

Furlough. New guidance for employers.



To all our clients and friends,

In terms of furloughing employees, according to our friends at [Gannons Solicitors](#), there are still a number of issues, based on new guidance, which employers need to take into account, including these key points:

- From the guidance published in the last week, it is essential that the employee has not only agreed to a pay reduction (if that is the case and the employer is not "topping up" to full pay) but has also agreed (not just been told) that they must do no work. This is a new requirement, so many existing furlough agreements may not comply.
- It would seem therefore that employers will need to seek a new agreement from the employee to cover this.
- It is unclear whether such an agreement can be backdated (but it would be wise to include a confirmation from the employee that they have in fact done no work since being put on furlough).
- HMRC have announced that the portal for claims to seek reimbursement of furloughed pay will open on Monday 20th April.
- There appears to be some confusion over the eligibility surrounding dates, as a result of new rules just introduced. The eligibility of an employee depends on him or her having been on payroll on 28 February or 19 March and a Real Time Information PAYE filing has been made for that employee on or before that date. So an employee hired on say the 27th February and paid monthly, who missed the RTI filing for February and for whom the RTI filing was not made by 19 March will not be eligible for

furlough. This contradicts all previous guidance from HMRC.

- Employees hired in March but for whom no RTI filing had been made by 19 March will similarly not be covered.
- The treatment of holiday pay remains unclear and HMRC is refusing to provide any assistance on this.
- Whereas previously guidance suggested that an employee merely needed to be notified that they were on furlough, with their agreement being needed only if contract terms were changed, this has now again suddenly changed. The rules now say that to qualify the employee must have been instructed to cease all work, and further "An employee has been instructed by the employer to cease all work in relation to their employment only if the employer and employee have agreed in writing (which may be in an electronic form such as an email) that the employee will cease all work in relation to their employment."