YESS is a charity advising and supporting employees to resolve workplace disputes.

Overview

Until 30 June 2014 only employees with caring responsibilities could make a formal request for flexible working. From 30 June the requirement to be a carer is removed. Below is a brief overview; take advice if in doubt. In summary:

- All employees who have been employed for 26 weeks can ask to work flexibly, without giving a reason;
- The employer must consider the request in a reasonable way – see the ACAS Code of Practice and the ACAS Guidance;
- The employer can only refuse on prescribed grounds;
- The employer must be told of the decision within 3 months;
- Only one request can be made in any 12 months;
- The change will be permanent unless otherwise agreed;
- Failure, by the employer, to consider the request and act reasonably may give rise to a claim for compensation;
- An employee must not be disadvantaged or dismissed for making a request;
- An unreasonable refusal of a request may be discrimination;
- The tribunal can order you to reconsider the request and award compensation.

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Company limited by guarantee no: 8838317. Charity no: 1155344
What is Flexible working?

- A change to the hours worked, e.g. reducing the number of hours,
- A change to the working hours, e.g. a later start or earlier finish,
- Working from a different location, e.g. from home.

This would cover compressed hours, flexi-time, homeworking, job-sharing, shift working, term-time hours and most other working patterns.

What is the new procedure?

- **An employee must** make a written, dated application setting out:
  - Proposed change to working conditions and date of change,
  - Effect of change on the employer and how to deal with that,
  - A statement that this is a statutory request and setting out any previous applications, with dates,
  - If the change is because of a disability or to care for a child or dependant, the employer should encourage the employee to say this, so it can be taken into account; unreasonable refusal of flexible working may be sex or disability discrimination.

- **You** must consider the request and should consider:
  - The benefits of the requested changes for the employee and the business, weighing the benefits against any adverse business impact;
  - Avoiding discrimination.

Your obligations:

- You should discuss the request with the employee as soon as possible, allowing them to be accompanied to a meeting – unless the request is agreed when a meeting may not be necessary.
- You must give a decision as soon as possible, at least within 3 months of the request, and the decision should be in writing.
- You can refuse the request on one of the following grounds:
  - The burden of additional costs
  - An inability to reorganise work amongst existing staff
  - An inability to recruit additional staff
  - A detrimental impact on quality
  - A detrimental impact on performance
  - Detrimental effect on ability to meet customer demand
  - Insufficient work for the periods the employee proposes to work
  - A planned structural change to your business.
Note

- Your main obligation is to act reasonably;
- There is no obligation on you to hold a meeting but it may be unreasonable not to do so;
- There is no right to be accompanied, but ACAS advise that you allow this;
- There is no right of appeal against the refusal of a request, but it would be good practice to allow an appeal;
- An employee can withdraw an application any time after it was made;
- If the employee fails to attend 2 meetings you can assume the application has been withdrawn, but it is advisable to check this with the employee first;
- Refusal of flexible working may be indirect sex discrimination;

Tips

- Approach each request individually and with an open mind;
- Flexible working may seem an unnecessary burden for your business but most companies now grant flexible working to many of their employees. You must consider it for all employees, not just parents;
- Consider all the options: part-time working (3/4 days pw), job-sharing, compressed hours (35 hours in 4 long days), a variation in hours (eg: leaving at 5pm but then catching up in the evening), partial working from home (to save the commute), term-time working;
- Although your employees do not have a ‘right’ to work flexibly; you must consider the request properly; there is a risk of discrimination if you refuse a request without good grounds;
- If you cannot accommodate their request – can you suggest a different flexibility to their working hours that would work for the business?
- A conciliatory and helpful approach is best because it preserves trust and a good relationship with the employee and the workforce;
- Consider how the change would work and how flexible you can be, e.g.
  - Your employee may prefer not to work Friday but too many others are off that day – could you suggest a different day?
  - Would partly working from home be viable?
  - If they want to do a reduced week, ask if they are available if there is an urgent matter/ on their days/times off.
Consider a trial period if you have doubts about the viability of the request.

You should not expect an employee to be available on non-working days unless this is necessary;

Consider and discuss with the employee:

- How will the change impact on other employees; you may want to discuss it with them if the employee agrees;
- Who will cover the work?
- Will it be necessary to recruit someone else and how easy will that be?
- Will there be issues around continuity?
- There is a lot of research which shows that flexible working is good for morale so good for business.

**Discrimination**

- An unjustified refusal of a flexible working request may be **indirect sex discrimination**. This occurs when:
  - There is a provision, criteria or practice (PCP), such as full-time working, which applies or would apply to all employees;
  - The PCP puts women at a particular disadvantage compared to men; it is mainly women who work part-time to care for children;
  - The PCP puts the woman at a disadvantage because, for example, she would not be able to get childcare;
  - The employer cannot show that the PCP (e.g. full-time working) is justified bearing in mind the needs of the individual woman and the needs of the business.

- Refusal of flexible working to a man may be direct discrimination if a woman in a similar situation would have been granted it.

**Remedies**

- Under the Flexible Working Regulations the Tribunal can order you to reconsider the request and can award compensation limited to 8 weeks’ pay (capped at £464 per week). However compensation for sex discrimination is not limited.

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