



Changes to flexible working regime – what employers need to know

On 20 July 2023 the Employment Relations (Flexible Working) Bill 2023 received Royal Assent and is currently expected to come into force in Summer 2024, though a precise date has not yet been confirmed by the government.

Despite campaigning from industry groups and recommendations from the government's own Flexible Working Taskforce to make flexible working the default position for workers back in May 2021, the new Act does not make flexible working a "day 1" right, and the eligibility requirements remain the same. The government has indicated, however, that it will create this "day 1" employment right through secondary legislation, though no such legislation has yet emerged, and this is not an issue covered by the Act.

What's changing?

The Act will amend the Employment Rights Act 1996 to make procedural changes to how employees and employers make and review flexible working requests. The key changes to these processes are as follows:

- Employees will now be able to make two flexible working requests in any 12-month period (rather than just one).
- Requests have to be dealt with by employers within 2 months of receipt of a request if no extension is agreed (rather than within 3 months).
- Employers are not able to refuse a request until they have 'consulted' with the employee (although the legislation does not clarify what 'consultation' needs to include or specify a minimum standard for consultation).
- Employees will no longer have to explain in their application what effect the employee thinks agreeing to the request would have on the business, and how any such effect might be dealt with.

What's not changing?

Certain parts of the flexible working regime haven't changed, including:

- A flexible working request can be lawfully refused by an employer on one or more of the eight statutory grounds, which remain the same (and include "the burden of additional costs" and "an inability to reorganise work amongst existing staff").



- Employees cannot challenge a refusal based on one of the eight grounds, and there remains to be no legal right to appeal an employer's decision (though the current ACAS Code of Practice from 2014 says that it is good practice to consider any appeal).

ACAS / Department for Business and Trade Consultations

ACAS will be updating its 2014 Code of Practice on handling requests for flexible working in light of the new legislation and has opened a [consultation](#) on these changes (closing 6 September 2023). The draft Code of Practice can be found [here](#).

The Department for Business and Trade has also launched a [consultation](#) on the approach being taken to non-statutory flexible working requests (i.e. those who submit requests without the 26 weeks' qualifying service). Whilst we do not expect this to lead to any legal changes, there may be some useful take aways for employers to consider building into their flexible working policies should there be an interim period between the Act coming into force and the government issuing secondary legislation to make flexible working a day 1 right.

The COVID-19 pandemic marked a change in how many of us work, and it's clear that the ability to work flexibly continues to be an important consideration for employees in the workplace. The recent changes, although not groundbreaking – are indicative of this shift in attitude, that work arrangements should be more flexible and that there should be an ongoing dialogue between employers and employees about the issue.

For now, there is no need for employers to take any immediate action, given the Act is not due to come into force for a year or so. However, it is a good time to review any flexible working policies and practices to ensure compliance of these with the Act and new ACAS guidance, and also to consider the general, cultural approach to flexible working within your organisation in light of these changes.

Updates

- The Flexible Working (Amendment) Regulations were made on 5 December 2023 and are due to come into force on 6 April 2024, removing the requirement for 26 weeks' service to make a flexible working request so that it becomes a day one right (see [here](#)).
- Acas have published a revised code of practice on requests for flexible working requests [here](#), which is "expected to come into effect on 6 April 2024".