

Employment Law Fact Sheet No. 15

FLEXIBLE WORKING



If an employee makes a flexible working request they will be asking their employer to consider a change to their existing working arrangements. Flexible working covers hours of work, times of work, place of work (e.g. homeworking) and different patterns of work such as shift patterns, job- sharing, part-time or flexi-time.

Any employee with 26 weeks' continuous service at the date the request is made may make a request for flexible working. An employee can make a request for any reason. However, only one request may be made within each 12 month period. The time is counted from the date on which the employee makes their request.

The new scheme only applies to employees. The right to make a request for flexible working does not apply to self-employed contractors, consultants or agency workers.

You have a statutory duty to consider the request in a reasonable manner. Guidance as to what this entails is set out in a handbook published by ACAS ([link below](#)). In Summary:

- The legislation requires that an employee should make their request in writing, and the request must be dated. However, if a request does not provide sufficient information the employer should still act reasonably and provide guidance. The application should contain details of the change to the working conditions they are seeking and when they would like this to come into effect. Strictly speaking it should also cover the effect they think the requested change may have on the employer and how in their opinion that could be dealt with. However if it does not it is still advisable to consider the request – such matters can be discussed during the process. An employee's application must also state whether they have previously made a request to the employer and, if so, when.
- On receipt of the request an employer should arrange a meeting to discuss it with the employee as soon as possible (for example, within 14 days). It is important not to delay since the entire process (including any appeal) must be completed within 3 months.
- It is also good practice to let the employee know if there is likely to be a delay in the employer being able to discuss the request with them. Guidance suggests that even where an employer is happy to accept the request it may be helpful to meet with the employee to discuss the proposal and ensure that it best meets the needs of both parties.

- Before reaching a decision the employer should consider the request in a fair and balanced manner. This will involve carefully looking at the benefits for the employee and the business and weighing these against any adverse business impact.
- Once a decision has been reached the employer must let the employee know of their decision to either (1) accept the request and establish a start date; (2) confirm any compromise agreed such as a temporary change on a trial basis; or (3) reject the request setting out clear business reasons and the process for appeal. The decision must be in writing and must be sent to the employee as soon as possible.
- If an employer refuses the request they must have clear business grounds for doing so as set by statute (see ACAS link below for further details). For example: it would cause an unacceptable burden of additional cost; an inability to reorganise work amongst existing staff; the change would have a detrimental impact on quality / ability to meet customer demand/ performance; insufficient work during the times the employee wishes to work.
- If a request is refused guidance suggests that employees should be able to appeal against the decision and this is seen as part of the request being handled by an employer in a reasonable manner. An appeal meeting should be held with the employee and the outcome decision should be given to the employee in writing. Where the appeal is rejected the employer should also explain the statutory ground they are relying on to justify the refusal.

Flexible working update

As of 6 April 2024 employees can make a statutory request to make permanent changes to their contract from their first day of employment. This means that from day one, they can ask an employer for changes to how long, when and where they work.

Employees are also able to make two flexible working requests every 12 months, a change from the current single request. The time limit for employers to deal with flexible working requests has reduced from three to two months, although this can be extended if the employee agrees.

Employers must consult with an employee before refusing a request, and the new legislation removes the need for employees to explain or justify the impact of the proposed change to their working arrangements. ACAS have published guidance which sets out the above process in more detail and employers should consider this and/or take advice in relation to any such requests:

<http://www.acas.org.uk/flexibleworking>

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