

Guidance on 'Furlough' for NYCC Maintained Schools

Updated 28th April 2020

Summary of key points

- Recent Government guidance has confirmed that there are some limited circumstances where schools may be able to access the funding from the Coronavirus Job Retention Scheme, commonly being referred to as 'furlough'.
- NYCC are planning to submit an application to HMRC on behalf of NYCC maintained schools who use ESS to pay staff and who wish to 'furlough' any employees. This will be one application to cover all the NYCC workforce.
- It is important that you read in detail the conditions that need to be met for you to be able to apply to the scheme – see below.
- ***The timetable for implementing furlough and making applications is extremely tight. You need to take urgent action to identify and contact those staff concerned. You then need to complete the application spreadsheet and return this to NYCCschoolsCJRS@northyorks.gov.uk by close of business on May 5th 2020.***
- ***The HMRC position on the inclusion of multi-postholders (i.e. several different posts with separate contracts for NYCC) is not clear and subject to further clarification. We are now advising schools to include the posts that meet the furlough criteria, even if the employee has other posts within school where furlough is NOT applicable. However, it is possible that these will need to be discounted once guidance becomes clearer.***

Background to the Coronavirus Job Retention Scheme (Government guidance)

- the Coronavirus Job Retention Scheme (CJRS) is designed to support employers whose operations have been severely affected by coronavirus (COVID-19) by providing them with a grant to help them to continue paying part of their employees' wages who would otherwise have been laid off during this outbreak
- the scheme will ensure furloughed staff receive up to 80% of their usual monthly wage costs, up to £2,500 a month, plus the associated Employer National Insurance contribution and minimum automatic enrolment employer pension contribution on that wage. The employer can opt to top up wages to 100% pay.
- 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

- 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

How it applies to State-funded Schools

Local authority maintained schools (including pupil referral units) and academies (including free schools) will continue to receive their budgets for the coming year, as usual, regardless of any periods of partial or complete closure. That will ensure that they are able to continue to pay their staff, and meet their other regular financial commitments, as we move through these extraordinary times.

In general, schools are not expected to furlough staff. However, the exception to this is in some instances, where schools may have a separate private income stream (for example, catering, sports facilities lettings, or boarding provision funded by parents in state boarding schools). Where this income has either stopped or been reduced and there are staff that are typically paid from those private income streams, it may be appropriate to furlough staff. Schools should first seek to make the necessary savings from their existing budget or consider options to redeploy these staff before furloughing them. Only after all other potential options have been fully considered should schools furlough those members of staff and seek support through the Coronavirus Job Retention Scheme.

The following conditions need to be met:

1. the employee works in an area of business where services are temporarily not required and whose salary is not covered by public funding
2. the employee's post would otherwise be made redundant or laid off
3. the employee's post is not involved in delivering provision that has already been funded
4. (where appropriate) the employee's post is not required to deliver provision for a child of a critical worker and/or vulnerable child
5. the grant from the Coronavirus Job Retention Scheme would not duplicate other public grants received and would not lead to financial reserves being created

Because of the above criteria, there is a financial limit on the claim due to the proportion of a school's income made up from the private income stream. As an example: If a school's average monthly private income stream (for example, from parent-paid school meals) provides 4% of the schools' overall income, the school could claim support through the CJRS for up to 4% of its payroll, after exhausting options to meet costs from existing budgets and redeployment. This would be done by furloughing staff (for example, catering staff) whose usual salary or combined salaries are linked with the income lost and come to no greater than 4% of the provider's total payroll.

Schools are not expected to consider each stream of private income separately so a school should consider its total income from private sources, as a proportion of its overall income, and the pay of all the staff it proposes to furlough, as a proportion of its total payroll.

Early Years Settings

If it is difficult to distinguish whether staff are funded through free entitlement or private income for the purposes of meeting the first 3 conditions as listed above, then an early years provider can access the CJRS to cover up to the proportion of its paybill which could be considered to have been paid for from that provider's private income. This would typically be income received from 'parent-paid' hours, and excludes all income from the government's free entitlements (or 'DSG income') for all age groups. In line with the conditions of the scheme listed above, providers should initially use the month of February 2020 to represent their usual income in calculating the proportion of its paybill eligible to be covered by the scheme. Providers should adjust these proportions in subsequent furloughing applications if their income from the government's free entitlements changes, but are not expected to make any adjustments in relation to changes in parent-paid income. As an example: If a provider's average monthly income is 40% from DSG and 60% from other income, the provider could claim CJRS support for up to 60% of their paybill. This would be done by furloughing staff whose usual salary / combined salaries come to no greater than 60% of the provider's total paybill.

These proportions could change in subsequent furlough applications as a result of DSG income changing (but not where income from parents increased or decreased). For example, if this provider subsequently receives additional DSG income from a local authority as a result of providing additional hours of childcare, such that its new DSG income would represent 55% of its total income in February 2020, then its maximum use of the furlough scheme should, from that point, be reduced to 45% of its paybill.

How do I furlough staff?

Step 1

Confirm that the above criteria are met and so furloughing can take place. Through the furlough process the school can apply to claim back a refund of 80% of salary through the CJRS scheme. The school needs to decide whether they will continue to pay 100% of salary to employees or whether they need to reduce that to 80% in line with the CRJS refund. We advise that a Governing Body (virtual) decision is documented to apply for the Furlough Scheme and to determine the level at which wages will be paid 80% or topped up to 100%. NYCC strongly advise applying 100%

Step 2

You need to identify those job roles linked with the private income funded activities that have ceased or diminished. It may be that all the staff in those posts need to be furloughed.

If it is a proportion of staff, then a fair process needs to be followed to determine which staff are affected as there is a potential for claims of discrimination over how staff are selected. Decisions need to be reasonable and justifiable and you need to keep a record of the decision and rationale. Objectively justifiable selection criteria include:

- Employees in the 'extremely vulnerable' category, who cannot work because they are 'shielding', or in the 'more vulnerable' category, where it has been determined following a risk assessment that they cannot safely work due to their health status.
- Roles where work has ceased or diminished.

Where it is difficult to select between employees it is possible to rotate on a 3 week rotating basis.

Bear in mind that the limit to what you can claim back under the CJRS is determined by the proportion of your pay bill that is funded by the private income stream and by how much of this has been lost due to coronavirus.

Also please note that new starters from 1st March 2020 onwards will not be eligible for furlough.

Originally HMRC guidance was that if a member of staff was to be furloughed, then it had to be for all their employment with the school (and NYCC more widely). However, we are now advising schools to include posts for staff who do fulfil other roles in school or elsewhere within NYCC as it may be possible to claim for the specific posts which are funded by a private income stream. However, dependent on the further clarification received from HMRC, it is also possible that these employees will need to be removed from the Local Authority claim before it is submitted to HMRC.

Step 3

Contact those staff affected in person or by telephone to explain that you are proposing to furlough them because no work is available. Employees must be consulted and have agreed to be furloughed. Furloughing is a change of status and is subject to existing employment law. A template letter is attached at Appendix A for use for the employee to confirm their acceptance. Please note that this needs amending dependent on whether 80% or 100% of salary will continue to be paid. A list of FAQs for staff is attached at Appendix B. Please note that this also needs amending dependent on whether 80% or 100% of salary will continue to be paid.

Step 4

Stop those employees to be furloughed from working, if you have not already done so.

How do I make a claim to the CJRS?

For maintained schools who use ESS to process their payroll, the LA has to make the claim on your behalf. To enable them to do this, the attached claim form (spreadsheet) needs to be completed. There are several sections to this, covering information, financial information and employee information.

Post Title(s): Please include all posts where furlough is applicable. Do not include posts that do not meet the furlough criteria (e.g. because they are publicly funded)

Start date: This should be the date work ceased; for example, Monday 23rd March 2020 if work ceased with the closure of schools to most pupils.

The LA are governed by HMRC timescales and so the deadline for submission is very tight. The completed spreadsheet should be submitted to NYCCschoolsCJRS@northyorks.gov.uk by close of business on 5th May 2020.

Remember to safely retain 'working papers' and evidence on the decision-making process around the assessment of proportion of private income as well as the rationale for selecting staff for furlough in case it is required for audit purposes in future.

Ending Furlough

Please note that it will be assumed staff remain furloughed after these details have been submitted until 30th June 2020 (currently the end date of the CJRS scheme). If you decide to bring any employees out of furlough before this, you must inform ESS as soon as possible. You can only bring staff out of furlough from 3 weeks onwards after the start date. You should try and provide the member of staff with reasonable notice where possible that the period of furlough is ending and they are going to be required to attend work or start working from home etc.

Where can I get help and advice?

Please contact your FMS Team contact about the financial aspects of the claim.

Please contact your school NYHR contact about identifying staff affected or e mail

nyhr@northyorks.gov.uk

Appendix A: Letter to Employee being furloughed

Private and confidential

[Date]

Dear [Employee Name]

Further to our previous conversation, I am writing to summarise the main points of our discussion and to set out the arrangement for how we can best preserve your continued employment in these uncertain times.

From Friday 20 March, all schools were instructed to close temporarily to the vast majority of staff and students. What this means is that unfortunately there isn't the demand for [INSERT SERVICE] to generate enough income to support staff salaries in the coming months.

However, it's not all bad news; the government is providing financial support for employers affected by Coronavirus disruption called the 'Coronavirus Job Retention Scheme'. This means the school will be able to access financial support to continue paying the salaries of employees who are temporarily sent home because there is no work. These staff are called 'furloughed' workers.

In these unique circumstances, we have discussed making a temporary change to your terms and conditions of employment to allow your employment to be furloughed. With your agreement, this will mean you will be able to take a temporary paid leave of absence. Please read carefully the information below before deciding whether to agree to the change. I encourage you to seek professional independent advice if you wish, from either your Trade Union or other appropriately qualified advisor prior to signing to agree to the change.

The furlough agreement will commence from [INSERT START DATE].

Your post(s) affected by this agreement is [POST TITLE(S)]

Whilst you are furloughed, you will continue to be employed by North Yorkshire County Council and accrue continuous service.

You will not be asked to undertake any work for the duration of the furlough agreement, although you may still be required to undertake relevant mandatory training.

You will continue to receive your usual full salary paid in the usual way; but this will be made up of 80% of government funding which we will reclaim as the employer (up to £2500 per month) and 20% of school funds IF APPLICABLE. Deductions for tax, national insurance contributions, and pension (if applicable) will continue to be made from your salary.

This agreement is temporary for a period of time and will be reviewed regularly and in accordance with the timescales set out by the Government.

At the end of the furlough agreement you will return to your usual substantive terms and conditions of employment. Your Furlough shall end on the earliest of the following events: -

- (a) the government’s Coronavirus Job Retention Scheme ending (currently 30 June 2020)
- (b) either you or us ceasing to be eligible for funding under that scheme
- (c) us deciding to cancel your Furlough and asking you to return to work, which we can do at any time and with immediate effect; or
- (d) your employment with us ending.

If you are currently in a probationary period, your probationary period is extended by the length of time you are on Furlough.

If you agree to the changes to your terms and conditions as set out above, please e mail me with your consent to the changes. If you prefer, you can print, sign and return the letter to me as soon as possible.

In order to claim for the funding for the furloughing of your post, we need to provide NYCC with your details; your name, post title, employee no etc. Your data will only be used for this purpose. For more information on how the council processes your personal data please refer to <https://www.northyorks.gov.uk/privacy-notice>.

I would like to take this opportunity to thank you for your continued commitment to School. We will keep in regular contact with you throughout the duration of the furlough agreement and look forward to seeing you back in work as soon as it’s practical and safe for all staff to return. If you have any questions please contact [INSERT NAME], in the first instance.

Yours sincerely

Headteacher

I hereby agree to the changes to my terms and conditions of employment set out in the above furlough agreement.

Signed: Employee

Date:

Appendix B: Employee FAQs

Furlough leave: Frequently Asked Questions for Employees

1. What is furlough leave?

Furlough leave is a temporary period of paid leave for when employees cannot do their normal work. You remain employed and paid but will not work.

2. Why is the school putting me on furlough leave?

In some cases staff costs are covered by income direct from parents rather than public funding. Where these services are no longer needed or cannot be provided, the school is not bringing in sufficient income to cover employee costs. The additional money provided by the Government to deal with Covid will not cover the additional costs and loss of income to the school, so it is important that we recover costs wherever possible.

3. What will I be paid while I am on furlough leave?

You will continue to be paid your normal monthly pay from NYCC at the end of each month as you do now. The school will then be able to reclaim up to 80% of your employment costs from the Government through the Job Retention Scheme (JRS). You will see no change in your usual pay, other than normal incremental progression and nationally agreed pay increases.

4. Is there anything I cannot do while on furlough leave?

Yes, it is important not to do any work within your furloughed role(s) whilst you are on furlough leave. If you record any working time against your post whilst on furlough leave, however small, it could break the scheme rules and the school could not reclaim your employment costs.

5. What can I do on furlough leave?

If you have another job that is not furloughed, you can carry on doing that job. You can also do training while on furlough leave, such as online eLearning.

6. Am I still employed by the school?

Yes, you are still an NYCC employee. There will be no break in your employment or continuous service rights, such as holiday or redundancy entitlement.

7. How long will I be on furlough leave?

The Job Retention Scheme runs from 1st March to 30th June 2020. You will be furloughed from the date you could no longer work until 30th June 2020, unless we tell you that you should return to work before then.

8. What if I become ill while on furlough leave.

You should report any sickness in the usual way. It will not break your furlough leave.

9. Do I still get paid holiday?

Yes, your holidays arrangements will still work in the normal way.

10. Has Unison been consulted on plans to furlough employees?

Yes, Unison has been consulted and understands the need to furlough employees to avoid further financial losses and redundancies. All collective agreements with Unison still apply during furlough leave, including terms and conditions, pay and allowances, including any nationally agreed pay award from 1st April 2020.