

Coronavirus – Job Retention Scheme Update

Further to our recent publications, HMRC have now confirmed their positions on both Office Holders and Company Directors and the eligibility to claim under the Job Retention Scheme.

The guidance follows the recent interpretations by the CBI and the ICAEW that where there is a definitive separation of duties between those required for statutory purposes and those for commercial purposes then Office Holders and Directors should be eligible for the scheme where all of the employment law requirements have been met.

Eligible individuals who are not employees

As well as employees, the grant can be claimed for any of the following groups, if they are paid via PAYE:

- office holders (including company directors)
- salaried members of Limited Liability Partnerships (LLPs)
- agency workers (including those employed by umbrella companies)
- limb (b) workers

The guidance below sets out specific considerations for those individuals who are paid via PAYE, but who are not necessarily employees in employment law. Unless explicitly set out below, all other guidance is applicable to these cases, and should be followed.

Office Holders

Office holders can be furloughed and receive support through this scheme. The furlough, and any ongoing payment during furlough, will need to be agreed between the office holder and the party who operates PAYE on the income they receive for holding their office. Where the office holder is a company director or member of a Limited Liability Partnership (LLP), the furlough arrangements should be adopted formally as a decision of the company or LLP.

Company Directors

As office holders, salaried company directors are eligible to be furloughed and receive support through this scheme. Company directors owe duties to their company which are set out in the Companies Act 2006. Where a company (acting through its board of directors) considers that it is in compliance with the statutory duties of one or more of its individual salaried directors, the board can decide that such directors should be furloughed. Where one or more individual directors' furlough is so decided by the board, this should be formally adopted as a decision of the company, noted in the company records and communicated in writing to the director(s) concerned.

Where furloughed directors need to carry out particular duties to fulfil the statutory obligations they owe to their company, they may do so provided they do no more than would reasonably be judged necessary for that purpose, for instance, they should not do work of a kind they would carry out in normal circumstances to generate commercial revenue or provides services to or on behalf of their company.

This also applies to salaried individuals who are directors of their own personal service company (PSC).