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# 3HR Legal Weekly

HR

## Flexible Working Explained—part 1

We explain your obligations as an employer with regards to your employees' right to request flexible working. In Part 2 we will review the research on how this right to request flexible working is affecting employees and organisations.

### Handling Flexible Working Requests

For someone to be eligible to make a flexible working request they must: be an employee, have at least 26 weeks' continuous service on the date they are making the application, and not have made a request for flexible working in the previous 12 months. Employees include part-time or fixed-term employees but not contractors, consultants or agency workers.

The flexibility being requested can take different forms. Examples include: the times of starting and finishing work, the place of work (perhaps working from home, or working at a different branch) and the hours of work.

An employee must make an application in writing and include various pieces of information, for example, they should explain the effects that they believe the requested change would have on the business, and how they think any such effects could be dealt with.

If you agree with the proposal you may respond to the employee immediately. However, if you do not agree with it, you should arrange a meeting with the employee as soon as possible. Make the employee aware that they may be accompanied by a colleague of their choice. The aim of this meeting is to discuss your concerns about why you feel the proposed arrangement cannot be accommodated. Any possible alternative working arrangements should be considered and discussed.

You are then required to write to the employee as soon as possible after the meeting, giving a decision on the application. If the decision is to refuse the request, the reason for this must be given. At this time, you should also notify employees of their right to appeal the decision.

You have a duty to consider a request in a reasonable manner and can only refuse a request for flexible working if you can show that certain grounds apply. These include: the burden of additional costs and an inability to reorganise work amongst existing staff etc.

It is recommended (although not mandatory) to have a trial period in which the employee works according to their proposed new arrangements, in order to evaluate how effective they will be. The duration of any such trial should be clearly set out in writing and a conclusion about whether the arrangement should become a permanent contractual change should be reached before the trial period has expired.

If the request is agreed, the change will be a permanent one to the employee's contract, unless agreed otherwise. There is no automatic right for an employee to change back to their previous working arrangements if their circumstances change (for example, once their child reaches a particular age, or once they no longer have caring responsibilities). Similarly, there is no right for you, the employer, to require the employee to return to their previous working arrangements. Any unilateral imposition of a different working pattern by the employer would be a breach of the employee's contract; however, you and the employee can mutually agree another change at some future point in time.

Legally, this process must to be completed within three months of the request being received, and this includes any appeals.

If flexible working is something you feel could benefit your organisation and you require practical help to implement such working practices, please contact your usual 3HR consultant.



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