

Extension of the Right to Request Flexible Working

Employment Law Changes



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Under section 80F of the Employment Rights Act 1996 Employees have the right to request flexible working if they have been employed for 26 weeks and have childcare responsibilities or responsibilities to care for an adult relative and there is a specified procedure which an employer must follow when such a request is made.

The amount of the penalty is 50% of the amount awarded to the employee subject to a minimum of £100 and a maximum of £5,000.

From 30th June 2014 all employees who have been continuously employed for 26 weeks or more will have a right to ask their employer for a change to their contractual terms and conditions of employment to work flexibly.

The requirement to follow the regulations when considering an application for flexible working will be replaced by a requirement to "deal with the application in a reasonable manner."

From 30th June if an employer receives a request from an employee for flexible working, the request should set out the change that the employee is seeking, when they would like it to take effect, the effect that the employee thinks the change will have on the business and how that effect can be dealt with.

The employer must then consider the request and arrange to

Services for individuals:

- Residential Property
- Wills & Probate
- Contentious Probate
- Tax & Estate Planning
- Family, Matrimonial
- Mediation
- Employment
- Accident & Personal Injury Claims
- Litigation & Dispute Resolution
- Agricultural Law
- Town & Country Planning Law
- Elderly Client Services

Services for businesses:

- Company & Commercial Services
- Commercial Property
- Civil Litigation
- Employment Law
- Debt Collection

Financial Services

meet the employee as soon as possible.

At the meeting, the employer should discuss the request in private but the employee should be allowed to be accompanied by a work colleague or a Union representative if they wish.

The employer must then consider the request. If the employer rejects the request it can only be on the basis of one or more of the following business reasons:-

1. The burden of any additional costs is unacceptable to the organisation
2. An inability to reorganise work among existing staff.
3. Inability to recruit additional staff
4. The employer considers the change will have a detrimental impact on quality
5. The employer considers the change would have a detrimental effect on the business's ability to meet customer demand
6. Detrimental impact on performance
7. There is insufficient work during the periods the employee proposes to work
8. Planned structural change, for example where the employer intends to reorganise or change the business and considers the flexible working changes may not fit with these plans

The employer should inform the employee of the decision in writing. If the request is accepted either as proposed or subject to some modifications then the implementation of the proposals should be discussed. If the request is rejected then the employee should be informed they have a right to appeal the decision.

There should be a fresh discussion of the application at the appeal stage.

The whole process should be dealt with within 3 months, or to a later date by mutual agreement.

An employee has the right to bring a claim to an Employment

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Tribunal if the employer does not deal with the application in a reasonable manner, or did not notify the employee of the decision within 3 months (or the date which they have agreed if the 3 months is extended), or that none of the 8 specified business reasons applies.

Although anyone can apply for flexible working, if a person with caring responsibilities for either a child or disabled adult applies then, in addition to the above claim, an employee could claim that they have been indirectly discriminated against contrary to the Equality Act. Such a claim would fail if a Tribunal accepts that the reason for refusal of the request was a proportionate means of achieving a legitimate aim.

More information

- The legislation can be seen at <http://www.legislation.gov.uk/ukpga/2014/6/part/9/enacted>
- ACAS have produced a draft code of practice which is at http://www.acas.org.uk/media/pdf/2/r/Consultation_draft_COP_FW.pdf
- There is a guide produced by ACAS at <http://www.acas.org.uk/media/pdf/p/6/Handling-requests-to-work-flexibly-in-a-reasonable-manner-an-Acas-guide.pdf>

Ware & Kay

good on paper, even better in person

Contact us

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