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Factsheet

Handling Requests for Flexible Working



Background

Since 2014 all employees have had a statutory right to ask their employer for a change to their contractual terms and conditions of employment to work flexibly provided.

With effect from 6 April 2024 the law is changing, and employees will be able to make a request for flexible working from their first day of employment with your organisation. They will also be able to make two statutory requests in any 12-month period (prior to 2024 the law only allowed one request in a 12-month period).

It should be noted that the right is to 'request': there is no automatic right to work flexibly as there will always be circumstances where an employer is unable to accommodate the requested work pattern.

Agency workers, office holders or those on employee-shareholder contracts do not have a statutory right to request flexible working.

Process

An [ACAS Code of Practice](#) outlines the process for requests. Employers have a duty to deal with requests in a reasonable manner and within a reasonable timescale. "Reasonable timescale" is a total of two months from initial receipt of the request to any appeal decision, unless a longer period has been jointly agreed. The ACAS Code will be taken into account by tribunals but (unlike the Code of Practice on Disciplinary and Grievance Procedures) a failure to follow it will not result in an uplift in any compensation awarded.

On receiving a request, you should arrange to discuss it with the employee as soon as possible. If there is likely to be a delay in deciding on the request, we recommend you inform and agree any extension to the process with your employee.

Initially employees must make their request in writing (which may be via email), which should:

- Be signed and dated by the employee
- State that it is a request for flexible working and confirm that they have made no more than two previous applications during the last 12 months
- Specify the change to working conditions they are requesting and when they would like that change to come into effect. The request could be for a change to their contracted hours of work, times of work and/or place of work

Employees should be advised that an accepted application will normally mean a **permanent** change to their terms and conditions, unless otherwise agreed. Employees who have been granted flexible arrangements do not have the right to insist on a return to full-time working (or a return to their previous hours or working pattern, whatever these were) should their circumstances change.

Please note - if the employee is only looking for a temporary change for a short period to cover a change in circumstances you can agree to a temporary change, allowing them to revert back to their old conditions after a specified period. A trial period may also be agreed.

Any requests for flexible working should be taken seriously, and a fair process followed.

Given the overall timescale for handling requests (two months), it is good practice to acknowledge receipt of a request in writing and to check your HR records to confirm whether the employee is eligible to make such a request. If any of the required information is not provided in the request, you should inform the employee that their application is incomplete and explain what further information is needed.

You should arrange to meet with your employee to discuss their application. If you intend to simply approve the request then a meeting may not be needed but you must meet and consult with the employee if you intend to reject the request. There is no statutory right for the employee to be accompanied to such a meeting, although the ACAS Code suggests that this should be encouraged. You may therefore wish to allow a work colleague or a trade union representative to accompany the employee if they request it. The companion is allowed to address the meeting (but not to answer questions on behalf of the employee) and to confer with the employee during the meeting.

Neither the employee nor the companion may be subjected to any detriment as a result of the employee seeking to exercise the right to be accompanied.

Deciding on a request

Having considered the changes, the employee has requested and weighed up the advantages, possible costs and potential logistical implications of granting the request you must let your employee know your decision as soon as possible.

The decision is best confirmed in writing (to prevent any future confusion) and may be either:

- To agree to the request, specifying the date on which the new contractual arrangements will apply and confirming what these arrangements are. As outlined above, any changes are a permanent change to the terms and conditions unless otherwise agreed; or
- To confirm a compromise or modifications to the request, as agreed at the meeting, such as a temporary agreement to work flexibly; or
- To refuse the request, based on at least one of the business reasons outlined below. This written notification should be provided after meeting with the employee; but providing an explanation as to why the chosen ground(s) apply in these circumstances could help answer any immediate questions the employee has, and may help with any potential claims.

The specific business reasons permitted by the legislation for refusing a flexible working request are:

- detrimental effect on the ability to meet client demand
- inability to reorganise work within available staffing
- inability to recruit additional staff
- detrimental impact on quality
- detrimental impact on performance
- burden of additional cost to the organisation
- insufficient work during the period the employee proposes to work
- planned structural changes, or
- any other such grounds as the Secretary of State may specify by regulations.

In considering these business reasons you should be careful not to inadvertently discriminate (directly or indirectly) against particular employees because of a protected characteristic*.

Appeals

There is no legal requirement to offer a right of appeal; however, offering a right of appeal could help avoid the employee raising the issue as a grievance and the ACAS Code recommends this as practice if a request to work flexibly is refused. If you do allow a right of appeal consider offering the right based on new information that was not available to you at the time you made your original decision or if the employee thinks the application was not handled reasonably in line with your policy.

It would be good practice for you to allow employees to be accompanied to an appeal meeting.

An appeal should be dealt with as quickly as possible. Remember, you must consider the whole request, including any appeal, within two months of having first received the original request for flexible working, unless an extension is agreed with the employee.

Policy

Depending on the size of your organisation, you may wish to consider introducing a policy for handling requests to work flexibly. A policy can help you to ensure consistency in handling requests (particularly if multiple requests are received) and can also make it easier to communicate information on the right to request in a transparent manner to all your employees. Please contact us if you would like to discuss developing a Flexible Working Policy, or you wish to review or update your existing arrangements.

* As stated in the Equality Act 2010 - age, disability, gender reassignment, pregnancy/ maternity (including breastfeeding mothers), marriage/civil partnership status, race, religion or belief, sex or sexual orientation

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Our mission

To provide high quality, practical and affordable human resources services on a greater than profit basis tailored to social sector organisations

Our vision

Improving social sector outcomes through better people management.

Our social purpose

To improve the management of people within social sector workforces through the provision of high quality and accessible HR services and development opportunities for their leaders and managers.

Our values

We pride ourselves on building **trusted** partnerships. We put our clients' interests at the heart of what we do and use our extensive HR and social sector experience to provide **expert**, pragmatic and value-adding advice and support.

We operate with **integrity**, **transparency** and **fairness** for all, and are trusted by our clients and social sector partners.

We create an environment of **mutual respect**, and we pull together to support each other when needed.

We act as an **ethical** employer with a social conscience, modelling compassionate and inclusive leadership, and the best in people management.