

Greater predictability over terms for workers

25 September 2023

The Workers (Predictable Terms and Conditions) Act 2023 has now been given Royal Assent. Whilst further Regulations will be required to bring these changes into effect, once these come into force, they will allow workers to make requests for more predictable terms in certain circumstances.

Will there be a right to predictable terms?

No; as with the legislation relating to flexible working, the new right is a right to request, rather than a right to, predictable terms. Employers will still have the ability to refuse such requests.

Who can make a request for more predictable terms?

Workers (and this term includes employees) will be able to make such a request where there is a lack of predictability in the work that they do for their employer. This right will also apply to agency workers. Where a worker is engaged under a fixed term contract for a term of 12 months or less, there will be deemed to be a lack of predictability in the work that they do; a request for a longer fixed term (or a request to remove the reference to a fixed term) will be deemed to be a request for greater predictability.

However, it is expected that there will be a qualifying period of service for workers to be able to make such a request; this period is still to be formally confirmed. It is currently anticipated that it will be 26 weeks but that workers will not be expected to have worked continuously throughout this period.

For what reasons may an employer reject a request?

The reasons for refusal are very similar to those which apply to statutory flexible working requests – there are just slightly fewer that apply. An employer can reject a request for more predictable terms if it considers that any of the following grounds apply:

1. the burden of additional costs,
2. detrimental effect on ability to meet customer demand,
3. detrimental impact on the recruitment of staff,
4. detrimental impact on other aspects of the employer's business (or, in the case of agency workers, of the temporary work agency's or hirer's business),
5. insufficiency of work during the periods the worker proposes to work,
6. planned structural changes, and
7. such other grounds as the Secretary of State may specify by regulations

There are additional provisions that will apply where a worker's or agency worker's contract terminates during the decision period (see below).

How many requests can be made?

During any 12-month period, a maximum of two statutory requests to change terms and conditions for the purpose of improving predictability and two statutory flexible working requests otherwise than for the purpose of improving predictability can be made by a worker.

What process will need to be followed?

The decision period for considering a request will be one month from the date of the application; Acas has been asked to prepare a new statutory Code of Practice to provide guidance on how such requests should be dealt with and a public consultation on this is expected this autumn.

What additional rights or remedies will apply in respect of these requests?

Where a worker succeeds in their claim that their employer has failed to comply with the statutory procedure, they will be entitled to compensation based on a number of weeks' pay; the number of weeks that will apply here is not yet clear and will be set out in regulations. There will also be additional potential claims of unlawful detriment and, for employees, automatic unfair dismissal.

When are the changes likely to come into effect?

The Government expects these changes to come into effect in or around September 2024 to allow employers time to prepare for the changes.

Contact



Mark Hickson

Head of Business Development

onlineteaminbox@brownejacobson.com

+44 (0)370 270 6000

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