

# APSCo Update: Guidance for Umbrella



## Guidance for Umbrella Affiliate Members - 31st March 2020

We appreciate that our umbrella affiliate members are faced with a number of issues in applying the Coronavirus Job Retention Scheme to their members. We are keen to ensure agency workers benefit from the scheme where practicable and Tania Bowers has been speaking to some of our largest umbrella members.

There are three particularly key issues that have been brought to our attention which we have fed back to Employment Agency Standards at BEIS as part of our twice weekly conference calls with them. Although EAS does not regulate the umbrella industry they are keen to understand how the scheme will apply to agency workers, which include the umbrella employed. In turn EAS are feeding into Treasury and HMRC seeking clarity on these points.

The key issues as we understand them are:

1. Cashflow. The Coronavirus Job Retention Scheme is a reimbursement scheme. It will need to be funded by you until such time as you can register for the scheme and the reimbursements come through. You will need to vary your contract of employment to enact the scheme and potentially you could defer payment to your employees until in receipt of funds from Government, but you should take legal advice.
2. Level of salary covered by the scheme. We know that umbrella employed workers tend to be engaged on a minimum salary and receive the majority of their payroll as some form of "bonus" (with PAYE and NICs applied) once payment is received from the recruiter. Under the scheme, bonus is expressly excluded from the reimbursement. There is an argument that umbrella employed workers may fall within the "variable pay" provision meaning that their earnings are calculated as an average of their past earnings (as per the guidance). We have specifically requested clarity from EAS on this point.
3. How many of the employees on your books are eligible for furlough. Like recruiters who operate PAYE payrolls you may have many employees who weren't working on 28th February but are employed by you. There is no contractual right to be paid unless they perform work on assignment (the position is different for those on Swedish derogation contracts). There is nothing specific about their entitlement in the guidance. The closest analogy is the reference to employees on unpaid leave on 28th February. It states "employees on unpaid leave cannot be furloughed, unless they were placed on unpaid leave after 28 February." EAS are also aware of this point.

It may be for you to take bespoke legal advice and make a decision based on their analysis. EAS have also warned us that Treasury are keen to not over complicate their guidance, so there may be a limit to further guidance issued. However, we are willing to listen to your particular concerns and raise them with Government where we can. We can also help in communications with our members to ensure that the supply chain works together in its response to Coronavirus.

If you have any queries, please contact the legal helpdesk at [legalhelpdesk@apsco.org](mailto:legalhelpdesk@apsco.org).