

COVID-19: Can Charities Access the Job Retention Scheme?

While some charities are likely to be even more stretched than usual during this period, that does not necessarily mean that they won't need to consider making staffing changes where the type and balance of staff isn't making best use of resources. The job retention scheme is designed to minimise redundancies due to the coronavirus crisis by providing grants to cover the cost of wages. But updated government guidance released at the end of March and updated on 4 April indicates that some charities may not be eligible for the new scheme. The guidance says:

"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. Organisations who are receiving public funding specifically to provide services necessary to respond to COVID-19 are not expected to furlough staff. 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 for some staff."

There is no legal definition of "public funding" and the guidance does not clarify what the phrase means. Specifically, we don't yet know whether lottery funding falls under the definition, although it seems very possible that it is.

Another source for uncertainty is the use of the words "expect" and "expected" in the guidance. It's unclear whether sufficient consideration has been given to scenarios where organisations who are at least partially funded by the public have the wrong type/balance of staff. Later on, the same guidance states that employees who are shielding can be furloughed, and there is nothing to exclude publicly funded employers from doing that.

Where a charity is commissioned to provide care, and the care is continuing during the pandemic, it's clear that the scheme can't be used to furlough a carer (and it's unlikely that such a charity would want to furlough them anyway). Less clear is whether employees in jobs that are less directly connected to the commissioned care, such as administration and maintenance, can be furloughed. Anecdotally we have heard that charities are taking an optimistic approach to this and are furloughing staff who aren't directly paid for by public funds, in the hope that the scheme will allow for this.

We already know that HMRC intends to audit employers which receive funding under the scheme. If an organisation is paid twice for the same thing (i.e. their public funding has continued *and* they have claimed money for the wages of furloughed staff), that could be considered a fraud.

If you are genuinely considering making staff redundant in order to reorganise your workforce, furlough leave may be justifiable even if you receive public funds. If you are prepared to accept the risk of being rejected for the scheme, or being required to repay the money claimed, you should ensure you have something to show for the additional money you receive. You should also carefully document your decision-making process so that you can provide evidence later if required.