

Guide To Furlough Leave Job Retention Scheme



Mark Bates Ltd
THE HOME OF PREMIER CARE

Version 2 (03/04/20)

This guide covers what to do when an Individual Employer no longer needs their PA temporarily due to the Coronavirus.

Funding Body Decision

It is essential that agreement is sought from your funding body if you choose to stop using your PA(s) due to the Coronavirus outbreak. This will clarify whether or not your funding will continue at the same level.

What is the Government's Job Retention Scheme?

If employers would have otherwise made an employee redundant or put them on a period of lay off without pay, the Government is encouraging them to protect the employee's job instead by allowing a leave of absence with pay. The Government will pay 80% of the employee's salary to make this possible.



What is Furlough leave?

Furlough is a standard word that simply means 'leave of absence', it isn't a legal term and doesn't have a technical definition at law.

Employees can be Furloughed as an alternative to making them redundant or laying them off without pay.

Does Furlough apply to me if I don't want my employee to attend work until social distancing measures have been lifted?

The Government scheme operated by HMRC is not open to publicly funded organisations. For that reason employers using Direct Payments may not be eligible to reclaim wages paid to Furloughed employees.

If you find you do not need your employee at all for a period of time during the Coronavirus outbreak, it is essential for you to take guidance from your funding body before making any decisions.

Some funding teams will continue to pay in full, in which case you won't need to worry about agreeing furlough leave. Some may choose to replicate the scheme which will mean paying your worker 80% pay using your Direct Payment funding. Some will determine that if there is no need for the worker then the funding stops altogether, in which case you should take further guidance on how to make your employee redundant. The introduction of the scheme reinforced the idea that employers should try to avoid redundancies where possible.

What's the difference between redundancy and lay off?

They are both legal terms with specific legal implications.

Redundancy means to dismiss the employee from their position altogether because you can show that their work has diminished to such an extent they are no longer required.

Lay off means that the worker is not required to work and so is put on a period of unpaid leave. Usually to do this you need to have a clear written clause in the contract of employment giving you a right to do so.

It is assumed that both redundancy and lay off are collectively what the Government are referring to when they say they want to protect employees from being 'laid off'.

I need care to continue, do I have to put my employee on Furlough leave?

Care workers have been designated Key workers in the Covid-19 response and can therefore continue to go to work, if they are fit and able to do so. These workers cannot insist on being furloughed.

However, employees who are in the extremely vulnerable category are advised to be shielded which means they should stay at home and avoid work and any unnecessary travel. If your funding body supports the furlough scheme they can be placed on furlough. If not, you ought to take advice on continuing to pay these workers in full during their absence from work.



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Can my employee insist they go on furlough leave if there are symptoms of Covid-19 in the household?

No. Any employees who are self-isolating for this reason have the right to time off work as they are considered to be unfit for work and so SSP will apply. This is totally different to Furlough leave. Self-isolation may last approximately 14 days.

Why would I want to put an employee on Furlough leave?

Other than when you are shielding an extremely vulnerable employee, it will only be applicable if you no longer have a need for the employee or if the need has diminished significantly. Examples include:

- You have a high-risk household and believe you can manage for the advised 12 weeks without the need for paid care
- Your employee provides social care which isn't needed as you're staying at home

Why would my employee agree to Furlough leave?

As you're only going to offer it when the alternative is a complete dismissal or leave without pay, this is likely to be a better financial option for them.

It gives them the security that they will continue to be paid (even if at a reduced rate of 80%). It means their employment is protected so when the time is right, they will return to work. You can agree to let them work elsewhere whilst on leave which will mean they can increase their income potential and annual leave will continue to accrue.

Where can I get further information on the Government scheme?

The Government have published guidance here:

<https://www.businesssupport.gov.uk/coronavirus-job-retention-scheme/>

<https://www.gov.uk/guidance/claim-for-wage-costs-through-the-coronavirus-job-retention-scheme>

If you need any further advice or support with employing Personal Assistants

Call: **0161 603 2167**

Email: **premiercare@msl.co.uk**

Who can I put on Furlough leave?

Only employees who otherwise you would have the justification to dismiss by way of redundancy OR put on unpaid lay off.

It is sensible to take further advice on these issues before you make your decision.

You must have had an employee on a PAYE payroll scheme on or before 28th February 2020. Employees include full-time, part-time and those on flexible contracts.

An employee cannot do any work for you whilst on furlough leave, they may however apply to the NHS as an emergency volunteer or, with your agreement, work elsewhere during the period of leave.

How much can they be paid on Furlough leave?

The Government have said they'll repay up to 80% of the employees pay but the employer can choose to make that up to 100%. It is essential to talk to your funding body to check their position regarding the continuation of funding during this period..

What's the process?

Make sure you have spoken to your funding body or local direct payment team to ensure they are supporting your decision to take this step and be sure you're not leaving yourself without the support you need.

Seek advice from MSL to support you to implement these changes and liaise with your PA.

You should also contact your payroll provider where applicable to inform them of any changes to your employees salary.

Free for
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MSL

**Legal & Employment
Advice Line**

Although every effort has been made to ensure all information provided is correct, this factsheet is provided for information purpose and should not be considered legal advice. If you require further information you should seek professional legal advice.

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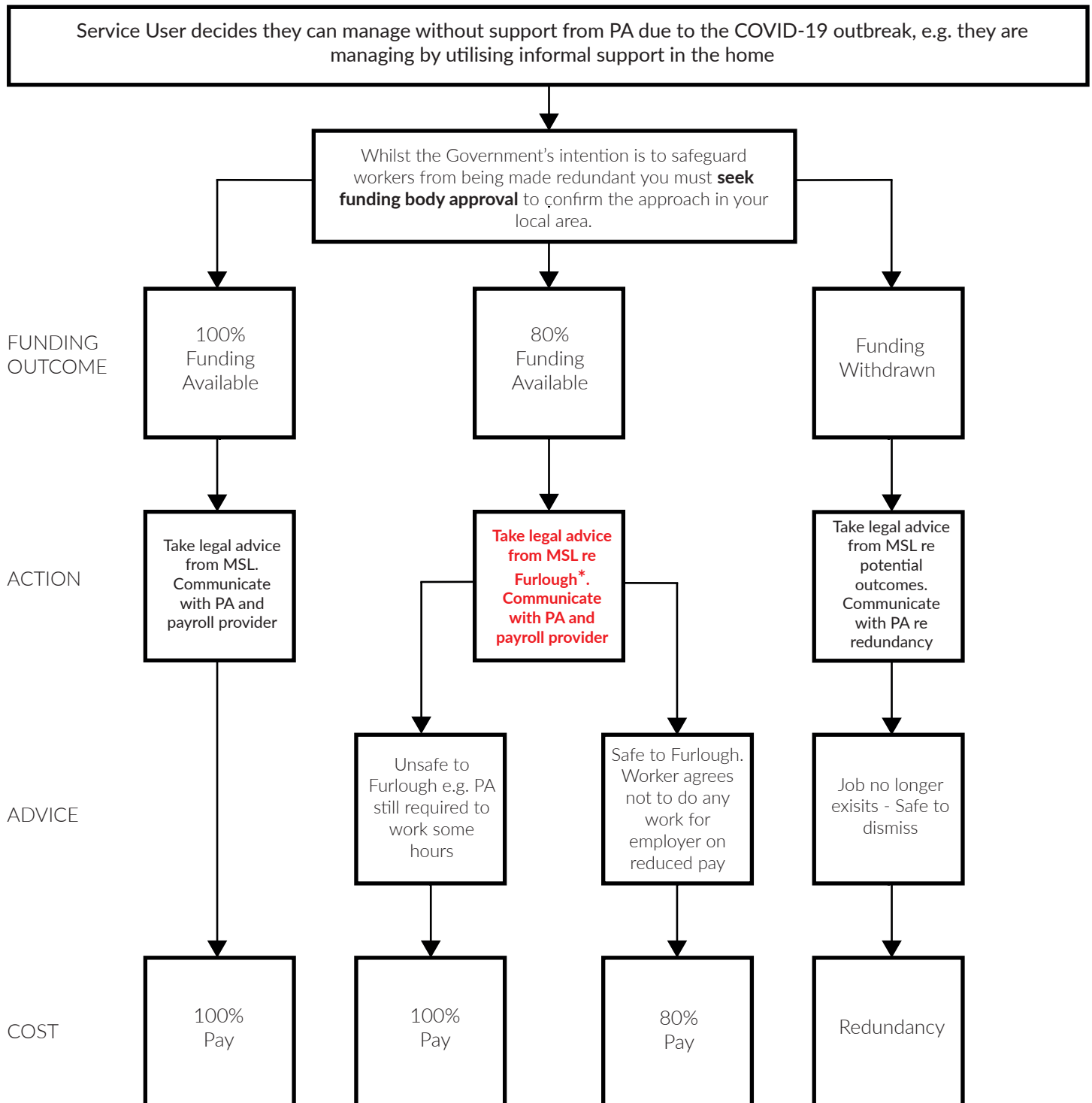
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This flowchart is designed to clarify the process to follow if an individual employer is planning to manage without the support of their employed PA as a result of the Coronavirus outbreak.



*Furlough is a standard word that simply means "leave of absence", it isn't a legal term. The Government have recently announced a job retention scheme which allows some employers to claim back 80% of wages for staff who are Furloughed. This HMRC scheme is not available to publicly funded organisations so it is uncertain whether individual employers funded by a Direct Payment from their Local Authority or CCG will be eligible. NOTE - You may be advised to agree a period of leave regardless of eligibility for the HMRC scheme.

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