

# Retire and Return



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7 October 2021

# Today's webinar

- Flexible retirement options
- What is retire and return?
- Legal considerations
- Q&A session
- Resources to support your organisation



# Poll questions

1. Do you have employment policies that cover retirement flexibilities including retire and return?
2. Do you actively promote the retire and return option to staff?
3. Do you know where to get advice on pension scheme flexibilities including retire and return?

If you answered no to any of the questions above, please tell us why? What are the barriers to doing this?



# Flexible retirement options

Dale Walmsley, Actuary, First Actuarial

# Flexible retirement options

- There are several flexible retirement options available:
  - Step down
  - Wind down
  - Draw down
  - Late retirement
- These were explored in our webinar on 2 September
- Recording available on the NHS Employers website

**NHS Employers**

## Retirement flexibilities – NHS Pension Scheme

	1995 section	2008 section	2015 section
<p><b>Step down</b> Staff can 'step down' to a different role, for example, to reduce their level of responsibility while remaining in NHS employment. This supports the organisation to retain the individual's skills and experience while supporting the staff member to approach retirement.</p>	✓	✓	✓
<p><b>Wind down</b> Staff can 'wind down' to retirement by remaining in their current post but reduce the number of hours or days they work.</p>	✓	✓	✓
<p><b>Retire and return to NHS employment</b> Staff who have reached the minimum pension age can choose to retire, claim their pension benefits and then return to NHS employment.</p>	✗*	✓	✓
<p><b>Draw down</b> Members can take part of their pension benefits and continue in NHS employment. This means that staff can continue working while benefiting from being able to partially draw down their pension benefits and supplement their income.</p>	✗	✓	✓
<p><b>Late retirement enhancement</b> If a member chooses to retire later than their normal pension age (NPA), their pension benefits will be increased by the application of late retirement factors.</p>	✗	✓	✓
<p><b>Early retirement reduction buy out (ERRBO)</b> Members or their employers can pay additional contributions to buy out, or reduce, the actuarial reduction that would be applied to their pension were they to retire before their normal pension age.</p>	✗	✗	✓

Further information about retirement flexibilities can be found on our website [www.nhsemployers.org/articles/flexible-retirement](http://www.nhsemployers.org/articles/flexible-retirement)

@NHSE\_Reward

\*Members of the 1995 section will not be eligible to rejoin the NHS Pension Scheme on their return to employment.

# What is retire and return?

- Retire and return is an alternative flexible retirement option available to employers and staff
- Broadly, retire and return means that members can draw their pension and return to working in the NHS
- However, there may be implications on past and future pension saving:
  - **Future:** Drawing 1995 benefits mostly prohibits building up further benefits in the NHS Pension Scheme – but not so for drawing 2008 and 2015 benefits
  - **Past:** Abatement...



# Suspension of abatement

- Abatement is where a member is receiving an NHS pension but it is reduced on NHS re-employment before their Normal Pension Age
- Some abatement measures were temporarily suspended via emergency legislation due to Covid-19, scheduled to end on 31 March 2022:
  - the “16 hour rule”
  - abatement for 1995 special class status holders
  - 2008/2015 drawn down abatement



# Legal Considerations

Nicola Green, Legal Director, Capsticks



# Legal considerations



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- Continuity of employment
    - Breaks between roles
  - Method of engagement on return
    - Part time
    - Bank work
    - Fixed term
  - Use of fixed term contracts

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- Effective break under the Employment Rights Act 1996 – Sunday to Saturday – therefore normally 2 weeks
  - Payment under the Superannuation Act 1972, ERA states that continuity is broken
    - no further right to a statutory redundancy payment
    - AfC reflects ERA wording and therefore no contractual redundancy payment
    - case by case basis

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- *Booth v USA* [1999] - EAT found for the USA and that there had been a break in service/continuity even though the gaps were designed to prevent the employee gaining statutory rights
  - Therefore, imposing a break purely to avoid employees accruing their statutory employment rights does not necessarily invalidate the break

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- *Welton v Deluxe Retail Ltd* [2013] – documentation issued before the break
  - The EAT found that the second contract of employment had been created when the employee accepted the job offer, which meant that there was not a week's gap between the two contracts
  - Do not issue contractual documentation for the return before retirement

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- Part time work
    - Part-time workers (prevention of less favourable treatment) Regulations
  - Bank work
    - Separate contract
    - Avoid regular use of bank workers
  - Fixed term work
    - Fixed-term employees (prevention of less favourable treatment) Regulations

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- Terms should be no less favourable
  - Age discrimination
  - Both direct and indirect can be objectively justified
    - What is the legitimate aim?
    - Are steps taken proportionate?
  - Non-renewal is a dismissal so consider the benefits of insisting on fixed term contracts

# Protection for fixed term employees



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- Fair treatment between fixed-term and comparable permanent employees
  - Fixed term to permanent after 4 years or more of successive fixed term contracts
  - Unfair dismissal protection (after 2 years)

# Prevention of less favourable treatment



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- Fixed Term Employees (Prevention of Less Favourable Treatment) Regulations 2002
  - No less favourable treatment concerning terms of contract (pay, pension, benefits)
  - Must not be subjected to any other detriment (access to promotion, selection for redundancy, appraisals)
  - Comparable permanent employee
  - Unless can be objectively justified



# Expiry of a fixed term contract



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- Expiry of a fixed-term contract = dismissal
  - ACAS Code of Practice will not apply
  - Procedural and substantive fairness still required where unfair dismissal rights have accrued
    - redundancy (and benefits that follow)?
    - some other substantial reason?

# Flexible retirement poster

The poster is titled "Retirement flexibilities – NHS Pension Scheme" and is from NHS Employers. It lists six retirement options with eligibility for three pension sections: 1995, 2008, and 2015. The options are: Step down (all sections), Wind down (all sections), Retire and return to NHS employment (all sections), Draw down (2008 and 2015 sections), Late retirement enhancement (2008 and 2015 sections), and Early retirement reduction buy out (ERRO) (2008 and 2015 sections). A note at the bottom states that members of the 1995 section are not eligible to rejoin the scheme.

	1995 section	2008 section	2015 section
<b>Step down</b> Staff can 'step down' to a different role, for example, to reduce their level of responsibility while remaining in NHS employment. This supports the organisation to retain the individual's skills and experience while supporting the staff member to approach retirement.	✓	✓	✓
<b>Wind down</b> Staff can 'wind down' to retirement by remaining in their current post but reduce the number of hours or days they work.	✓	✓	✓
<b>Retire and return to NHS employment</b> Staff who have reached the minimum pension age can choose to retire, claim their pension benefits and then return to NHS employment.	✓	✓	✓
<b>Draw down</b> Members can take part of their pension benefits and continue in NHS employment. This means that staff can continue working while benefitting from being able to partially draw down their pension benefits and supplement their income.	✗	✓	✓
<b>Late retirement enhancement</b> If a member chooses to retire later than their normal pension age (NPA), their pension benefits will be increased by the application of late retirement factors.	✗	✓	✓
<b>Early retirement reduction buy out (ERRO)</b> Members or their employers can pay additional contributions to buy out, or reduce, the actuarial reduction that would be applied to their pension were they to retire before their normal pension age.	✗	✓	✓

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<https://www.nhsemployers.org/publications/retirement-flexibilities-poster>

# Flexible retirement web page

## Flexible retirement

Flexible retirement helps staff to change the nature or pattern of their work in the lead-up to retirement, to suit their future plans.

3 August 2021



<https://www.nhsemployers.org/articles/flexible-retirement>

# Our plans to provide further support

- Webinar on pension tax
- Retire and return guidance
- Flexible retirement videos – real life examples
- Online learning modules



# Thank you.

Email us: [pensions@nhsemployers.org](mailto:pensions@nhsemployers.org)

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