



The final furlough: what are the pros and cons of re-hiring redundant staff?

Personnel Today by [Raoul Parekh](#) and [Deborah Margolis](#) - 28 December 2020

Difficult decisions have been faced by employers as furlough has repeatedly been extended at the last minute and an end to the Covid crisis is still some way off. We look at the options available to businesses.

The government's furlough scheme permits employers to re-employ staff and put them on furlough if they were made redundant or stopped working for the employer on or after 23 September 2020. With the vaccine being rolled out and many businesses hoping for a return to "normal" in the coming months, should employers take the chance to keep key talent warm, or are the risks too high? We set out the pros and cons below.

Benefits

- Keeping talent warm: Where businesses anticipate a return to pre-Covid business levels in the coming months and a consequent need to re-hire for some roles, re-hiring key staff that were made redundant on or after 23 September 2020 could avoid that talent finding a home elsewhere. The obvious benefit of this is that businesses are already familiar with the individual's skills, there is no need train them on the business and the requirements of role, and you can stop former staff turning to competitors.
- Good publicity for the employer: Taking advantage of this requirement may result in positive publicity both in terms of employee relations and as an employer, in a similar way to the positive headlines for firms which have returned furlough payments to the government.

Potential costs and risks

- Employment costs: Although the government contributes 80% of an employee's usual salary for hours not worked up to a maximum of £2,500 per month, employers are still required to pay employer National Insurance Contributions at around 13.8% plus pension contributions. The scheme is due to be reviewed in January 2021 and the minimum amounts that can be re-claimed are likely to increase.
- Holiday pay: Employees will continue to accrue holiday during furlough. To minimise costs, employers may wish to require employees take their holiday during their furlough period - but they would still have to top up to full pay for these days of leave.



- Notice pay: Any notice pay on furlough (ie, if re-dismissal is needed because the business does not fully recover) would need to be at full pay. In addition, since 1 December 2020 employers can no longer claim furlough pay during employees' notice periods. Employers are likely to be conservative in their re-hires, and may also choose to mitigate the risk by re-hiring on "placeholder terms" depending on the bargaining power of the parties.
- Employment risks (unfair dismissal): If employees previously received statutory redundancy pay then this will break their continuity of service and any re-hire will be a new period of employment. Assuming that this constitutes a new period of employment, employees will not have sufficient service to bring an ordinary unfair dismissal claim until they have two years' continuous service.
- Employment risks (discrimination): Employees can bring discrimination or whistleblowing claims regardless of their length of service. If an employer chooses to re-hire only some dismissed employees (which is likely), there is a risk that those who are not re-hired allege that this decision was discriminatory. This risk would be partially mitigated if re-hiring is limited to specific, closely defined roles, and that all of the former employees who filled those roles are re-hired (and/or they are unique roles).
- Redundancy pay: The government's guidance does not specify what should happen to redundancy payments that have already been paid to employees. Since redundancy payments break continuity of service, we think it works in the employer's interest not to ask for repayment (and in any event, we think that any goodwill for rehire would be destroyed if employers were to ask for redundancy pay to be paid back).

How to best manage the risk

If employers operate in industries where business is likely to pick up before or around the end of April 2021, re-hire and furlough is a good opportunity to keep talent warm in the meantime and to minimise training time and costs. While there are several costs and risks to be aware of, these can be minimised (if desired and depending on the employer's objectives) by re-employing staff on substantially different terms to usual. Depending on the bargaining power and the sector, employers may consider presenting staff with "placeholder terms", with an offer for continued employment to follow in March subject to trading conditions and business needs. These 'placeholder terms' would include:

- Fixed-term contracts due to expire at the end of April (to reduce the potential cost of notice pay in the event that the business doesn't fully recover)
- Lower salaries - we would suggest a maximum of £37,500 / year (80% of this salary is £2,500 per month, ie the maximum that can be currently re-claimed from the government)
- Statutory minimum notice periods.

Read the full article [here](#).