



A GUIDE TO THE RIGHT TO REQUEST FLEXIBLE WORKING

Certain employees have a statutory right to request a change in their working patterns, including a change in hours or location, in order to care for an adult who needs care or a child. Employers must give proper consideration to such requests.

An employee can make only one request a year. If the employer grants the request it will amount to a permanent variation in the employee's terms and conditions of employment and the employee will only be able to revert to the previous working pattern if the employer agrees.

Eligibility - Parents

To be eligible a person must:

- be an employee who has at least 26 weeks' continuous service;
- have a child under 17, or a disabled child under 18;
- be the mother, father, adopter, guardian, special guardian, foster parent or private foster carer of the child, or person in whose favour a residence order is in force (or be married to, the civil partner or partner of one of these categories of people);
- have or expect to have responsibility for the upbringing of the child; and

- be making the application in order to care for the child.

Eligibility - Carers

To be eligible a person must:

- be an employee who has at least 26 weeks' continuous service;

- care or expect to care for a spouse, partner, civil partner or relative or someone who lives with the employee; and

- be making the application in order to care for the adult

The Request

An employee must make a written and dated request stating:



- III that it is a statutory request for flexible working;
- III what working pattern is proposed;
- III the date it is hoped the change will become effective;
- III the effect the change will have on the employer and the ways it could be dealt with;
- III how the employee meets the relationship criteria; and
- III whether a previous application has been made and, if so, when.

Procedure

If the employer agrees to the change, then it must notify the employee of this within 28 days of the request, setting out the agreed variation and the date it will take effect. If the employer does not agree, then it must convene a meeting within 28 days of the request. The employee has the right to be accompanied at the meeting by a fellow employee.

Within 14 days of the meeting, the employer must write to the employee with its decision. If the employer agrees to the request, it should specify the variation agreed and the date it will take effect. If the employer refuses the request it must state the grounds for refusal and set out the appeal procedure.

If the employee wishes to appeal he/she must write to the employer with 14 days, setting out the grounds of appeal. An appeal hearing must take place within 14 days of the notice of appeal and a decision given within 14 days of the hearing, setting out the grounds for the decision. No appeal hearing is necessary where, within 14 days, the employer upholds the appeal and notifies the employee accordingly.

These time limits can be extended by agreement.

Reasons justifying refusal

An employer will only be able to refuse an application on one or more of the following grounds:

- III burden of additional costs;
- III detrimental effect on ability to meet customer demand;
- III inability to reorganise work amongst existing staff;
- III inability to recruit additional staff;
- III detrimental impact on quality or performance;
- III insufficiency of work during the periods the employee proposes to work; and
- III planned structural changes.

Remedies

If an employer fails to comply with the procedure or rejects the employee's application based on incorrect facts, then the employee can bring a claim in an Employment Tribunal within three months either of being notified of the appeal decision or of the alleged breach by the employer.

An Employment Tribunal can grant the following remedies:

- III a declaration;

- III an order for the employer to reconsider the application if (i) the correct procedure has not been followed, (ii) the employer has failed to explain why the specified business grounds apply, (iii) or it has relied on incorrect facts; and/or
- III an order for compensation which it considers to be just and equitable up to a maximum of eight weeks' pay, subject to a statutory maximum per week.

Employees have the right not to be subjected to any detriment for exercising or attempting to exercise the right and it will be automatically unfair to dismiss an employee on the basis that he/she has made a request.

Tribunals cannot question the commercial validity of an employer's refusal to grant a request for flexible working, provided the reason is one of those permitted (see above). However, employees may be able to back up their claims with a sex discrimination claim, for which there are potentially unlimited damages. It is therefore advisable for employers to ensure they have an appropriate policy in place for dealing with requests for flexible working.

This Guide is intended to be a general guide to the right to request flexible working arrangements and is not a substitute for taking advice on specific issues.

**If you have any specific questions about your own circumstances please contact a member of Martineau's Employment & Pensions Group for definitive advice on:
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