

I can't work as a result of my childcare and/or caring responsibilities due to Covid-19 - What can I do if my employer refuses for furlough me?

Informal discussion

If you cannot work from home and your employer has refused to [furlough](#) you, we would recommend that you speak to your employer again informally about being placed on furlough and/or follow up in writing if possible.

Many employers are unaware that you are eligible to be furloughed for childcare/caring responsibilities, so it may be worth pointing them to the government guidance: [Check if your employer can use the Coronavirus Job Retention Scheme - GOV.UK \(www.gov.uk\)](#).

Many employers also do not realise that you can be furloughed at any point while the scheme is in place, even if you haven't previously been furloughed and there is no limit on the number of employees an employer can furlough.

We have produced a [Furlough Information Sheet](#) which you could also show your employer.

When speaking to your employer, we recommend that you explain how difficult your situation is, whether it be due to your childcare difficulties and/or other caring responsibilities and try to appeal to their human side. You should explain that you have considered all other options, but none are available to you and you now find yourself in an impossible situation through no fault of your own.

You should also stress that the government is encouraging employers to use the furlough scheme to support parents and carers who are unable to work due to childcare and/or caring responsibilities, and that it would be minimal cost to them (5% contribution to national insurance contributions and employer pension contributions) because the government will reimburse the cost of your salary.

If appropriate, you could also suggest [flexible furlough](#) depending on your circumstances if this will allow you to meet your caring responsibilities and continue to work reduced hours. Flexible furlough allows you to work part-time and be furloughed for the hours you do not work. The government guidance sets out how your hours will be calculated for the purposes of flexible furlough.

[Check if your employer can use the Coronavirus Job Retention Scheme - GOV.UK \(www.gov.uk\)](#)

The Prime Minister has been asked about parents who are asked to go to work, but have no childcare. [On 13 May at Prime Minister's Questions](#), he said: *"In so far as people may not be able to go back to work because they do not have the childcare that they need, their employers must be understanding. As I said, it is clearly an impediment and a barrier to people's ability to go back to work if they do not have childcare."* He has promised to look into this.

You should point this out to your employer if they are refusing to furlough you. You could argue that in refusing to furlough you when you have no other options, your employer is breaching the duty of trust and confidence they owe you. In addition, a refusal to furlough could amount to unlawful sex or disability discrimination in some cases. Please see our section on [discrimination and furlough](#). In practice, this a negotiation.

Raising a grievance

If after an informal discussion, your employer still refuses to furlough you, you could consider raising a grievance.

You can find more information on how to raise a grievance here:

<https://workingfamilies.org.uk/articles/appeal-or-grievance-letters/>

It is always advisable to try and resolve things amicably, as formal processes can damage your relationship with your employer.

For some legal insight into grievances and tips on how to engage with your employer before it reaches this point: <https://workingfamilies.org.uk/workflex-blog/grievances-do-more-harm-than-good/>.

Public Funding

If your employer receives public funding which is used for your salary e.g. schools or civil service, then your employer may not be able to use the furlough scheme. We understand that this is because it would amount to a form of double accounting as the role is already funded by the public purse.

However, the government guidance states that if your employer receives public funding for staff costs, and that funding is continuing, employers should continue to pay their staff and not furlough them.

The implication of this is that you could ask your HR department to grant you “special leave” for this time and pay you your salary as normal for the time you have had to take off for COVID related reasons. You are in circumstances where you could request to be furloughed (but for the public funding exemption) under the [guidance](#) for employees.

NHS

There is information on the NHS approach here: <https://www.nhsemployers.org/covid19/staff-terms-and-conditions/staff-terms-and-conditions-faqs/pay>

You may want to alert your manager to the above guidance to ask that you are paid for the time you need to take off for childcare related to Covid-19.

Other options

Negotiate a reduction of your hours:

You can negotiate a reduction in hours with your employer if this would allow you to balance work and childcare. If your employer does not agree to your informal conversations, you can put in a formal [flexible working request](#). However, your employer has three months to make a decision and could refuse if it would have a detrimental impact on their business. You should also bear in mind that if successful, your flexible working request will automatically result in a permanent change to your working conditions – so if you only want the change to be temporary, you should make this clear in your request.

We've created a [template letter to request flexible working during coronavirus](#) that you can use.

Time off for dependants:

You also have the statutory right to take [time off for dependants](#), but this is unpaid, unless that's a perk in your contract/employer's policy or practice. Time off for dependants concerns not just children, but other dependants too, like a partner or parent. You can take time off which is necessary because of an unexpected disruption in care arrangements. Time off for dependants usually lasts only a couple of days, because it is aimed to allow you time to organise the care of your dependant. But for now, our view is that depending on your circumstances, this could last for much longer. For many children, in lockdown this is likely to apply. Or if in childcare where their class or bubble may be sent home from school to isolate for 2 weeks if there is a case of coronavirus. Older relatives who would usually provide childcare may have been told to self-isolate or shield. In today's circumstances, some people have no other care options they can organise.

Your employer might challenge the time off if they believe the disruption in care is no longer "unexpected". It is true that if you knew about a situation beforehand, it will be more difficult to show that it was absolutely necessary for you to be off. Your employer can expect you to show that you tried to make alternative arrangements. But if you can show there is nobody else who can help, time off for dependants should be considered reasonable and necessary, even if you knew about the situation for a while.

Time off for dependants does not have to be taken in blocks of 1 day. It can be taken for only a few hours. There's also no limit to how often you can take time off for dependants, the time taken off just has to be **reasonable** and **necessary**. For example, if you only need time off work for part of the day, it would be possible for you to continue working for part of the day (or week) but explain that you take time off for dependants for x number of hours (or days) – these will then be unpaid. Unlike flexible working or parental leave, your employer cannot refuse you this time off, as long as it is necessary. You should not be punished for taking this time off (in legal terms, this means you have the right not to be treated unfavourably), so your employer should let you continue working the hours that you are able to work.

Unpaid parental leave:

You can take [unpaid parental leave](#):

- You can take parental leave if you are an employee and you have worked for your employer for at least 1 year
- Your child has to be under 18 years old
- You can take 4 weeks per child per year
- Parental leave can be taken in blocks of 1 week at a time (if your child is on DLA or PIP, you can take it in blocks of 1 day)
- It is normally unpaid, but your employer's policy might be more generous

The requirements for parental leave set out above are the legal minimum. You should always check your contract and employer's policies – they may be more generous than the law.

Bear in mind your employer might be able to postpone parental leave if the business would be particularly disrupted (whereas they cannot postpone time off for dependants). However, it may be difficult for an employer to argue that it is reasonable to postpone parental leave in the current circumstances.

Strictly speaking, you need to [give 21 days' notice](#) to take unpaid parental leave, but given the circumstances, your employer may let you take the leave even if you cannot give the required notice. If your employer insists that you give them 21 days' notice, you may be able to take time off for dependants to look after your children for this 21 day period.

If you cannot take unpaid parental leave, for example because you haven't worked for your employer for more than 1 year, or you have already taken the maximum amount of parental leave available to you, you could rely on time off for dependants instead (see above).

Special leave:

If you can take special leave (that your employer has agreed specifically because of the coronavirus or as part as a more general kind of compassionate leave policy that some employers have), then this could be a good option.

Annual leave:

Your employer may also allow you to take some annual leave. The benefit of this is that it would be paid at your full salary.

Forming a childcare bubble

You could also consider creating a childcare bubble. Parents are able to [form a childcare bubble with one other household for the purposes of informal childcare](#). <https://www.gov.uk/guidance/making-a-childcare-bubble-with-another-household>.

Financial support for childcare

The Government also has a useful tool for checking whether you can receive financial support for childcare: <https://www.gov.uk/childcare-calculator>. There is also further information on help paying for childcare here: <https://www.childcarechoices.gov.uk>.

Financial Assistance

If your income has dropped as a consequence of taking unpaid leave this may mean that you could claim some form of financial support.

To check which benefits you may be entitled to, you can use this online benefits calculator on the Entitled To website: <https://www.entitledto.co.uk>

You can find more information regarding your rights in relation to the effects of coronavirus on our website:

<https://workingfamilies.org.uk/articles/coronavirus/>

and more information on financial support available here:
<https://workingfamilies.org.uk/articles/coronavirus-support/>

Bring a claim in the Employment Tribunal:

Depending on your individual circumstances, a refusal to furlough you and/or refusing all other options you have suggested could mean that you have a potential claim for discrimination and/or breach of contract.

Submitting an Employment Tribunal claim should be a last resort that should only be taken after exhausting the other next steps we have detailed in this advice (wherever possible and time permitting). However, if you wish to submit a claim, there are strict time limitations to do so. You must contact ACAS to start early conciliation within three months less a day of your dismissal (for unfair dismissal and constructive dismissal) and within 3 months less 1 day of the act complained of (for discrimination claims). For further details of the process for bringing an Employment Tribunal claim please see here: <https://workingfamilies.org.uk/articles/time-limits-for-employment-tribunal-claims/> and here: <https://www.workingfamilies.org.uk/articles/early-conciliation/> and here: <https://workingfamilies.org.uk/article-categories/starting-a-claim/>.

You can find more information on starting a claim here: <https://workingfamilies.org.uk/article-categories/starting-a-claim/> and information on possible compensation here: <https://www.workingfamilies.org.uk/articles/calculating-damages/>.

Please note that tribunal claims can be expensive and long, and there is no guarantee of success, so this step should be considered cautiously. It is almost always best to try to resolve the issue with your employer.

If you are considering bringing a claim, we recommend that you seek specific legal advice.