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CORONAVIRUS FRAUD

HMRC SEEKS TO COMBAT CORONAVIRUS FRAUD



It shouldn't come as a surprise that any programme run by a government that ostensibly hands out 'free' cash will become a target for exploitation and a honeypot for those minded to commit fraud. And the Coronavirus Job Retention Scheme (CJRS) and Self Employment Income Support Scheme (SEISS) are just that.

By Adam Bernstein

While the government wanted to help individuals and firms at a time of crisis, it now wants to deal with what has become a knotty problem for HMRC – money being incorrectly claimed.

Jim Harra, first permanent secretary and chief executive of HMRC, told a recent public accounts committee meeting, mid-June, that the furlough scheme was a “magnet for fraudsters,” and that tipoffs were being taken “very seriously.” It appears from his evidence that between 1 April to 2 June HMRC had received over 2,000 claims of abuse of the CJRS. 900 of those had been reviewed and two-thirds of the allegations led to action being taken against the claiming employers. According to Moneyweek, there's a real “concern that some firms have taken unfair advantage of the CJRS and the SEISS, which have so far cost the taxpayer almost £27bn.”

In essence, any employer that asks employees to work while they have been put on furlough and the cost of their wages and salary is being paid for under the terms of CJRS is committing fraud. It is just as bad if the employer makes a claim under CJRS for employees who have not been furloughed, or where CJRS monies

paid over are being kept by the employer and not passed on to employees that have been furloughed. Employers breaking the rules should be concerned that they could be prosecuted under the Fraud Act.

CJRS has been abused

Putting HMRC's view of the abuse of CJRS to one side, it appears that there is evidence of trouble brewing. A survey commissioned by Crossland Solicitors, and noted by workplaceinsight.net, looked at 2000 employees in a variety of industries. It found that some 34 per cent had been placed on furlough and asked to work in breach of the rules and one in five had been asked to cover someone else's job or work for a linked business.

Of course, whether HMRC can actually and forensically examine businesses en masse for fraud is another matter entirely. The body doesn't have the resources to look at all employers and so will no doubt check on firms randomly, by exception or following an allegation. And with the new flexible working plans that came in on 1 July, the process will become even harder for HMRC.

Nevertheless, employers should be alive to the risk of being reported – anonymously – via HMRC’s online fraud reporting service. Sight also shouldn’t be lost of the fact that accountants have a duty to report (suspected) fraud to HMRC.

Legal perspective

So, what do the rules permit? According to the direction that the Chancellor, Rishi Sunak, gave HMRC mid-April, an employee put on furlough is one who “has been instructed by the employer to cease all work in relation to their employment.”

The direction then turns to what is permitted under CJRS – training. On this it includes “training activities directly relevant to an employee’s employment agreed between the employer and the employee must be disregarded...”.

In simple terms, an employee can undertake training or learning that relates to their job while furloughed, but they aren’t allowed to do anything that generates income – not even a simple administrative task.

Interestingly, an employee placed on furlough may be barred from working (or volunteering) for their employer, but they are not barred from taking another job with a different and unconnected employer (unless their employment contract prevents this) or volunteering for a different organisation.

Employees are one thing, but what of those who are directors? The rules place them in a very sticky position and officially permits them to do very little apart from meeting their legal duties such as

compiling and submitting statutory returns and payments to HMRC and Companies House. As with employees, a director on furlough is not allowed to do anything that generates income for the business or company – even if it is their own. And any director running their own business thinking of claiming CJRS and then working on a self-employed basis should think twice as that too is banned.

Insomniacs can read the direction at: bit.ly/2NqCLDc

In summary

Ultimately, an employer playing fast and loose with the system could face a bill of up to 200 percent of the monies claimed. Be careful if you’re claiming or tell HMRC if you’ve pangs of guilt.



HMRC’s ability to handle fraud

At the end of May, the government published draft legislation and a short consultation which closed on 12 June. Snappily titled Draft legislation: Taxation of coronavirus (COVID-19) support payments, it details how the monies paid by the government under its coronavirus support programmes will be taxed. It also details the planned powers for HMRC to investigate abuse and seek repayment of monies claimed incorrectly, fraudulently or where it’s not been paid over to furloughed employees.

It’s of note that a corporate shell offers no immunity; directors can be made jointly and severally liable for the tax charge that seeks back the incorrect claim.

Penalties are part of the regime and will be applied where an incorrect claim has been made deliberately or where an employer has not paid monies to the employees claimed for. The legislation was passed and received Royal Assent on 22 July and is now law; penalties will only be applied if the claimant fails to tell HMRC of the error either within 90 days of the claim being made or 90 days of the law being enacted.

As to the specific penalties, a penalty of between 30 and 100 percent of the tax charge that seeks repayment will be levied where the error has not been notified to HMRC within the specified period – but only if the disclosure is made voluntarily. If HMRC action leads to a disclosure, the penalty will be much higher - between 50 and 100 percent of the tax charge.