

Wolferstans Update: 20th March 2024

Navigating Flexible Working Requests in line with the ACAS Code of Practice

The Employment Relations (*Flexible Working*) Act 2023 received Royal Assent on 20 July 2023. The act will make several changes to the flexible working regime **from 6 April 2024**, including:

- Introducing a requirement for employers to consult with employees before rejecting their request;
- Allowing an employee to make more than one statutory requests in any 12-month period as currently allowed;
- Reducing the decision period within which an employer administers the statutory request; and
- Removing the requirement for the employee to explain what effect, if any the change might have on the business and how that might be managed.

In line with the regulation's changes, ACAS recently published an updated Code of Practice on flexible working. This article explores the key points of the code, specifically focusing on the statutory rights and procedures for making and handling requests for flexible working and how it affects both employers and employees.

Key Highlights:

1. Flexible Working Requests

Every employee has a statutory **right to request flexible working from the first day of employment**. A request **must be in writing, stating that it is a statutory flexible working request** and **include the following**:

- The date;
- The proposed changes to the terms and conditions;
- the desired effective date; and
- disclosure of any prior requests made.

Employers should make clear to their employees that the above information must be included in any statutory request for flexible working.

An employee **may make two statutory requests for flexible working within any 12-month** period. However, can only have one live request at any one time.

2. Considering Requests

Employers must handle every request reasonably, assessing the impact on both the employee and the business.

Employers must agree to flexible working request unless there is a genuine business reason not to, which includes the following:

- The burden of additional costs;
- Inability to reorganise work amongst existing staff;
- Inability to recruit additional staff;
- Detrimental impact on quality, performance, or ability to meet customer demand;
- Insufficient work available for proposed working periods; and
- Planned structural changes to the employer's business.

When handling requests, **employers must not unlawfully discriminate against the employee in relation to any protected characteristics as set out in the Equality Act 2010. Any reasonable adjustments for disability should be considered separately from flexible working requests.**

Employers must not subject employees to any detriment or dismissal based on making a flexible working request or for taking legal action in relation to the request.

3. Consulting the employee

Employers **must not reject a request without first consulting the employee**. A **consultation meeting must be arranged promptly within a two-month period (including any appeal)**, to allow both parties to discuss the potential benefits or impacts, potential modifications, alternative suitable options, or trial periods. It should be held privately, either in person, remotely or via telephone.

The meeting should be held by a person with sufficient authority, and a written record of the discussion kept.

Employers should provide a reasonable opportunity for the employee to attend a meeting. If the **employee fails to attend without a good reason**, the employer may **consider the request withdrawn** and must **inform the employee of this in writing**.

4. Communicating a decision

Once a decision is reached, the employer must inform the employee promptly in writing. If the request is accepted in full or in part, details of the agreed agreement should be confirmed.

If the employer rejects the request, the written decision should clearly explain the business reason(s) and provide additional information to help explain the decision.

All requests including appeals, must be decided, and communicated within a period of two-months from when the employer first receives the request. An extension may be agreed upon, with written confirmation.

5. Appeals

While there is no statutory right of appeal, allowing an employee to do so is good practice. The **process should be impartial and handled by someone not previously involved in the request**, who has authority to make a decision.

The employer must inform the employee of the appeal decision in writing without unreasonable delay, providing clear reasons for the outcome.

While there is **no statutory right of accompaniment, it is good practice to allow it**. Employees can be accompanied by a fellow colleague, trade union representative or an official employed by a trade union if the request is reasonable.

The next steps

Employers are advised to familiarise themselves with the updated Code of Practice, review and update their policies and procedures to reflect the changes. Proactively communicate the upcoming changes to managers and ensure appropriate training is in place.

If you would like any support in updating your policies, training or require further guidance, please contact Wolferstans LLP on 01752 663295.