

Right to request flexible working – changes ahead for employers

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The Employment Relations (Flexible Working) Bill 2022 was introduced by Labour MP Yasmin Quereshi on 15 June 2022. The Bill sought to amend the current right to request flexible working (contained in Sections 80F-I of the Employment Rights Act 1996) in several ways including permitting more than one request per year.

The Government had previously carried out consultation regarding proposed reforms to the right to request flexible working in 2021. The response was published in December 2022, and the Government committed to measures identical to those in the Bill together with making flexible working a day one right.

The Bill has now completed its passage through Parliament and will become law. In accordance with the changes:

- Employees will be able to make two flexible working requests per year instead of one,
- Employees will no longer have to explain in their applications what effect they think granting the request will have on the employer,
- Employers will need to consult with the employee before refusing an application, and
- Employers will need to decide on whether to accept the request within two months instead of three (unless an extension is agreed).

The new law will apply in England, Scotland and Wales and is expected to come into force in approximately July 2024, in order to give employers time to prepare for the changes.

No detail is provided in the new Act regarding what consultation should look like and nor does it set out any minimum requirements. However, ACAS have issued consultation on an updated Statutory Code of Practice on handling requests for flexible working. As part of this ACAS have issued a [draft Code](#), which takes account of the changes. The Code also includes a section on “Consulting the employee and exploring alternatives”. This provides that “employers should have a formal meeting with the employee” and the meeting should be conducted in a way to “allow a reasonable discussion and consideration of the request”.

Equally, there is no statutory requirement to offer a right of appeal in the new Act. However, the right of appeal is included in the Code, and it would be good practice for employers to include this right in their policies. Whilst the Code does not grant any freestanding rights to bring a claim, employment tribunals will take the Code into account when considering relevant cases.

Although the Government committed to making the right to request flexible working a day one right, there is no provision for this in the new Act (although the draft ACAS Code refers to it). However, it is expected that this will also come into force in approximately July 2024 when secondary legislation is introduced. Therefore, for the time being at least employees will still need 26 weeks service before they are able to make a request.

In addition, the new Act does not make any changes to the eight business reasons an employer can rely upon to reject a request, and these remain in place.

In readiness for the changes, employers should review and update their existing policies on flexible working. Employers may also wish to get ahead of the curve and permit all employees the right to request flexible working from day one of employment (as is the case in the NHS). Being open to flexible working not only benefits employees but also leads to more diverse and inclusive workplaces which benefits employers. Equally, flexible working can assist with recruitment and retention which given the tight labour market is a further benefit for employers.

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