



Brachers Bitesize

Flexible Working

Tuesday 14 April 2024

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Contents

- 01** Changes since 6 April 2024
- 02** How to handle a request for flexible working
- 03** Practical tips and ideas to manage flexible working arrangements
- 04** Potential risks if employers get it wrong



Flexible Working

What is flexible working?

- The Chartered Institute of Personnel and Development (CIPD) undertook research last year which showed that:
 - 40% of employers have seen an increase in request for flexible working following the pandemic;
 - 39% say they will be more likely to grant requests for flexible working, besides working from home, compared with before the pandemic;
 - 66% of organisations believe it is important to provide flexible working as an option when advertising jobs; and
 - 60% of employees surveyed said they had flexible working arrangements in their role.

What is flexible working?

- Any working arrangement that meets the needs of both the employee and employer regarding when, where and how an employee works.
- Examples:
 - Homeworking;
 - Hybrid working;
 - Flexitime;
 - Staggered hours;
 - Compressed Hours; and
 - Job Sharing.

Benefits of flexible working

- For employees it could be:
 - Helping balance working lives alongside personal responsibilities, needs and preferences;
 - Promoting positive health and wellbeing; and
 - Opening up more job opportunities.
- For employers it can help:
 - Attract and keep staff;
 - Make employees more productive, keeping them happy and motivated;
 - Recruit employees for jobs that are harder to fill; and
 - Improve diversity and inclusivity.



Changes since 6 April 2024

What has changed since 6 April 2024?

- Employment Relations (Flexible Working) Act 2023 - amends relevant sections of the Employment Rights Act 1996.
- The Flexible Working (Amendment) Regulations 2023 - amends the Flexible Working Regulations 2014 by deleting Regulation 3 (restricting when a request could be made).
- Amended ACAS Code of Practice

What has changed since 6 April 2024?

- Day one right (rather than having to be employed for 26 weeks).
- Employees entitled to make two requests (instead of one) in any 12-month period.
- Employers must decide in two months (reduced from three months), subject to agreeing a longer decision period.
- Employers cannot refuse a request unless the employee has been consulted.
- Employees no longer have to explain what effect their requested change may have on the employer and how any such effect might be dealt with.

What has changed since 6 April 2024?

- We now have:
 - Employment Rights Act 1996 - Part 8A
 - The Flexible Working Regulations 2014
 - ACAS Code of Practice on requests for flexible working



Request for Flexible Working

Statutory Request for Flexible Working

- A qualifying employee may apply to his employer for a change in his terms and conditions of employment if the change relates to—
 - the hours they are required to work,
 - the times when they are required to work,
 - where, as between his home and a place of business of his employer, he is required to work, or
 - such other aspect of his terms and conditions of employment as the Secretary of State may specify by regulations (none so far)

Statutory Request for Flexible Working

- A statutory request by an employee for flexible working must be **in writing** and must state as such, i.e., that it is a statutory request. It must include:
 - The date of the request;
 - The change the employee is requesting;
 - The date the employee would like the change to come into effect; and
 - Whether the employee has made a previous request for flexible working to the employer.
- Employers should make it clear to their employees that this information must be contained in a statutory request for flexible working (ACAS Code)

Statutory Request for Flexible Working

- Once a statutory flexible working request has been received, the employer must:
 - Handle it in a reasonable way;
 - Accept the request unless there is a genuine business reason not to;
 - Unless the request has been accepted in full, consult the employee and discuss any alternative options;
 - Make a decision within a maximum of 2 months (including any appeal) from when the request was made; and
 - Not dismiss or cause the employee detriment because of their request.

Statutory Request for Flexible Working

- An extension to the statutory two-month period can be agreed between the parties and if agreed, the employer must confirm this in writing to the employee.
- An agreement to extend the decision period in a particular case may be made—
 - before it ends, or
 - with retrospective effect, before the end of a period of three months beginning with the day after that on which the decision period that is being extended came to an end.

Statutory Request for Flexible Working

- An employee may have only one 'live' request for flexible working at any one time.
- Once a request has been made, it remains 'live' until:
 - A decision about the request has been made;
 - The request is withdrawn;
 - An outcome is mutually agreed; or
 - The statutory two-month period for deciding requests (including any appeal) ends.

Handling a request reasonably

- Law provides no further guidance on “reasonable manner”
- ACAS Code:

Considering a request for flexible working

8. Employers must handle every request in a reasonable manner. This should include carefully assessing the effect of the requested change for both the employer and the employee, such as the potential benefits or other impacts of accepting or rejecting it.

9. Employers must agree to a flexible working request unless there is a genuine business reason not to.

Handling a request reasonably

- The Employment Rights Act 1996 and the ACAS Code state a request must only be refused if one or more of the following business reasons apply:
 1. The burden of additional costs;
 2. An inability to reorganise work amongst existing staff;
 3. An inability to recruit additional staff;
 4. A detrimental impact on quality;
 5. A detrimental impact on performance;
 6. A detrimental effect on ability to meet customer demand;
 7. Insufficient work available for the periods the employee proposes to work; or
 8. Planned structural changes to the employer's business.

Obligation to consult

- Unless an employer decides to agree to the written request in full, they must consult with the employee before making a decision – ACAS Code 12.
- Ensure all relevant information is obtained so a fully informed, evidence-based decision can be made. (AC13)
- The meeting should be held without unreasonable delay and on a date that gives both parties reasonable time to prepare. (AC 14)
- An employee may request to be accompanied at a consultation meeting.

Statutory Request for Flexible Working

- Once a decision has been made, the employer must inform the employee in writing without unreasonable delay. (AC20)
- The written decision should confirm the details of the agreed arrangement and offer the employee an opportunity for any further discussion to refine the details. (AC21, 22))
- If the employee's request is being rejected, the written decision should clearly explain the business reason(s), and any other information which may help explain the decision. *Remember that the business reason must be one set out in the Employment Rights Act 1996.* (AC24, 25)

Statutory Request for Flexible Working

- No statutory right for an employee to appeal a decision. However, allowing an appeal is good practice.
- If an appeal is permitted, the written decision should make that clear and explain how the employee can appeal, setting out the timeframe for doing so. *Remember the two-month period.*
- An appeal meeting should be arranged and dealt with impartially where possible.
- Once a decision has been made, this should be confirmed in writing as soon as possible, and the decision should make clear what has been decided and why.

Informal Request for Flexible Working

- Employers and employees can agree flexible working arrangements informally without using the statutory procedure.
- Workers, to whom the statutory right to request flexible working does not apply, can also request arrangements informally.



Tips and Ideas

Tips and Ideas to Manage Flexible Working Arrangements

- Employment Rights Act 1996 and ACAS Code of Practice
([Acas Code of Practice on requests for flexible working | Acas](#) and additional guidance [What flexible working is - Statutory flexible working requests - Acas](#))
- Flexible Working Policy ([Having a policy - Statutory flexible working requests – Acas](#)).
- Template letters including:
 - A letter for employees to make a flexible working request ([Flexible working request letter template | Acas](#)).
 - A letter to acknowledge an employee's request and tell them the next steps ([Flexible working request acknowledgement letter template | Acas](#)).
 - A letter for an employer to confirm their decision to an employee and right to appeal (if applicable) ([Flexible working request outcome letter template | Acas](#)).

Tips and Ideas to Manage Flexible Working Arrangements

- Training for management.
- Keep accurate records of consultations and further discussions.
- Build flexibility into job roles when designing jobs (where possible).
- Advertise during recruitment that you are open to discussing flexible working options.

Claim form

You must complete all questions marked with an ******

Official Use Only			
Tribunal office			
Case number		Date received	

1 Your details

1.1 Title Mr Mrs Miss Ms

1.2* First name (or names)

1.3* Surname or family name

Are you? Male Female

Potential Risks

Risks if employers get it wrong

- If an employer refuses a statutory request, an employee can bring a claim if the employer:
 - didn't make a final decision within 2 months - unless a later deadline was agreed;
 - didn't deal with the request reasonably;
 - didn't provide a valid reason for refusing the request; or
 - discriminated the employee by refusing the request.
- If an employer refused an informal request, an employee can only bring a claim for discrimination.

Risks if employers get it wrong

- Employees who make, or plan to make, a statutory flexible working request are protected from unfair dismissal and detriment.
- If someone is dismissed for making a flexible working request, it will be treated as an automatic unfair dismissal (a day one right).
- Detriment means someone experiences being treated worse than before and/or having their situation made worse. Examples include:
 - Bullying;
 - Harassment; or
 - Overlooking promotions or development opportunities.

Risks if employers get it wrong

- When handling a request, employers must not discriminate unlawfully against the employee in relation to any of the protected characteristics set out in the Equality Act 2010:
 - age
 - disability
 - gender reassignment
 - marriage and civil partnership
 - pregnancy and maternity
 - race
 - religion or belief
 - sex
 - sexual orientation

Risks rejecting a statutory request

- The legal obligation to make reasonable adjustments is separate to the legal obligation to consider a request for flexible working.
- A failure to follow the ACAS Code of Practice does not make a person or organisation liable to legal proceedings. However, employment tribunals will take the Code into account when considering relevant cases.

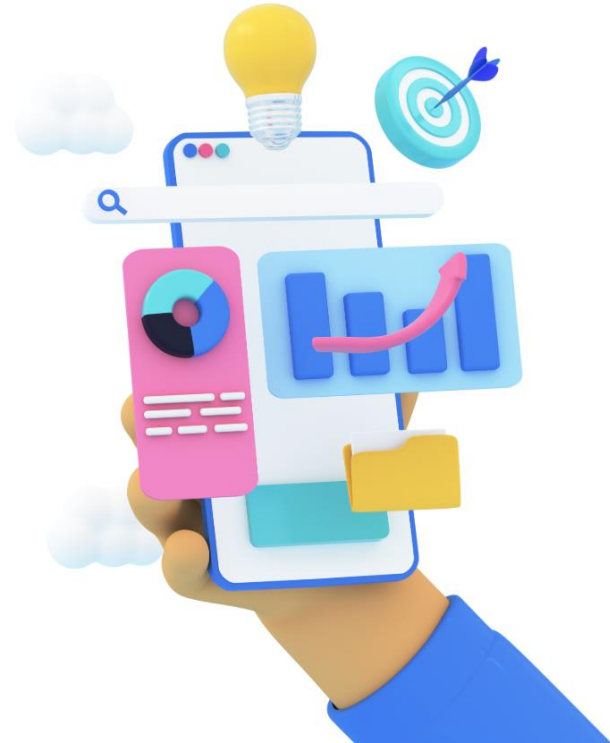


Questions

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