

COVID-19: Flexible Furloughing, Witnesses and Claims Investigation

Published 6 July 2020

The Coronavirus Job Retention Scheme (CJRS), through which many businesses have furloughed employees, has prohibited employees on furlough leave from undertaking any work on behalf of the business, including their providing services.

The question of whether an employee on furlough leave may be required to attend Court to give evidence has been the subject of two contrasting County Court decisions. In the County Court in Manchester, HHJ Evans vacated a trial as one of the witnesses (who was giving evidence on behalf of his employer) was on furlough leave (*Wapnick v HSS*); in contrast, in the County Court in Nottingham HHJ Godsmark indicated that attending Court to give evidence is not prohibited by the furlough scheme and that the furlough leave of a witness is not a reason to vacate a trial (*Fottes v Bourne Leisure*).

Where employees are on furlough leave, there is a lack of clarity over the extent to which they may assist in the investigation of accidents and claims, and whether they may be interviewed by claims inspectors or solicitors in order for witness evidence to be prepared. Concerns over whether the involvement of an employee in accident investigation may be in breach of the CJRS rules has presented insurers and their insureds difficulty in investigating a number of claims through the lockdown period.

From 1 July 2020, provided employers meet certain eligibility requirements, changes to the CJRS enable employers to bring employees back to work on a flexible, part time basis, for any amount of time or shift pattern, whilst still being able to claim the CJRS grant for their normal hours not worked.

The new flexible rules of the CJRS enable employers to bring their employees back to work, to assist in the investigation of accidents and claims or give evidence at trial, without being required to bring them back to work full time and without fear of being in breach of the furlough scheme rules.

Employers who have had concerns about the appropriateness of interviewing a furloughed employee, or calling an employee to give evidence at trial, will no doubt welcome the new flexibility within the CJRS as an effective mechanism for alleviating those concerns.

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