

FLEX IN THE CITY ... AND THE TOWNS AND VILLAGES

As every employer should already know, the right for employees to request flexible working has been around for many years, having been first introduced in 2002. Since its introduction, the Regulations have been amended and a formal procedure must be followed in respect of any request employees make.

The original Regulations applied to those employees with children under the age of 6 or those with disabled children under the age of 18 years old. In April 2007 the right to make a request to work flexibly was extended to carers of adults. In November 2007 Gordon Brown announced that the right to flexible working was to be extended further to all parents/primary carers of children. Whilst the exact age limit is still under consultation, the smart money is that it will be limited to children under the age of 16. If, as anticipated, these Regulations are introduced on this basis, it is likely to affect 4.5 million of the working population. The new Regulations are scheduled to come into force in April 2009.

In the Queen's speech the Government promised to "bring forward proposals to help achieve a better balance between work and family life". John Hutton, Secretary of State for Business, Enterprise and Regulatory Reform said "The right to request flexible working not only helps millions of parents juggle work and family life, but can also benefit business by improving staff retention and productivity".

As you might expect, there are a plethora of studies being undertaken into flexible working. Some find that many employers are ignoring staff requests to work flexibly or have given unacceptable reasons for turning them down. Others suggest that many employees are completely unaware of their rights to request flexible working. What can be a flexible working request could range from a request to work reduced or more flexible working hours, job sharing or home working and anything in between. The key word is "request". Employees have the right to request to work flexibly, not to have the request automatically granted.

In the event that a dispute between a request being granted or not has to be considered by an Employment Tribunal, then employers should bear in mind that the Tribunal Judge could work part time and have two wing members could also work part time!

A recent report from BERR (Department for Business Enterprise and Regulatory Reform, formally BTI) reported that 91% of work places who receive requests in the last year approve them paving the way for a mindset that requests should be granted where possible. It may well be the case that employers offer the right to request to work flexibly to all employees of their own volition rather than to just those employees with children.

Any employee wanting to make a "request" is obliged to follow a statutory procedure which gives a timetable as to how the request should be considered and what it should include. The employee is required to give consideration to how their request may cause difficulty for the employer. Meetings have to take place and an appeal

procedure has to be considered. There are a number of subscribed grounds upon which a flexible working request can be turned down by the employer.

If a request is granted and then later down the line they want to go back to their old hours of work – they can't automatically. In fact what will be required is a further flexible request to work longer hours which the employer does not have to accept. Employees are only entitled to make one flexible working request in any one 12 month period, so employees at least have some degree of certainty that once accommodation has been made to working practices they are going to continue for at least 12 months. The Tribunal cannot order that a request for flexible working be granted. However, the Tribunal can award up to 8 weeks pay as compensation and order the employer to reconsider the application. It would be a brave employer that rejected an application on a second occasion.

The benefits of Flexible working include, employing and retaining higher skilled employees as employers are able to accommodate their working hours requirements: it is good for work life balance; it can be more cost effective and save on overheads; it can have a positive impact on staff retention and lead to increased customer satisfaction

Types of Flexible working can include: part time/flexi time; staggered hours; job sharing; shift swapping; time off in lieu; term time working; zero hours contracts and home working/tele working.

Whilst flexible working is potentially great news for employees, it is going to cause more than one or two headaches for employers. Whilst there have been some mutterings about an employers backlash, it seems inevitable that the regulations are going to be increased, as they appear to have support from not only the Government, but Conservatives and Liberal Democrats.

Employees will be “flex”ing their rights. Employers should make sure that they know how to deal with the request properly, as it may land them in hot water.

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