

Employment webinar 1st April 2020 Questions and Responses

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In Control Partnerships

Registered Office: Invicta House, 108-114 Golden Lane, London, EC1Y 0TL

PO Box 17649, Solihull, B90 9LA

t. **0121 474 5900** | admin@in-control.org.uk | www.in-control.org.uk

COMPANY REGISTRATION NO. 06393960 | VAT No. 938 3115 21 | Charity Number 1130761

Topic & Questions	Response	Other note or links
FURLOUGH		
<p>1. Public money issues relating to Furlough</p> <ul style="list-style-type: none"> ☠ Can PA's funded through direct payments be furloughed? ☠ Furlough guidance indicates that it will not apply to public funded income that is continuing, is Direct Payments is classed as public funded money? ☠ Can you furlough with PHB, I have been told you cannot because it is public money ☠ government guidelines say that furlough does not apply to public funded income ☠ I have furloughed 3 staff, with their written consent, so that I can reduce risk with one live-in PA. My direct payments payroll service says they don't think I'm eligible for Job Retention Scheme (I am registered as employer with PAYE). This is because of the public funds clause 	<p>The Guidance states <i>“The Coronavirus Job Retention Scheme is a temporary scheme open to all UK employers for at least three months starting from 1 March 2020. Any UK organisation with employees can apply, including: businesses, charities, recruitment agencies (agency workers paid through PAYE), public authorities” and “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. This also applies to non-public sector employers who receive public funding for staff costs” BUT also states</i></p> <p><i>“In a small number of cases, whose staff cannot be redeployed to assist with the coronavirus response, the scheme may be appropriate for some staff”</i></p>	<p>https://www.gov.uk/guidance/claim-for-wage-costs-through-the-coronavirus-job-retention-scheme</p>
<p>2. Do staff who are furloughed still pay the same tax etc.?</p>	<p>Yes</p>	

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<p>3. If a local authority decides to stop the direct payment because the PA is temporarily not required e.g. because a family member is caring for a self-isolating/vulnerable person, should they furlough the PA as they no longer have the money to pay them from the DP?</p>	<p>There is no suggestion at this point that Direct Payments will be stopped. If the member of staff is not required during the crisis for infection control reasons and cannot be redeployed then furlough is an option. If the direct payments continue a claim to the job retention scheme fund will not be required</p>	
<p>4. Can a family member who has been furloughed from their main employment become a temporary carer and be paid from a PHB (as well as their furloughed pay)</p>	<p>If they are already on your payroll?? <i>"If your employee has more than one employer they can be furloughed for each job"</i> The expectation is that furloughed employees paid through the fund will not be working. Taking on other work may not be permitted by their contract, so it may be necessary to get consent. The employer might reduce furlough pay to reflect the care pay</p>	
<p>5. Does the level of furloughed pay stay the same if it runs for an extended period of time or does it reduce as your previous months pay is now only 80%?</p>	<p>It remains at 80% of original salary? There is no indication that the job retention payments will decrease.</p>	
<p>6. Our PA works in a f/t job during the week and works for us at the w/e only. We do not want then to attend due to the risk to us. She has worked the same hours every week for the past 2 years. What are our options with regards furlough?</p>	<p>The guidance states <i>"If your employee has more than one employer they can be furloughed for each job"</i></p>	

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<p>7. Can the local authority help to claim from Job Retention scheme? I really don't fancy the potential extra work with 3 kids at home and home schooling and caring.</p>	<p>I would imagine different LA's will take different approaches to this. Some have a Direct Payment support team or commission one who might help with this. However the precise method for making a claim is yet to be finalized</p>	
<p>8. If the employee is shielding because they are at risk are they eligible to be furloughed?</p>	<p>Initially this would be classified as SSP? If they have been recommended to self-isolate then SSP will be payable as it is not a furlough situation</p>	
<p>9. If a carer decides to self-isolate due to living with one someone who is at high risk- is this an example where they can be furloughed?</p>	<p>Under the new legislation they are entitled to SSP as of day one of their isolation. They need to complete an online isolation form rather than getting a GP note. The first two weeks' SSP (which should cover the self-isolation period) will be recoverable from HMRC</p>	
<p>10. I want to furlough as one of my PAs also works at a school and so I will only have my other one as a risk of infection is higher from her. Would this be allowed?</p>	<p>Yes</p>	

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<p>11. ZERO hour contracts</p> <ul style="list-style-type: none"> ☠ Can I furlong zero hrs contract staff. Who work regular hrs for me of between 30-40 hrs each per wk. Funded by CHC PHB? PHB is for my 2 sons whom req 24 hr care. They are scared & don't want any staff here at the moment & wish for me to provide the care ☠ Does Furlough apply to Zero hrs Contracts ☠ If I have PHB is it me who claims direct the funding for furloughing from the government (if my staff are self-employed on zero hrs contract) 	<p>If your carer a 'zero hours' worker who is paid only for the hours they work you can ask them not to attend. You may be able to claim for them under the job retention scheme with the claim based on previous average earnings, but if your PB is still being paid this may not be possible. However you may wish to use your PHB to make some retention payments to them so as to ensure they remain available to you post crisis</p>	
<p>12. how long furlough pay will go for</p>	<p>Employees can be furloughed for as long as there is no need for them to attend work, If a claim on the job retention fund is needed that will continue as long as the government deem it necessary. The guidance states that the claim procedure will currently be available to the end of April. Claims need to be every 3 weeks and can go back to 1st March</p>	
<p>13. under direct payments should local authority pay pay for furlough or they have to claim from govt</p>	<p>If Direct Payment continues you can continue to pay for your PA's directly. If they are not required you, as the employer, could furlough them. If your direct payments continue they should be paid from these without claiming on the job retention fund</p>	

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14. Would it be legal if the LA/CCG restrict employers from paying a full wage for furloughed staff? Is it 80% if employees agree and if not entitled to full pay? If the LA/CCG do not agree could they come back and claim the 20% from me?	So far I have not seen any indication that LAs will review personal budgets in circumstances where you have to furlough staff. You remain contractually obliged to staff to pay 100% unless they agree to accept less, so the direct payments should continue	
Statutory Sick Pay		
15. Will the SSP be reclaimable for the full 12 week period?	Effective 13 March 2020 SSP will be payable from the first day of absence. It will be payable both for sickness absences and also when an employee has been required to self-isolate. Employees can complete a self-isolation form in place of a fit note. This can be found online and there is no need to have it signed by a GP. Employers with less than 250 employees will be able to reclaim the first two weeks' SSP paid for COVID related absences (although the procedure for doing so is not yet clear)	
16. where do you get isolation note from i.e. what link	See link >	www.nhs.uk https://www.acas.org.uk/coronavirus/self-isolation-and-sick-pay see the links towards the bottom of the page
17. how much is ssp	see gov.uk £94.25 subject to eligibility	

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18. IF the carers have other jobs too, can they claim SSP more than once? Or better if they claim SSP form the employer who pays them most?	If they are unfit for work due to COVID or self-isolating they are unlikely to be able to attend the other job. However it is possible to claim SSP for a job you are unfit for but continue a job you are fit for. You cannot however claim SSP twice at one time	
PAYMENT For Staff		
19. Should PA's be paid with direct payment even if there is no need for the PA to work?	Yes its likely under their employment contract they will remain entitled to receive full pay unless the contract contains a clause which entitles the employer to lay them off and/or reduce their pay.	
20. My PA cancelled her annual leave in order to provide care for me (cover PA was stuck in Poland) can I still pay her the annual leave she had to cancel?	Yes She would be paid for the weeks she worked as normal. Her holiday allocation gets deferred to later in the year as she has not yet used it – and she may be able to carry it over to next year	
21. Hi, what happens if I want to pay my staff 80% or full pay if they are unwell or self-isolating due to them of their family being high risk	This is allowable – you are basically topping up SSP. There is a possibility the LA may object to the payments being used this way, but given the circumstances I would be surprised if they did	
22. Hi, what happens to people like myself I have 3 part time jobs? One of which is PHB one is 0 hour contract and one is self-employed. Can I apply for help from my self-employment or 0 hour contract if I'm being paid a retention from my PHB job	The guidance states <i>“If your employee has more than one employer they can be furloughed for each job”</i> It is not yet clear how help will be provided if you are self employed	

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23. if a disabled person works in a supermarket but chooses to shield because she has asthma and her husband has asthma/breathing problems due to nasal polyps/regular uti's/infections and also both have spina bifida but haven't had a note does she get paid?	Classed as self-isolating so SSP	
24. If a PA doesn't want to go to work as they themselves are classed as vulnerable and have to self-isolate for 12 weeks, how will they be paid, will it be at 80% or SSP?	As above	
25. My payroll have asked me to write on pa timesheet that my son is self-isolating and next to the hours she would normally work write furloughed, is this correct?	If the carer is self-isolating he is not furloughed	
26. If someone is a zero hour's worker and the client decides not to have them attend - are they required to pay them? In this situation would the authority be correct in suspending the DP until the care recommences?	If your carer a 'zero hours' worker who is paid only for the hours they work you can ask them not to attend. You may be able to claim for them under the job retention scheme with the claim based on previous average earnings, but if your PB is still being paid this may not be possible	
27. and also will the shielding PA be able to be paid their full wage as some are paid more than the SSP amount per week	If self-isolating the statutory entitlement is to SSP. It is for the employer to decide whether to top that up to full pay from their PB	

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Work Conditions		
<p>28. We have asked our PAs to not come in and are asking them to agree to 80% of their wages can we ask them to do some on line emotional support from home and some practical help like policies. We are paying family members which has been agreed by LA.</p>	<p>The guidance states “A furloughed employee can take part in volunteer work or training, as long as it does not provide services to or generate revenue for, or on behalf of your organisation. However, if workers are required to for example, complete online training courses whilst they are furloughed, then they must be paid at least the NLW/NMW for the time spent training, even if this is more than the 80% of their wage that will be subsidised”. Providing on line support would appear to be a service for the employer so not allowed if the job retention fund is being claimed upon</p>	<p>https://www.gov.uk/guidance/claim-for-wage-costs-through-the-coronavirus-job-retention-scheme</p>
<p>29. If a PA has been temporarily laid off by their employer e.g. if their employer is self-isolating, is the PA able to work for someone else in the interim especially when social care workers are in short supply and they are able to work?</p>	<p>Yes if not furloughed they can be redeployed. If furloughed and wanting to work for someone else, the first employer’s consent should be sought</p>	
<p>30. Can personal assistants still work in the family home with coronavirus going on? Are they allowed in to work as it goes against the government advice? Thank you</p>	<p>Yes because direct care staff are recognised as critical keyworkers</p>	

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<p>31. My pa has refused to work. She will only do my shopping and says she is only doing essential jobs. I do not need personal care. can you tell me what a pa can do</p>	<p>This depends what is in your employment contract with your PA and your care plan. If she is not doing her full job then potentially this could be a disciplinary matter, but she is likely to claim that she is doing it due to perceived imminent danger to health, so any such action could be unlawful</p>	
<p>32. what if the pa provides care for a child by taking them out for respite</p>	<p>Some are continuing to go out for fresh air and exercise within the current guidelines.</p>	
<p>33. What happens if an employer says they do not want the PA to work as they have a family member who is also a PA to complete the hours instead?</p>	<p>They remain an employee. If they are able and willing to work then they are entitled to be paid in the normal course of events If you continue to receive your full PH then the PA should be paid from it. There should be no need to claim under the job retention scheme. If you wish to employ someone else (e.g. a family member) to provide care during this period, it is doubtful that you could claim for the furloughed employee's salary</p>	
<p>34. My son lives in supported living but he also has direct payment. He is isolating and so cannot go out with his pa who is paid through direct payment. I'd like to still pay her but the money belongs to the LA, where do I stand as an employer trying to support an employee?</p>	<p>Could the PA be redeployed to do other things, like face timing your son or phone calls?</p>	

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35. Can employees be dismissed if they are choosing to isolate?	This would likely be an unfair dismissal even if they have less than 2 years' service due to the connection with health concerns	
36. What about PAs that are new and about to start a job but are not required initially. DO we need to pay from the employment contract start date of can the start date be delayed? What if the PA has handed in their notice at their previous job and have no income	Employees hired after 28 February 2020 cannot be furloughed or claimed for in accordance with that scheme However it should be possible to delay their start date as if they do not agree you can simply terminate the contract	
Family member payments		
37. Where family members might be paid, is this subject to normal employment status - register HMRC etc.	Yes	
38. Do you need to get permission from LA to employ a family member if you have staff shortage?	Yes	
39. Would in the instance that the person pays a family member - would they have to register these individuals as employees?	Yes	
40. If self-isolating and the individual does not want the carers attend is it allowable to then pay family members who are also self isolating at home with the individual?	If you wish to employ someone else (e.g. a family member) to provide care during this period, it is doubtful that you could claim for the furloughed employee's salary	

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Employee identity as a critical Keyworker		
41. How best will PA's prove their key worker status if stopped by police?	Ask for a headed letter from your council or CCG, there are some example templates on www.be-human.org.uk/coronaheroes	www.be-human.org.uk/coronaheroes
42. If police stopped my employee they will have no form of work ID and I'm not happy with her carrying her contract can my agency give all personal assistants an ID badge	Yes ask the agency or ask them to verify the PA's identity via a company letter headed letter	www.be-human.org.uk/coronaheroes
43. What information does a Personal assistant need if they want to go in a shop and or get stopped by the police?	See above	
Out of UK Employees		
44. My PA is in lockdown in his own country. Does Furlough still stand?	The reason for their absence is not because they have been furloughed but due to their country's restrictions, You do not have to pay anything – but obviously you may want to ensure they do return eventually	
45. Due to the lockdown, one of my PA, who is not UK based, is stuck with me for the duration. I am paying her for the full time she is with me. My other PA I have asked to self-isolate as a back-up so she is entitled to be paid and I have furloughed her as advised by ACAs and my CHC team. Is this right?	Yes	

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<p>46. PA stranded in Kenya. British Gov and Airways want £2000 for flight back. She hasn't the money. What if anything is she entitled to from her employer. she is a British citizen and has a 48hr a week contract with employer what is she entitled to as far as wages ., thank you</p>	<p>She isn't attending work and the reason for absence is not illness or self-isolation so there is no entitlement to either pay or SSP</p>	
<p>Specific or Misc. Questions</p>		
<p>47. I provide a community social care provision. Most of my service users have chosen not to attend. Usually if they give me notice I don't charge them. But should they be paying (using direct payment) at this time?</p>	<p>I guess this depends what is the service contract – but subject to the need to show flexibility during the crisis</p>	
<p>48. Please can we have the link to the gov information ref PAs who are shielding being furloughed? Thank you.</p>		<p><https://www.gov.uk/government/publications/guidance-to-employers-and-businesses-about-covid-19/covid-19-guidance-for-employees></p> <p><https://www.gov.uk/government/publications/guidance-to-employers-and-businesses-about-covid-19/covid-19-guidance-for-employees></p>
<p>49. My son would still be in school. He is now home. I don't have the budget to pay for when he is not in school, but need the care. Are local authorities getting any money to increase the budget</p>	<p>Additional Special Educational needs are made an exception for support during school closures. Contact your school or the education department of your local council.</p>	

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<p>50. How do I apply to use my Daughter DP for myself as admin role? I am her Court Deputy and already full fill this role. Though LA never pay me for my hours of work.</p>	<p>The Deputy guidance states <i>“You can claim expenses for things you must do to carry out your role as deputy, for example phone calls, postage and travel costs. You cannot claim: travel costs for social visits, for the time spent carrying out your duties (unless you’re a professional deputy, for example a solicitor)”</i></p>	<p>https://www.gov.uk/become-deputy/accounts-gifts-and-expenses</p>
<p>51. Sorry but I'm not clear... you say it's OK to ask PAs not to attend and still pay them as normal but you can't use public funds to furlough. Isn't this a contradiction? Or do you just mean that you can't claim under the job retention scheme? Are LAs going to accept payment of PAs if they're not working?</p>	<p>The Guidance states <i>“The Coronavirus Job Retention Scheme is a temporary scheme open to all UK employers for at least three months starting from 1 March 2020. Any UK organisation with employees can apply, including: businesses, charities, recruitment agencies (agency workers paid through PAYE), public authorities” and “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. This also applies to non-public sector employers who receive public funding for staff costs” BUT also states</i></p> <p><i>“In a small number of cases... whose staff cannot be redeployed to assist with the coronavirus response, the scheme may be appropriate for some staff”</i></p>	<p>https://www.gov.uk/guidance/claim-for-wage-costs-through-the-coronavirus-job-retention-scheme</p>

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	So far there is no indication that Direct Payments will cease for people so there will be no need to claim from the fund.	
52. In the very beginning we made the decision that we would pay the PA's full pay for 12 weeks and that they would not work for this period, as we are shielding 3 members of our family in our home and we would care for our son, who needs 24 hour care. We told the PA's that we would review after 12 weeks. Now there has been some info out there that says because we are using public funding we should continue to have our carers in. We made the decision based on shielding our family and as we are extremely high risk/vulnerable. We are worried what will happen after when everything goes back to normal in regard to what the CCG would say, what if we need to pay the money back? It is just more stress for us and worry.	There is no indication that personal health budgets will stop, and you remain contractually bound to pay them. There is some further guidance due to come out specifically about personal health budgets. Let the CCG know the action you have taken and why. There will be a great deal of unprecedented action that needs to be done to keep people safe.	
53. I would be keen to understand the approach employers should be taking to Client contributions and top ups during this period?	We will explore this further	

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54. If a disabled person has a DP but needs help by his family to manage. Who is the employer family or the person?	If the DP is in the recipient's name and the family are helping him/her to manage. The employer is the recipient.	
55. Can PA's work elsewhere if they are not needed with me?	Yes arrangements would then need to be made to reimburse the costs.	

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