



Pinsent Masons

# Furlough – Overclaims and essential next steps

March 2021

# Furlough – Overclaims and essential next steps

With the announcement of over £100 million to fund a new "Taxpayer Protection Taskforce" to combat fraud within COVID-19 support packages, the issue of overclaims of furlough monies is once again at the top of the agenda.

Under the Coronavirus Job Retention Scheme, employers have been able to claim up to 80% of employee salaries up to a limit of £2,500 per month, per employee. However, employers can only claim where employees have not worked or provided a "service to" their employers while furloughed. Increasingly employers are discovering that, despite having instructed employees not to work during furlough periods, some have ignored these instructions.

In doing so, well-meaning staff may have inadvertently sown the seeds of significant corporate compliance issues which may leave businesses exposed to financial penalties of up to 100% and reputational risk arising from the engagement of HMRC's naming and shaming regime.

The Chancellor's announcement marks a **distinct change of strategy** for the government, with HMRC moving from the conciliatory sending of nudge letters acknowledging that "mistakes happen" to funding the Fraud Investigation Service which only take on investigations where dishonesty is suspected.



## Defining "work" within a claim period

It is key that employers ensure that employees must not do any work that provides a future return for the organisation or provides services to the organisation or any associated organisation. What is considered "work" will include the following:

- Responding to emails received from their employer or actioning requests contained in emails
- Coordination or delegation of tasks to others
- Business Meetings
- Promotional Activities

Employees who carry out work without the employer consent, or even awareness, may be considered to be providing "services to" and/or generating revenue for or on behalf of an employer.

## Work reviews

Employers will need to consider appropriate steps to identify and monitor their operations to ensure furloughed employees comply with the requirements of the furlough scheme and do not perform any work activities on behalf of the employer during this period.

## Working during the claim period

Employers will also have to distinguish within a claim period whether the identified days or entire furlough claim period need to be repaid. A good understanding of the detail of the due diligence is required because repayment scenarios are fact specific and somewhat technical. Employers may find that they need to repay a complete grant period, or merely the hours or days during which the non-entitlement occurred.

## Review, analysis and reporting

Reviews of corporate communication and reporting platforms used by employers in running their day to day operations can help identify potential exposure. By performing targeted enquiries across these systems employers are able to gain insights into potential activities and behaviours of furloughed employees.

Applying forensic review tools will assist with performing remote and timely enquiries, gaining greater insights to better understand potential exposure exists. This will allow employers to properly analyse it's actions and ensure notification are made in advance of the deadline and assist with any subsequent quantification of the appropriate repayment and associated reporting.

## Out-Law resource

Read more of our furlough entitlement coverage on our award winning Out-Law website:

- [HMRC to offer amnesty for furlough rule breaches](#) – 7 July 2020
- [HMRC issues 'nudge' letters on furlough fraud](#) – 20 August 2020
- [UK businesses hand £215m of furlough payments back to government](#) – 22 September 2020
- [Furlough fraud - the importance of due diligence](#) - 8 October 2020
- [Companies should do furlough payment due diligence as UK amnesty ends](#) – 12 November 2020

## Our specialists

For more information on any of the areas discussed, our team of experts are here to help.



**Andrew Sackey**

Partner  
Risk Advisory Services  
T: +44 20 7490 9373  
M: +44 7771 387 667  
E: [andrew.sackey@pinsentmasons.com](mailto:andrew.sackey@pinsentmasons.com)



**Anne Sammon**

Partner  
Employment  
T: +44 207 418 8212  
M: +44 7826 532 729  
E: [anne.sammon@pinsentmasons.com](mailto:anne.sammon@pinsentmasons.com)



**Chris Richardson**

Partner, Head of Forensic Accounting Services  
Risk Advisory Services  
T: +44 20 7418 8078  
M: +44 7833 234 835  
E: [chris.richardson@pinsentmasons.com](mailto:chris.richardson@pinsentmasons.com)





Pinsent Masons LLP is a limited liability partnership, registered in England and Wales (registered number: OC333653) authorised and regulated by the Solicitors Regulation Authority and the appropriate jurisdictions in which it operates. Reference to "Pinsent Masons" is to Pinsent Masons LLP and/or one or more of the affiliated entities that practise under the name "Pinsent Masons" as the context requires. The word "partner", used in relation to the LLP, refers to a member or an employee or consultant of the LLP or any affiliated firm, with equivalent standing. A list of members of Pinsent Masons, those non-members who are designated as partners, and non-member partners in affiliated entities, is available for inspection at our offices or at [www.pinsentmasons.com](http://www.pinsentmasons.com). © Pinsent Masons.

For a full list of the jurisdictions where we operate, see [www.pinsentmasons.com](http://www.pinsentmasons.com)