

Croner Advisory Q&A

October 2020

As part of your association membership, you have free and instant access to specialist advice to help your business navigate challenges brought by the pandemic and wider workplace matters.

Croner, our trusted helpline providers, give examples below of popular questions they are receiving from members.

Croner can give you pragmatic guidance to assist with the changing government schemes, business restructure, local measures, and more. Call **0844 561 8133** and quote your association number to speak with an expert today.

What is the Job Support Scheme and can my business make use of it?

On 24 September 2020, the Chancellor, Rishi Sunak, announced his Winter Economy Plan designed to protect jobs and support businesses over the winter months. As part of the Plan, the Chancellor announced the Job Support Scheme (JSS) which has now replaced the Job Retention (or furlough) Scheme (JRS).

The first thing you need to know is that the Job Support Scheme is different from the original Job Retention Scheme. Under this new scheme, staff are not furloughed and the government will not pay staff to undertake no work at all. The aim of the scheme is to help employers who can support employees doing some work but need more time to recover.

Under the scheme, workers work at least one third of their normal working hours. The government provides pay for one third of the time they do not work, up to a cap of £697.92 per month. You then provide pay for another third, except this pay is not subject to a cap.

You do not need to have previously furloughed an employee under the Job Retention Scheme to make use of this. Claims for the government grant can be made through the government website.

Can I still claim under the Job Support Scheme if my business needs to shut?

Yes. The government has confirmed that the scheme has been expanded to cover companies that are asked to close as a result of local, and regional, coronavirus restrictions. If your store is told to shut, and you are eligible to claim under the scheme you will be able to claim two thirds of your staff's wages from the government.

You should note that this will only be available to businesses subject to lockdown restrictions. In the absence of these, your staff will need to work at least a third of their usual hours in order for you to benefit from it.

Is my business eligible to claim the Job Retention Bonus?

The Job Retention Bonus offers a one-off payment to employers across the UK for every employee previously furloughed under the Job Retention Scheme that are kept on until at least 31 January 2021. Depending on how many employees you did place on furlough, this could lead to you gaining a substantial sum from the government.

To gain the bonus, your employees must be eligible for the Job Retention Scheme and you must have claimed a grant from the Scheme for them. The JRB can be claimed for employees who:

- were furloughed and had a Job Retention Scheme claim submitted for them that meets all relevant eligibility criteria for the scheme
- have been continuously employed by you from the time of your most recent claim to the Job Retention Scheme for that employee until at least 31 January 2021
- have been paid an average of at least £1,560 (gross) between the tax months of 6 November to 5 December 2020, 6 December 2020 to 5 January 2021 and 6 January to 5 February 2021. Employees must have at least one payment of taxable earnings in each of the relevant months
- are not serving a contractual or statutory notice period, that started before 1 February 2021, including notice of retirement, for the employer making a claim.

Use of the Job Support Scheme will not impact upon your ability to claim the bonus, meaning you are able to make use of both. Claims will only be able to be made between 15 February and 31 March 2021. After this date, no further claims will be able to be made.

Despite government aid, I'm facing making some employees redundant. What alternatives could I think about?

In any redundancy situation, you need to make sure that you have considered all alternatives before proceeding with a process, as it may be that you can save the costs you need to save without making staff redundant.

The first thing you can consider is laying off staff. Lay-off is where an employer no longer requires an employee to attend work for a temporary period. The employee will not be paid but may be entitled to a statutory Guarantee Payment — presently the maximum is £30 a day for 5 days in any three-month period — so a maximum of £145 with part-time entitlement being pro-rata. To go down this road, you should first check staff contracts. If you are not contractually entitled to lay them off without pay, they will need to agree to this.

Instead of a lay-off, you could consider introducing a shorter working week as a temporary measure. Again, this will require consultation with the workforce and their written consent to the temporary changes. You should make it clear during the consultation that the alternative will be redundancy. A temporary reduction in hours and pay is more likely to be accepted by your employees as an alternative to the finality of redundancy.

You could even look into your current plans for recruitment. One option is to withdraw job offers or defer new starters, however you should remember that unilaterally withdrawing a job offer that has been accepted will be a breach of contract and that deferring a new recruit's start date will require their consent if the offer has already been accepted. Alternatively, the company could put in place a recruitment freeze and reduce the use of temporary staff.

We don't think we are going to be able to pay staff a Christmas bonus this year. Do we have to pay them?

The first thing you should establish is whether you are under any duty to provide such a bonus. Fundamentally, there is no statutory requirement to pay staff a bonus at any time. However, if bonuses are a contractual benefit included in the terms and conditions of employment or in the employee handbook, then employees will have an expectation of the

payments and management are under a legal obligation to pay it. Non-payment in this situation could result in a claim for breach of contract.

Much will depend upon the wording of the contract. Many organisations choose to include a clause which reserves the right to withhold any bonus if they see fit. This will help to prevent it being considered 'mandatory'. Nonetheless, you should still be cautious. If you have paid a Christmas bonus to all your staff for a number of years without any changes or interruptions, adjustment of the practice can give employees a ground to make a claim. In an event such as that, an employee can claim that the annual payment has transformed into a custom or tradition through the consistent conduct of the organisation.

It is advisable for all bonuses to be marked as discretionary within contracts and the employee handbook. As an extra precaution against potential claims, employees should be given advanced notice as to whether the criteria is going to be met for them to claim their bonus. For example, if it was a condition to hit a pre-determined sales level and this has not happened, then it need not be paid. By providing advanced notice, this can also serve as an incentive to staff to improve upon their current productivity levels.

What do I need to know about the new points-based immigration system coming into force from 1 January 2021?

If you want to employ foreign workers from 1 January, you need to remember that free movement of persons between the UK and the EU will have ended. As a result of this, all foreign nationals now need to meet certain criteria in order to legally live, and work, in the UK.

Individuals will need to meet certain criteria or have a minimum of 70 points. Generally, the job will need to be providing a salary of at least £25,600, aside from in certain areas where skills shortages have been identified. For example, those seeking positions in nursing may be able to apply for roles offering a minimum of £20,480.

Points are expected to be awarded in the following ways.

Mandatory points (points which need to be awarded)

- Job offer from an approved sponsor - 20 points
- Job at an appropriate skill level - 20 points
- English language to a required level - 10 points

Tradeable points (points which can make up the total)

- Job with salary of at least £25,600 - 20 points
- Job with salary of at least £23,040 - 10 points
- Job with salary of at least £20,480 - 0 points
- Job in a shortage occupation - 20 points
- PhD in a relevant STEM subject - 20 points
- PhD in a subject relevant to job - 10 points
- Job in a shortage occupation as designated by the MAC - 20 points
- Applicant is new entrant to the labour market as designated by the MAC - 20 points