**Job Support Scheme Guidance**

Two new job support schemes have been introduced to come into effect once the current extended Coronavirus Job Retention Scheme (‘CJRS’) ends, which is likely to be December. These are the Job Support Scheme (JSS) Open to help where employees are working reduced hours and Job Support Scheme (JSS) Closed, where the business is forced by law to close completely or in part. Although this was originally due to run until April 2021 we do not know if this will be extended past this date.

An agreement must be entered into with the employee before the arrangement starts and a checklist of what needs to be included within a JSS agreement with that employee will be issued by HMRC.

The employee must have been paid before a claim can be made and under the JSS Open large employers will need to complete a financial impact test before claiming (see below).

HMRC has prepared detailed documents setting out how to calculate claim periods and worked examples showing fixed and variable hours which we will not repeat:

<https://www.gov.uk/government/publications/find-examples-to-help-you-calculate-your-employees-wages-for-the-job-support-scheme>

Below we set out some Q&As in respect of both schemes and then the separate rules for JSS Open and JSS Closed.

**Q&AS APPLICABLE TO JSS GENERALLY**

**Q: Which employers can use the JSS schemes?**

**A**: The following criteria apply:

* For JSS Closed you must be experiencing ‘reduced business activity’ due to COVID-19 *and* have been forced by one of the devolved governments (but not a local authority) to close – either all or part of your business.
* For JSS Open you must be experiencing ‘reduced business activity’ due to COVID-19. You may be asked to confirm this during the claim process.
* You do not need to have previously claimed under the Coronavirus Job Retention Scheme (CJRS).
* You will need a UK, Channel Island or Isle of Man bank account.
* You must have created and started using a UK PAYE scheme on or before 23 September 2020.
* You must have enrolled for PAYE online on or before 23 September 2020.
* For the JSS Open scheme there is a financial impact test to be passed by companies employing 250 or more employees on 23 September 2020.
* If you are a large company you are not expected to have made any capital distribution when claiming under the JSS such as a dividend, charge, fee or other distribution or, if it is a partnership, any equivalent payment to its partners. This is not law but an ‘expectation’.
* Depending on how your business is impacted you can use the JSS Open or the JSS Closed scheme or both, but not for the same employee at the same time.

**Q: Do I need to complete a Financial Impact Test?**

**A:** The following conditions apply:

* To claim under JSS Open employers employing over 250 employees as at 23 September 2020 across all payrolls of a single entity will need to complete a financial impact test before claiming.
* Registered charities or charities exempt from registration do not need to complete this test.
* The test only needs to be completed once.
* If you are VAT registered, then the method of calculation will depend on how frequently you file your VAT returns.
* If you are not VAT registered, then you use your average monthly turnover from 1 May to 30 September 2020.
* Further details can be found here: <https://www.gov.uk/guidance/complete-a-financial-impact-test-if-youre-a-large-employer-claiming-through-the-job-support-scheme-open>

**Q: Which employees are eligible?**

**A:** The employees you claim for must have been in employment as at 23 September 2020 and you must have made a PAYE Real Time Information (RTI) submission notifying payment to HMRC, any time from 6 April 2019 up to 23 September 2020.

As long as they are treated as employees for tax purposes (irrespective of how you treat them for NI) and paid through PAYE then they qualify. This includes:

* office holders (including company directors)
* salaried members of Limited Liability Partnerships (LLPs)
* agency workers (including those employed by umbrella companies)
* limb (b) workers (those performing work personally)
* contingent workers in the public sector, and
* contractors with public sector engagements in scope of IR35 off-payroll working rules

**Q: What about employees who have left?**

**A:**

* If an employee left your employment *before* 23 September 2020 because you made them redundant or they stopped working for you for another reason, then you *cannot*claim for them even if you rehire them.
* If your employee left your employment *after* 23 September 2020 and you then rehired them, you *can* still claim for them under JSS Open and JSS Closed provided they meet the relevant eligibility criteria.

**Q: Can I serve notice on an employee and still claim for them on the scheme?**

**A:**

* No employee is eligible if they are on or are served contractual or statutory notice after 23 September 2020. This is any notice period (such as resignation or dismissal for a reason other than redundancy) and not just one where the employee has been made redundant.
* It is possible to withdraw notice (this would have to be with the agreement of the employee) and you can then claim for days after the withdrawal of the notice but not before.
* If an employee begins serving a contractual or statutory notice period during the first 7 days of a JSS Open or JSS Closed agreement you cannot claim for any days that occurred before the employee was put on notice and you will not be able to claim a grant for any days covered by the contractual or statutory notice period.

**Q: Can I claim under both schemes at the same time?**

**A:** Potentially yes. If you have premises in different locations subject to different rules or if your business has been legally closed but some employees are still permitted to come to work but are on reduced hours. However, you cannot claim for the same employee under both schemes at the same time and you can only make one claim per employee, irrespective of the number of locations that they work at.

**Q: Can I delay paying my employees until I have received the grant?**

**A:** No, the grant will be paid in arrears after you have paid your employees and you must continue to pay your employees on their normal contractual payment date. Failure to do so makes you ineligible for the scheme.

**Q: Do I have to deduct tax and NI?**

**A:** Yes, income tax and NI must be deducted as usual and you must continue to pay employer’s NI and also deduct pension contributions and make the employer pension contributions, unless the employee has opted out. Student loans and the apprenticeship levy must still be deducted.

**Q: My staff are paid using public funds – can I still claim?**

**A:** No, you are expected to use those public funds to continue to pay staff. This applies even if you are not in the public sector.

**Q: What if the company is in administration?**

**A:** Administrators can use the scheme provided there is reasonable likelihood of retaining workers because the company is going to be sold as a going concern.

**Q: What needs to be in a temporary working agreement?**

**A:** You have to have a temporary working agreement (TWA) in place before you can claim under the scheme. HMRC is issuing a checklist of matters to be included shortly. However, what we do know is this:

* The agreement must be in writing but does not need to be signed by the employee. Our advice is always to get it signed because otherwise employees may deny they knew anything about it and if you are reducing wages you need written agreement to avoid a claim for unlawful deduction from wages.
* The employee (or their union if this is a collective situation) must have agreed to the terms.
* A copy of the TWA must be available to HMRC for five years.
* The agreement must be in place before the TWA starts but it does not have to specify exactly what hours the employee will be working; it can be left flexible, as long as the employee works a minimum of 20%.
* An agreement under JSS Open can include arrangements for normal working hours and also agreement about unpaid leave days although a grant cannot be claimed for unpaid leave days.
* The agreement can be reached in advance of any laws brought in closing businesses.

**Q: What about employees on maternity/paternity/shared parental/adoption/parent bereavement leave?**

**A:**

* All of the employee’s statutory entitlements still apply.
* The government is going to pass legislation to prevent parents receiving less when on statutory parental leave because they have been on reduced wages on a JSS.
* Employers cannot claim a grant for employees on statutory parental leave except if there is a contractual right to top up the statutory payment, in which case the top up can be claimed for.
* Those on maternity leave may end it early and be put on the scheme - but they must give eight weeks’ notice and cannot join the scheme until that eight weeks is up.
* If an employee is in receipt of maternity allowance they cannot be claimed for under the scheme and if they agree to go on the JSS then they must contact Jobcentre Plus to stop their maternity allowance.

**Q: What if an employee is sick while on a JSS?**

**A:** Employees on JSS who become ill, due to COVID-19 or any other cause, or are required to self-isolate, must be paid at least Statutory Sick Pay if they meet the other eligibility criteria.

**Q: What about employees on fixed-term contracts?**

**A:** If your employee’s fixed-term contract has not already expired, it can be extended, or renewed. An employee who was on a fixed-term contract that expired after 23 September can be re-employed after 23 September and claimed for provided that the other eligibility criteria are met.

**Q: Can I claim for apprentices?**

**A:** Yes, they can be claimed for as with any other employee but if you ask them to do training then they must be paid the minimum wage for time spent training.

**Q: Can employees train during non-worked hours?**

**A:** Under both JSS Open and JSS Closed employees can undertake training provided this does not generate an income or services to you. Any time spent training should be paid at full pay.

**Q: What if there has been a TUPE transfer so employees were not on the payroll as at 23 September 2020?**

**A:**

* You can claim JSS Open or JSS Closed in respect of the employees of a previous business transferred after 1 August 2020 if either the TUPE or PAYE business succession rules apply to the change in ownership.
* You can also claim in respect of the employees associated with a transfer of a business after 1 August 2020 from the liquidator of a company in compulsory liquidation where TUPE would have applied were it not for the company being in liquidation.
* Employees who have been transferred under TUPE and or a change in ownership prior to 1 August 2020 are treated the same as all other employees.

**Q: What if we have consolidated payroll?**

**A:** If payrolls of one organisation have been consolidated since 1 August 2020 then claims can still be made under JSS Open and JSS Closed.

**Q&As APPLICABLE TO JSS OPEN**

The JSS Open applies where the business remains open but there is a reduction in business meaning a reduction in the number of staff needed.

**Q: How much can I claim under JSS Open?**

**A:** You must pay employees their normal wages for hours worked and they must work at least 20% of their normal working hours. The JSS Open grant then pays 61.67% of your employee’s wages for hours not worked, up to a total grant cap of £1,541.75 per month. You will also have to contribute 5% of the cost of hours not worked up to £125 per month for each employee.

**Q: Can I top up the 5%?**

**A:** Yes you can.

**Q: Are there minimum periods for an employee to be on the JSS Open?**

**A:**

* Any JSS Open agreement must last for minimum period of 7 consecutive days and if it does not, you cannot claim for any days covered by the agreement.
* Employees can be placed on a JSS Open agreement multiple times, but each separate instance must be for a minimum period of 7 consecutive days.
* They can span two JSS claim periods and the minimum 7 consecutive days do not all need to be in one claim period.
* If there is a change in Health Protection Regulations which legally requires your business premises to close, then:
* you can end an employee’s JSS Open agreement early, even if this means the agreement will last fewer than 7 consecutive days
* you will still be eligible to claim the JSS Open grant for any eligible days that took place up to and including the day your premises was legally required to close

**Q: Are there restrictions on what employees on JSS Open agreements can do?**

**A:** Yes, while your employee is on a JSS Open agreement you cannot ask them to do any work for you in hours not worked that:

* makes money for your organisation or any organisation linked or associated with your organisation, or
* provides services for your organisation or any organisation linked or associated with your organisation

As long as these conditions are met your employee can:

* take part in training
* volunteer for another employer or organisation
* work for another employer if their contract allows them to

**Q: Do employees accrue holiday under JSS Open and what must I pay them?**

**A:**

* Employees continue to accrue holiday in the usual way.
* If they are on holiday they must be paid their normal wages.
* Employees can take holiday during working hours or hours when they are not working.
* Employees should not be placed on a JSS Open agreement for a period simply because they are on holiday for that period.
* Employers can oblige employees to take holiday at particular times and cancel holiday if they give the required statutory notice (double the length of the holiday to take it and the length of the holiday to cancel it).
* If an employee usually works bank holidays the employer can agree that this is included in the grant payment. If the employee usually takes the bank holiday as leave then the employer would either have to top up their usual holiday pay or give the employee a day of holiday in lieu.

**Q: Does training time in working hours count towards the 20% hours requirement for JSS Open?**

**A:** Employees can undertake training either in working hours or non-working hours. Hours your employees undertake training, which you pay them for at their full rate, will count towards the 20% usual hours requirement for JSS Open.

**Q: How do I calculate what I pay to my employees under JSS Open?**

**A:** You will need to work out the days that the employee is eligible for under the scheme. These are known as ‘JSS Open Days’ and are days when the employee is not:

* on unpaid leave
* on statutory sick pay related leave
* serving a notice period (redundancy or otherwise)
* being claimed for through JSS Closed

You must decide if your employee is on variable hours or fixed hours. Variable is where they do not have fixed hours or they are paid based on the hours they work (because of overtime etc). A claim is not going to be declined because you choose the wrong one.

Detailed explanations and calculations have been provided by HMRC and can be found here: <https://www.gov.uk/guidance/extra-steps-to-take-before-calculating-your-claim-through-the-job-support-scheme-open>

<https://www.gov.uk/government/publications/find-examples-to-help-you-calculate-your-employees-wages-for-the-job-support-scheme>

**Q&As APPLICABLE TO JSS CLOSED**

**Q: What are the conditions to be met to claim under JSS Closed?**

**A**: The following eligibility criteria apply:

* you are experiencing reduced business activity due to COVID-19
* you have closed your business premises as a direct result of Health Protection Regulations put in place by the UK government or a devolved administration
* your business premises have been required to close and has closed due to Health Protection Regulations put in place by UK government or a devolved administration and is restricted to only operating:
* delivery or collection services
* outdoor services

and you must have had to limit your business operations to meet one or more of these restrictions. If your business operations did not have to change to meet these restrictions, then you are not eligible to claim

* where part of your business premises are legally required to close by the regulations, and have been closed, you may be able to claim for employees who usually work in the closed part of the premises. However, further details on the eligibility conditions for businesses in this position will be published by HMRC shortly
* your business would otherwise be closed but you are open to host blood donation facilities
* you have not voluntarily closed your business premises without being legally required to do so
* you have in place a JSS Closed agreement with your employees to stop work for a minimum period of 7 days
* you must have paid the full amount claimed for an employee’s wages for hours not worked to the employee before each claim is made. You do not have to pay the employee any additional amounts above the grant, though you can pay them more if you wish

You will not be eligible in the following cases:

* You have had to close your business premises because of an incident of COVID-19 at your business premises.
* You have had to close your business premises due to a restriction put in place by an authority other than a UK government or a devolved administration (for example, a local authority).
* You have chosen to close your business premises despite not being legally required to do so.
* You have had to close your business as a result of restricted hours (such as curfews).

**Q: What can I claim under JSS Closed?**

**A:** You can claim a grant payment to cover 66.67% of your employee’s wages, up to a total grant cap of £2083.44 per month. Examples of calculations can be found here:

<https://www.gov.uk/government/publications/find-examples-to-help-you-calculate-your-employees-wages-for-the-job-support-scheme>

**Q: How do I know if I must close?**

**A:** Assuming it is still a regional restriction you are obliged to:

1. Use an online postcode checker <https://www.gov.uk/find-coronavirus-local-restrictions?priority-taxon=774cee22-d896-44c1-a611-e3109cce8eae>
2. Check the restrictions that apply to your business
3. Read the relevant restrictions to work out if you have to close.

**How do I work out an employee’s primary workplace?**

**A:** Your business premises are treated as an employee’s primary workplace for your JSS Closed claim if you would have expected your employee to spend at least 60% of their working hours there during the claim period, had the premises not been forced to close.

If your employee works across multiple workplaces for you then they will only be eligible for JSS Closed if enough of their workplaces have been closed so as to prevent them from spending 60% of their combined time at their expected workplaces.

**Q: Are there minimum periods for a JSS Closed agreement?**

**A:** Yes, a JSS Closed agreement must last for minimum period of 7 consecutive days. Employees can be placed on a JSS Closed agreement multiple times, but each separate instance must be for a minimum period of 7 consecutive days.

If the JSS Closed agreement does not last 7 consecutive days then you cannot claim for any days that were covered by the agreement. A JSS Closed agreement can span two JSS claim periods and the minimum 7 consecutive days do not all need to be in one claim period.

These rules apply unless there is a change in Health Protection Regulations which means the premises are no longer legally required to close. If this happens:

* you can end an employee’s JSS Closed agreement early, even if this means the agreement will last fewer than 7 consecutive days
* you will still be eligible to claim the JSS Closed grant for any eligible days that took place up to the day your premises were legally allowed to open

**Q: Can employees take holiday and what must I pay them?**

**A:** Yes, they can take holiday. They continue to accrue holiday in the usual way and if they are on holiday then they must be paid their normal wages.

Employees should not be placed on a JSS Closed agreement for a period simply because they are on holiday for that period.

Employers can oblige employees to take holiday at particular times and cancel holiday if they give the required statutory notice (double the length of the holiday to take it and the length of the holiday to cancel it).

If an employee usually works bank holidays, then the employer can agree that this is included in the grant payment. If the employee usually takes the bank holiday as leave then the employer would either have to top up their usual holiday pay or give the employee a day of holiday in lieu.