

BEAT COVID-19 Inactive Employees in “Excluded Sectors”



15 May 2020

Background

On 17 March, the Government of Gibraltar announced measures to help businesses affected by restrictions put in place due to the Covid-19 pandemic. The measures included Regulations enabling employers in certain business sectors to register “Inactive Employees”. Those employers would receive a Contribution from Government, to be paid direct to their employees. This scheme was only available to businesses that were not in “Excluded Sectors”.

On 7 May, the Regulations were amended to provide for Excluded Sectors to furlough inactive employees, who would receive a minimum month amount. This amount is to be paid for by the employer, rather than Government.

This document describes the scheme available for Excluded Sectors.

The rules governing the scheme are contained in the [Appropriation \(Business Employee Assistance Terms COVID-19\) Regulations 2020](#). HM Government of Gibraltar has published [Guidelines](#) for measures for business, though at the time of writing these have not yet been updated for the scheme for Excluded Sectors.

Businesses covered by the measure

The scheme only applies to businesses sectors that are excluded from the initial BEAT COVID-19 measure, so the new scheme applies to the following “Excluded Sectors”:

Utility providers	Food delivery companies
Telecoms operators & internet service providers	Online gaming industry & casinos
Data centre providers	Accountancy and law firms
Care workers	Businesses licensed by the GFSC
Supermarkets, grocers, butchers	Pharmacies, health stores
Market stalls	Bunkering, ship chandlers, sea transport & other shipping
Wholesalers with a tobacco licence	Property management companies
Petrol stations	Any other business deemed to be in substantive operation
Businesses predominantly reliant on Government as their main source of income	

The above list may be updated by notice in the Gazette. Further, the Minister responsible has the power to designate an employer from an Excluded Sector to be from a Relevant Sector on a case by case basis if there are extenuating circumstances that merit such designation.

Period covered by the measure

The measures are in place from date of publication on 7th May until the end of the “Relevant Period”, this being the earlier of:

- ▶ The date by which the pandemic is over, as announced in the Gazette by the relevant Government Minister,
- ▶ Or 30 June 2020, or such later date as the Minister may determine by notice in the Gazette

How the measure works

An employer may designate an employee as being an “Inactive Employee”, once the necessary approval has been granted (see “Applications and eligibility” below).

Such an employee may be furloughed for up to 35 days, although a longer period may be agreed with the Financial Secretary where he believes this to be fair and reasonable in the circumstances.

During the period that the employee is furloughed, the employee will receive the higher of:

- ▶ 50% of their contracted salary, and
- ▶ £1,155 over a calendar month period (or a lower pro-rated amount where the employee is normally required to work less than 37.5 hours per week).

This is paid by the employer and no contribution is paid by the Government.

The employer may pay an additional amount to their employee.

An employer may not designate more than 25% of its workforce as Inactive Employees at any time, unless an application is made to the Financial Secretary for a higher amount and he is satisfied that this is fair and reasonable in the circumstances and in the public interest.

Applications and eligibility

To be eligible, an employee must:

- ▶ be registered with the Department of Employment or the Income Tax Office as employed by an employer in an Excluded Sector
- ▶ not provide any services to their employer during the time they are furloughed.

The employer must first notify the employee in writing.

An application is then made in writing to the Director of Employment who shall determine with the approval of the Financial Secretary whether it is fair and reasonable in the circumstances, on a case by case basis.

It seems likely that an on-line form will be made available for this purpose, though this has not been clarified at the time of writing.



Employees' rights

An employer who seeks to designate an employee as an Inactive Employee is required to first notify the relevant employee in writing.

Any such employee, or their representative body, is entitled to make representations in writing to the Financial Secretary and/or the Director of Employment within 48 hours of the employee being notified.

Such representations shall be taken into consideration prior to any approval being made by the Director of Employment or the Financial Secretary under the scheme.

Inactive Employees retain their employment rights and obligations during the time they hold this status, other than the rights to receive their salary in accordance with their employment contract. It appears to us likely that holiday and leave do not accrue during the furlough period, but that is subject to confirmation.

Termination of employment

The following applies in respect of all employees in Gibraltar, whether in an Excluded Sector or not, and whether or not they are Inactive:

The employment of an employee may not be terminated during the Relevant Period without the consent of the Director of Employment.

Further, any notice of termination received or processed by the Department of Employment or any purported termination of employment, between 15th March until the end of the Relevant Period is deemed void unless the employer obtains the consent of the Director of Employment.

The Director of Employment shall not grant consent to any termination of employment during this time unless she is provided with reasonable cause for the termination, and this is not linked directly or indirectly to any diminution or cessation in the requirements of the employer' business due to the pandemic.

Tax Considerations

Inactive Employee

Tax is not payable on the amount received during the period they are furloughed, up to a maximum of £1,155 (or lower amount on a pro-rata basis where their normal working hours are less than 37.5 per week).

Any additional amount received by the employee will be taxable.

Any allowances claimed by the individual will be reduced by one-twelfth for each month in which the individual receives a payment in the relevant tax year.

Inactive Employees' Social Insurance contributions for the period covered by such payments will be waived. The Social Insurance contributions will be deemed to have been made by the individuals.

Employers

PAYE should not be deducted or paid in respect of payments made to the employee during the period they are furloughed, up to a maximum of £1,155 (or lower amount on a pro-rata basis where their normal working hours are less than 37.5 per week). This amount should not be included in the Employer's Annual Statement, Declaration and Certificate (P8 Form).

If the employer makes additional payments to the employee, PAYE is payable on such payments.

Employer's Social Insurance contributions in respect of the Inactive Employee will be waived for the period they are inactive.

Deferment of PAYE and social insurance

[Guidelines](#) issued by HM Government of Gibraltar include the following measure that applies to all businesses in Gibraltar:

"A deferral of the payment of PAYE/SI obligations to HMGoG for 12 weeks after month-end in which payment would typically be due commencing in relation to those due in May 2020 (i.e. April payroll)"

This applies to PAYE/SI on salaries in April, May and June 2020 (i.e., payments due in May, June and July 2020).

Announcements made prior to the Guidelines being issued indicated that the deferral was intended to be for 12 weeks after the end of the month in which the salary is paid, rather than 12 weeks after the end of the month in which the PAYE/SI was due. We await further clarification.

This material has been prepared for general informational purposes only and is not intended to be relied upon as advice. It is based on published Regulations at the time of writing and announcements made. Practical application may differ and is subject to change at short notice. Please refer to your advisor for specific advice.

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