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Flexibility Over Flexible Working Procedure

Flexible working applications can take many forms but the pandemic has resulted in a significant increase in the number of individuals working from home or under a hybrid model. Both CIPD and Acas have published guidance to support employers in dealing with hybrid working arrangements.

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Under the statutory flexible working procedure, the “decision period” in which the employer must notify the employee of the outcome of their application (including dealing with any appeal) is three months or such longer period as is agreed between the employer and employee. Any agreement to extend the period must be made before the original period ends, or with retrospective effect within three months of the end of it.

In Walsh v National Rail Infrastructure Limited, the EAT was asked to consider whether, by agreeing to an appeal hearing outside of the original decision period, the employee had implicitly agreed to extend the decision period. The Tribunal in this case considered that the decision period had been extended by agreement and, as it was still running at the time the claim was made, it did not have jurisdiction to consider the Claimant’s claim. The EAT disagreed with the Tribunal’s findings – agreeing to an appeal hearing outside of the decision period was not the same as agreeing to extend that decision period; there were many reasons why an employee might wish the appeal to still go ahead despite the decision period having ended. Although agreement to extend was not required in any particular format (i.e. it did not need to be in writing), there did need to be a specific agreement to the extension, including an agreement over the period of that extension.

Flexible working applications can take many forms but the pandemic has resulted in a significant increase in the number of individuals working from home or under a hybrid model. A September 2020 YouGov survey indicated that the majority of employees in Great Britain wanted to continue working from home some or all of the time after the pandemic. Both CIPD and Acas have published guidance to support employers in dealing with hybrid working arrangements and links can be found here:

CIPD - Hybrid Working - Practical Guidance

Acas - Hybrid Working - Guidance for Employers

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