



Flexible working

Summary

As of Monday 30 June 2014 the right to request flexible working was extended to all employees with at least 26 weeks' continuous service. Previously this only applied to parents and carers.

This only applies to the right to request flexible working, not to receive it. The eight permissible reasons for rejecting a claim have remained the same.

In addition to this significant change the Government abolished the statutory procedure for handling flexible working requests, on the basis that it was too rigid and bureaucratic. This gives greater discretion to employers in how they handle requests. They are now simply required to be able to demonstrate that they have "handled requests in a reasonable manner" rather than having strict guidelines to work within.

What's changed?

Under provisions set out in the Employment Rights Act 1996 and regulations made under it, all employees have a statutory right to ask their employer for flexible working after 26 weeks' employment. This means a change to their contractual terms and conditions of work. This request could include changes to the employee's working hours, time and/or location. Previously this only applied to the parents of children under 17, or, in the case of a disabled child, under 18, as well as those caring for an adult.

Those who have been employed for fewer than 26 weeks (for example agency workers) do not have this statutory right but employers may wish to consider their requests, depending on the circumstances, as a way of bringing benefits to all parties.

An employee is only entitled to make one request for flexible working in any 12month period.

Handling requests

The changes that have come into force remove the statutory procedures for how these requests should be handled. Previously, employers had strict rules as to responding to the various stages and timeframes. This has been abolished to simplify things. Now, employers must simply reach a decision within three months and be able to

demonstrate, if questioned, that they have acted in a "reasonable manner". The underlying principle is that employers should create a culture where employees can be sure that decisions regarding their requests will be handled objectively and fairly and they will not be treated badly because they requested flexible working.

Acas recommends that employers consider putting in place a written policy, setting out how they will handle requests for flexible working. The recommend that this is developed in conjunction with employees (and their representatives, such as trade unions where applicable), as well as legal advisors. A policy should clearly explain:

- How employees should make the application – to whom and what it needs to include – the legislation is clear that the application must include the date of the application, the change to the working conditions requested, the date this should take effect, the effect they think this would have on the employer and their views on how this could be dealt with, as well as confirmation that this is a statutory request with details of any previous requests made.
- A clear statement that the employer will consider every valid request and only reject it for one of the eight reasons set out.
- Details of those that can accompany employees to meetings regarding this request.

- Details of any appeals process.
- Time limits on dealing with requests.

If you decide not to have a formal policy you should still ensure your employees are made aware of all of this information, so you can demonstrate it, if called upon.

In terms of handling the request Acas sets out a number of recommendations that would be considered "reasonable":

- Upon receipt of a request an employer should:
 - Arrange a meeting with the employee as soon as possible after receiving their written request.
 - Ensure that all dealings are well communicated to the employee and handled in a timely manner. The whole process (including any appeal) must be completed within three months of first receiving the request, by law. This can be extended if the employee agrees.
 - Discuss the request with the employee to better understand the changes he or she is requesting and how they might be mutually beneficial.
 - Handle any discussions as a formal management conversation, in a location where it can take place without being overheard, offering the employee the option to be accompanied by a work colleague.
 - Consider the request carefully: looking at the benefit of the requested changes in working conditions for the employee and the business and weighing these against any adverse business impact of implementing the changes.

At this point employers have three options:

1. To accept the request and confirm start dates/ any other details.
2. To confirm a compromise agreement as a result of discussion.

3. To reject the request, setting out clear reasons, how these apply and details of an appeal process.

Rejecting requests

The reasons for rejecting a request have not changed. These are:

- The burden of any additional costs is unacceptable to the organisation
- An inability to reorganise work amongst existing staff
- An inability to recruit additional staff
- The employer considers the change will have a detrimental impact on quality
- The employer considers the change will have a detrimental effect on the business' ability to meet customer demand
- Detrimental impact on performance
- There is insufficient work for the periods the employee proposes to work
- A planned structural change to the business, for example, where the employer intends to reorganise or change the business an considers the flexible working changes may not fit with these plans

Considering multiple requests

It is not unlikely that employers will, on occasion, receive more than one request at the same time. Requests should be considered in the order in which they were received and on their own merit. An employer is not required by law to make value judgments about the most deserving case but merely to consider the business case and the impact of refusing or accepting the request.

Appeals

Once an employer has reached a decision they need to tell the employee, in writing, as soon as possible. An employee is entitled to appeal the decision and complaints can be made to the employment tribunal about the employer's

handling of this request, if appropriate. However, it should be noted that unless the employer's treatment of the employee constitutes unlawful discrimination, the tribunal can only adjudicate on whether the employer followed the procedure "reasonably", took the claim on the correct facts and seriously and whether its reasons for rejecting the application were "acceptable".

Special circumstances

It is worth noting (and communicating to employees) that, should they need change for a short period due to bereavement or study this can be done either formally, through the statutory process, or informally, to change back after a short period of time. If this is done through the statutory process employees must be made aware that, should this be approved under the right to request, they do not have a statutory right to request another variation in contract terms for a period of 12 months.

Further guidance

Acas has produced three useful guides on this subject available from www.acas.org.uk/index.aspx?articleid=1616

1. A Code of Practice on handling requests to work flexibly in a reasonable manner
2. The right to request flexible working: an Acas guide
3. Homeworking – a guide for employers

For help with setting in place clear guidelines and policies relating to flexible working contact Joanne Turner on 0117 9292811. For help with handling disputes on this subject contact Alex Lyttle on 0117 9292811 or James Taylor on 01454 204880.