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Flexible Working and Employee Rights

1. What rights do employees have to request flexible working arrangements?

Employees have the statutory right to make a flexible working request (usually a change to their current pattern of working arrangements) after 26 weeks' employment. Employees meeting the requisite length of service can make a request of this type once every 12 months. Previously, the right only applied to parents of children under the age of 17 (or 18 if the child is disabled) and certain carers but that restriction has been removed.

2. What kind of flexible working arrangements can an employee ask for?

Flexible working is used to describe any working pattern other than the employee's normal working pattern. It can involve changes to such matters as the hours or times an employee is required to work, or where they work. It can include flexitime arrangements or working the same hours over fewer days, starting and finishing work at different times and even job-share arrangements.

Following the COVID pandemic and the move to return employees to the office, perhaps the most common requests employers will receive are those from employees wishing to continue with hybrid or full time work from home arrangements.

3. What should an employer do if a request for flexible working is received from an employee?

First of all, the employee's request has to be in writing and it has to include certain information, such as details of the change being asked for, when the change would start and what effect the employee thinks the change would have on the business and how the business could handle it. The request should also clearly state that it is a statutory flexible working request.

If a proper form of request is received, an employer must consider the request in a 'reasonable manner'. To make sure that this is done, the employer should arrange to meet with the employee to discuss the request as soon as possible and balance the benefits of the proposed changes against any adverse impact on the business. In letting the employee know what the decision is, which should be done as soon as possible, and in any case no later than 3 months following receipt of the initial request, the employer should also allow the employee a right of appeal against that decision if the request is not granted, in full or at all.

4. If a request is refused, should the employee be told why?

Yes, as if the request is refused, it can only be on the basis that there is a clear business reason, and the law states that it must be for one of a list of specific reasons. These reasons

include that extra costs would be incurred which would damage the business, the work cannot be reorganised among other staff or that the business would not be able to meet customer demand. An employer needs to indicate what specific reason they are relying on.

5. Are employee flexibility requests made on an “all or nothing” basis? What if the employer is prepared to agree to some but not all changes, or is willing to agree on a trial basis?

An employer can negotiate to agree changes to what the employee is requesting. This way, if an employer is unsure about how the change might affect the business, they can agree the change on a temporary basis and agree to review the arrangements on a specified date and then make changes if necessary.

It will be important to remember that flexible working arrangements can be beneficial to a business. Not only can they help to retain valuable employees who want to continue to work for the employer where their skills and experience may not be easily replaced – and may be grateful that their employer has helped them by agreeing to the changes – but it may also help a business if employees are working off site and outside normal business hours.

On 20th July 2023 the Employment Relations Flexible Working Act gained Royal Assent and introduced some changes to the flexible working request procedure. There has been no firm date set for when the amendments to the regime will come into effect but there is indication that this not be before Summer 2024. Employers should therefore familiarise themselves with the changes to come and be ready to implement these when necessary.

The key changes the legislation introduces are set out in our article here-
<https://deanwilson.co.uk/amendments-to-the-right-to-request-flexible-working-arrangements-on-the-way/>



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