MATT GINGELL
020 3797 1264 | mattgingell@mattgingell.com



Flexible working: HR guide

Description

Introduction

Employees are not automatically entitled to **flexible working** unless the flexible arrangement forms part of their contract.

Employees may make a request for **flexible working** under the statutory procedure, but employers can turn down requests for permitted business reasons.

Eligibility to make a request for flexible working under the statutory procedure

Employees can make a flexible working request from day one of their employment.

Employees can make two requests in any twelve month period.

What type of change can be requested?

The change may relate to:

- the hours worked.
- the times when required to work.
- the place of work.

This could include a variety of flexible arrangements such as job-sharing, home-working, reduced hours, annualised hours and term-working (with longer holiday periods).

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Making a request for flexible working

In order to make a request for **flexible working** under the statutory procedure the employee must:

- make their request in writing.
- date the application.
- state that the application is being made under the statutory procedure.
- state the change to the working conditions they are seeking and when they wish the change to take effect.
- state whether they have made a previous application under the procedure and the date of any previous application.



How must employers handle requests?

Employers are not be permitted to refuse a request unless the employee has been consulted.

Employers must deal with requests in a reasonable manner. There is no specific statutory definition of what constitutes a reasonable manner â?? but Acas suggests in its Code of Practice and Guide how employers should handle requests. Acas recommends that employers should discuss the request for **flexible working** with the employee as soon as possible (preferably in a private place) and allow the employee to be accompanied by a work colleague for any discussion (and any appeal). Employers should consider the request carefully by looking at the benefits of the requested changes in working conditions for the employee and weighing these against any adverse business impact of implementing

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the changes. Employers should also inform the employee of the decision as soon as possible in writing and if the request is rejected allow an appeal.

The process must be completed within two months (including any appeal decision). The parties may agree a longer period.

An employer can only refuse a request for **flexible working** for one or more of these business grounds:

- the burden of additional costs.
- an inability to reorganise work among existing staff.
- an inability to recruit additional staff.
- a detrimental impact on quality.
- a detrimental impact on performance.
- a detrimental effect on ability to meet customer demand.
- insufficient work for the periods the employee proposes to work.
- a planned structural change to the business.

Under the new employment legislation any refusal will need to be reasonable. The employer will need to explain in writing what the ground is (or grounds are) for any refusal and why the employer considers the refusal reasonable.



Remedies under the statutory procedure

An employee who has made an application for **flexible working** under the statutory procedure may, subject to complying with time-limits and the Acas early conciliation procedures, bring a claim in the employment tribunal on the basis that:

- The employer failed to deal with their application in a reasonable manner.
- The employer failed to notify the person of the decision within the decision period.
- The employer rejected the application for a reason other than one of the statutory grounds (see above).
- The employerâ??s decision to reject the application was based on incorrect facts.

- The employer treated the application as withdrawn but was not permitted to do so. (The two permitted circumstances are a) when the employee, without good reason, has failed to attend a meeting arranged by the employer to discuss the employeeâ??s request and the second meeting arranged for that purpose; and b) when the employer has allowed the employee to appeal against

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the rejection of their request, or to make a further appeal, and the employee, without good reason, fails to attend a meeting arranged by the employer to discuss the employeeâ??s appeal and the second meeting arranged for that purpose).

Where an tribunal upholds a claim, it must make a declaration to that effect and may make either or both of the following:

- An order for reconsideration of the request.
- A compensation award up to a maximum amount of eight weeksâ?? pay.



Informal requests for flexible working and other potential claims

There is nothing to preclude employees from making informal **flexible working** requests.

Employees who make requests, whether under the statutory scheme or on an informal basis, could have other potential claims such as for discrimination.

Where, for example, an employer has a policy not to allow employees to work part-time hours, this could be indirectly discriminatory on the basis that the policy of not allowing staff to work part-time disadvantages women as more women than men have child caring responsibilities.

Offering flexible working makes good business sense

Irrespective of the law, employers should encourage **flexible working** wherever possible. Advertising jobs to suit peopleâ??s needs and instilling a culture of flexibility allows employers to attract and retain top employees that otherwise they could miss out on or lose to a more flexible competitor.

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This guide is intended for guidance only and should not be relied upon for specific advice.

If you need any advice on **flexible working** requests or have other employment law queries please do not hesitate to contact me on 020 3797 1264.

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