

Right to Request Flexible Working Extended

Extended Right

On 18 March 2009, the Government published Regulations extending the statutory right to request flexible working. Under these Regulations, with effect from **6 April 2009**, carers of children **under the age of 17** will be eligible to request flexible working and ask to change their working hours, their time of work and/or their place of work. Currently, only carers of children under the age of six, of disabled children under the age of 18, and of dependant adults are entitled to make such a request.

A Quick Reminder of the Rules

In order to qualify to make a request, in addition to having a child of the qualifying age, an employee must have been continuously employed for a period of not less than 26 weeks. The individual must also have responsibility for the child's upbringing and be the child's mother, father, adopter, guardian, special guardian, foster parent/carer (or the spouse or civil partner of such a person). Following receipt of a qualifying request:

- Within 28 days, the employer must convene a meeting to discuss the request
- Within 14 days of the meeting, the employer must write to the employee with its decision and, if appropriate, set out the appeal procedure
- The employee then has 14 days to appeal. If the employee appeals, an appeal meeting must be convened within 14 days of the appeal notice

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Grounds for Refusal

While an employer is under no obligation to accede to a flexible working request, if it is to reject a request in accordance with the procedure, it must have a sound business reason to do so which falls within one of the following prescribed categories:

- the burden of additional costs
- detrimental effect on the ability to meet customer demand
- inability to re-organise work amongst existing staff
- inability to recruit additional staff
- detrimental impact on quality
- detrimental impact on performance
- insufficiency of work during the period the employee proposes to work
- planned structural changes

If an employer fails to consider a flexible working request in line with the statutory requirements, the employee can be awarded up to eight weeks' pay following a successful application to the employment tribunal. In addition, the tribunal may order the employer to reconsider the request.

Handle with care

Although the eight reasons for refusal appear to give employers ample opportunity to deny a request, it is essential to proceed with caution as unjustifiable refusals can also expose employers to claims for indirect sex discrimination. Consequently, it is important to ensure that due and careful consideration is given to any request before it is refused. In some circumstances, it may be wise for

an employer to consider agreeing to a short trial of the proposed flexible working arrangement to establish whether the proposal is workable. In addition, employers should bear in mind that their response to a flexible working request need not be limited to yes or no – it may be possible to strike an acceptable compromise with the employee.

Practice group contacts

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