSP. The government has said it will pay up to 2 weeks of SSP. You should go back to the agency and say you are entitled to SSP. The agency should be asked to provide you a copy of a form SSP1 to explain why they are not paying SSP1 and this can be used as evidence further down the line if you need to make a claim.

I am an independent contractor; will the scheme apply to me?

The scheme is available to those on the PAYE system only. Self-employed educators will not be able to access this scheme but will instead have access to a similar scheme which was announced by the Chancellor on Thursday 26 March 2020. We will need to wait for more detail of this scheme before we can provide further clarity. Most supply educators are not self-employed.

What will happen next?

We continue to press the government, employers, agencies and agency bodies to recognise the sterling contribution that supply workers make to education in England and Wales, and to protect this group of flexible key workers during these exceptionally difficult times.

This advice will be updated as further information on the scheme becomes clear.

To date, government guidance has been released gradually. Full details of the scheme are not yet known so you are encouraged to refresh this page for developments and to review [government advice for workers](#) which is updated regularly.