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COVID-19 Coronavirus Job Retention Scheme

9 April 2020

Pension Issues Q&A

Introduction

The government introduced the Coronavirus Job Retention Scheme (CJSR) in March to address the situation created by the COVID-19 outbreak. Employers and employees will principally be concerned with the operation of the CJSR in terms of the payment of salaries to employees. However, the CJSR has a significant impact on any pension arrangements in place which should be taken into account when considering how to furlough employees.

The Q&As below relate mainly to issues affecting defined contribution/money purchase schemes. Issues relating to defined benefit schemes give rise to more unique concerns. We would urge any employers with concerns about their defined benefit schemes to seek advice as soon as possible.

Q. What can employers apply for under the CJSR?

Employers can apply for a grant that covers 80% of an employees' usual monthly wage costs of up to £2,500 plus associated employer National Insurance Contributions and minimum automatic enrolment employer contributions on that amount.

Q. What is the auto-enrolment statutory minimum?

Under automatic enrolment, the minimum statutory requirement is for a contribution to be paid which represents 8% of an employee's "qualifying earnings", with 3% of that paid by the employer and 5% paid by the employee. Qualifying earnings for the 2020/21 tax year are set at earnings between £6,240 and £50,000.

Auto-enrolment duties will continue to apply as normal (including re-enrolment and re-declaration duties) where the CJSR is used. That includes the duty on employers and employees to pay contributions. Reference should also be made to pension scheme rules to determine whether any other duties apply.

Q. What is the maximum pension contribution that can be reclaimed?

Under the CJSR an employer is only able to claim for the minimum of 3% of an employee's qualifying earnings on the subsidised wage. Any amounts above that which the employer usually pays (or continues to pay) will need to be funded by the employer.

There are other ways in which the statutory requirements relating to pension contributions for automatic enrolment can be met. If an employer uses an alternative method, it will only be permitted to reclaim the statutory minimum of 3% of an employee's qualifying earnings based on the subsidised wage.

Q. Can I make changes to pension Ts & Cs?

An employer may seek to amend an employee's terms and conditions to align the pension contributions with that which can be reclaimed under the CJSR. To amend any contractual terms will require the agreement of the employee and potentially any unions representing employees.

Amendments to contractual terms may lead to a reduction in the pension contributions which are paid in respect of an employee. That could be beneficial to the employer in ensuring any pension contributions over that which can be reclaimed under the CJSR are not payable. For an employee it may also mean that there is a reduction in any pension contributions meaning that the salary paid under the CJSR increases. Reducing pension contributions will have a detrimental effect on the amounts being saved to any pension scheme and employees will need to understand any such impact.

Q. What about the statutory consultation requirement?

Certain changes to pension schemes made by an employer who has 50 or more staff give rise to a statutory requirement to consult with employees for a period of 60 days. Reducing the amount of future

employer contributions or introducing a requirement for employees to make contributions will specifically give rise to the consultation requirements.

The Pensions Regulator has introduced a relaxation to the statutory requirement whereby it will not take any action if an employer does not carry out a consultation. For that relaxation to apply the following steps have to be met:

1. The employer has furloughed staff for whom it is making a claim under the CJRS.
2. The employer is proposing to reduce the employer contribution to its money purchase scheme for furloughed staff only. Staff not on furlough will not change.
3. The reduced contribution for furloughed staff will only apply during the period of furlough and will revert back to the current rate when furlough ends.
4. The employer has written to affected staff (or representatives) to describe the intended changes and the effects on the pension scheme and the furloughed staff.

If each of those steps cannot be met an employer will continue to be required to consult with its staff on any changes. The Regulator has said it will review the relaxation on 30 June.

A failure to comply with the consultation requirements could give rise to the imposition by the Regulator of civil penalties (up to £50,000) and improvement notices. The Regulator is unable, however, to reverse a change that an employer has made without meeting the requirements.

Notwithstanding the relaxation noted above, with careful drafting you may be able to structure any changes in such a way that do not give rise to the requirement to consult with employees. As with most questions relating to pensions, the pension scheme rules will need to be reviewed.

Some industries may have statutory protection for pension members which may make the imposition of any changes difficult to achieve.

Employers seeking to make changes to terms and conditions relating to pensions should seek advice.

Q. What about pension scheme documents?

In most cases the answer will be yes. The terms of any rules will need to be reviewed and amended where necessary to align with any changes to contractual provisions. Even where a group personal pension scheme is in place with an insurance company, the terms of the arrangement may need to be updated to reflect what is happening in practice.

Q. What about salary sacrifice?

Salary sacrifice arrangements for pension contributions effectively mean that the employer pays both the employer and employee pension contributions in return for the employee foregoing a portion of salary representing the pension contributions he/she would otherwise have made.

If no changes are made to that arrangement as part of the CJRS, the employer will continue to be bound to pay both employer and employee pension contributions. Employers will need to ensure that the level of salary on which salary sacrifice operates is clearly set out with employees.

Amendments to salary sacrifice arrangements can be made as a result of COVID-19. Amending a salary sacrifice arrangement to introduce a requirement for an employee to make contributions would trigger the statutory requirement to consult with employees. Advice should be sought if any such changes are being considered.

Q. Are there options that employees can invoke?

Employees could choose to opt-out (either completely or on a temporary basis) of active membership of their pension scheme so as to increase the amount of salary that is paid to them from the CJRS. Employers and employees will need to consider whether opting-out effects a future ability to re-join the respective pension scheme and consider what benefits will be applicable should re-joining be a possibility.

Employers should take care to ensure that they are not seen to be encouraging or inducing employees to opt-out of auto-enrolment during furlough. Doing so could give rise to the involvement of the Pensions Regulator.

Employees who are paying contributions in excess of the statutory requirements or those required by the respective scheme could choose to stop paying those amounts whilst they are furloughed.

Employers will need to consider the rules of any pension scheme (particularly the rules on temporary absence) and consider whether to relax any statutory provision which may mean that employees do not have a right to opt back in to the pension scheme.

Both employers and employees should understand the implications that opting-out will have on any dependant's benefits payable.

Q. What impact will the CJRS have on death in service benefits?

Employers will need to consider whether the operation of the CJRS will impact the way in which any death in service benefits are paid. Most such benefits are insured with an insurance company. Employers will need to confirm whether the payment of such benefits apply where an employee has been furloughed. Where the benefits continue to apply, the employer will need to confirm the level of salary on which those benefits are to be paid.

An employer may also wish to confirm whether there are any provisions within the insurance policy which exclude the payment of death benefits because of a pandemic.

Q. We operate a defined benefit pension scheme. What issues should we consider?

Although employers with defined benefit schemes will be facing similar issues to those employers with money purchase schemes, a defined benefit scheme presents a level of complexity for which specific advice should be sought.

Employers and trustees will particularly want to consider the provisions of their temporary absence rules and the definition of "pensionable salary" and whether that definition will have an impact on the benefits that are accrued during furlough and the effect it will have on the way in which the scheme's recovery plan is calculated.

Employees who are members of defined benefit schemes may have a facility with which to reduce their contributions during furlough to allow them to remain as an active member. In addition, the payment of any additional voluntary contributions could be suspended whilst on furlough.

Q. Can employees on furlough continue to act as trustees?

Employees who have been placed on furlough are prohibited under the CJRS to make money for the organisation for which they work or to provide services for that organisation. However, acting as a trustee of a pension scheme will not fall within those categories so an employee who is a trustee can, and indeed should, continue to carry out their duties while on furlough.

How we can help

The CJRS is a new scheme which all employers in the UK are having to come to terms with. It will be important to ensure that the pensions aspects of the CJRS are achieved correctly, especially as the effect of any changes will be felt by employees in the future. We are working closely with many business who have been impacted by the new Government scheme and have already built up an expertise in the operation of the CJRS. Please do call or email any member of our team for more information and for advice around the operation of the CJRS.

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