

Legislation update – Flexible Working

Significant changes to flexible working laws came into effect on 6 April 2024. These changes to legislation, through the **Employment Relations (Flexible Working) Act 2023**, reflect the increasing recognition of the importance of a work-life balance.

Flexible working is a broad term which refers to a way of working that differs from the conventional 9 to 5 working routine in a workplace environment. Flexible working aims to meet the needs of both employers and employees as to when, where and how someone works. Flexible working includes part-time working, home working, hybrid working, flexitime, job sharing, compressed hours, annualised hours, term time working and team-based rostering.

The aftermath of the pandemic led to a rise of ‘working from home’ and hybrid working. Employees and employers saw the benefit of having additional flexibility that was not considered an achievable option prior to March 2020.

The new legislation is not necessarily viewed as being more supportive of flexible working environment. However it allows employees the opportunity to obtain a better work-life balance, whilst still allowing the employer the right to refuse a request on specified grounds.

What are the flexible working changes in 2024?

1. ‘Day One’ right

Previously, employees could only make a formal request if they had been in employment for a continuous 26-week period. The new laws broaden the scope, allowing employees to request flexible working from ‘day one’ of their employment.

2. Number of applications

Employees can now make two flexible working requests every 12 months, a change from one requests every 12 months.

3. Justification

The new legislation removes the need for employees to justify or explain the impact of the proposed changes to their working agreement.

4. Time limit

Employers time limit to deal with the request will reduce from 3 to 2 months. This can be extended with the employee’s agreement.

5. Consultation

Employers will now be required to consult with the employee before refusing a request. During this consultation, the employer will need to provide the employee with the business reason for why their request is being refused, as well as provide concrete evidence to support their reason for refusal.

There have been no changes to the process of the request or the permitted business reasons for refusing an application.

Permitted Business Reasons for Refusal

Employers can only refuse an employee if one or more of the below permitted reasons apply:

- Burden of additional costs
- Detrimental effect on the business' ability to meet customer demand.
- Detrimental impact on quality and performance
- Unable to reorganise work amongst existing staff.
- Unable to recruit more staff.
- Insufficient work during periods the employee wishes to work.
- Planned structural changes.

There is no obligation for an employer to agree to a trial period, however trial periods are being viewed as appropriate for both parties to better determine the proposed flexibility is workable.

What does 'consultation' mean?

Where employers are inclined to reject a request, they are now required to 'consult' with the employee before doing so. Acas have published a Code of Practice which provides clear guidance on the employer's duties to consult. The Code states the consultation meetings should be used to ensure all relevant information is obtained and understood before a decision is made. An emphasis is made on the consultation being held in a manner which allows for reasonable discussion and consideration and exploring alternatives or variations of the original request. A discussion on a possible trial period should also be considered.

A written record of the meeting should always be kept, which should provide an accurate reflection of the discussions held.

Following the consultation, the employer must inform the employee of their decision. This should be confirmed in writing.

An employer should ensure the above all takes place within the statutory 2 month period.

What steps should an employer take?

Employers are encouraged to carefully review and consider Acas: Code of Practice on request for flexible working.

If not already done so, employers should be reviewing their current flexible working policies to ensure they are up-to-date and in line with the flexible working changes. This would include updating any employee handbook and policies to ensure your employees are fully aware of their legal rights and the updated procedure.

For those who manage flexible working requests, updated training could be provided to ensure they are aware of the changes specifically the need to consult the employee on the reasons for refusal, and reminded of the reasons why an employer can refuse a request.

How can we help?

We are able to provide advice to both employees and employers on their respective rights and responsibilities. In the event that the procedure was not followed, we are able to provide advise on the potential remedies and responses. **If you have any questions around redundancy, please contact our employment solicitors for an initial free, no obligation conversation on [0208 514 9000](tel:02085149000) or email us at employment@edslaw.co.uk.**

The information contained in this article is provided for guidance. It is provided for your information only and should not be used as a substitute for obtaining legal advice that it specific to your particular circumstances. It is strongly recommended that you seek advice before taking action.