

Flexible working in a post Covid world

The Coronavirus Pandemic made many changes in Education. Some changes will remain after the pandemic including the way we go about our work.

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The Coronavirus Pandemic (“Pandemic”) ushered in so many changes in the Education sector that it’s hard to keep track. Whilst we are still living with some of that change, a great deal of it is temporary and will, sooner or later, ebb away. However, some of it will inevitably remain long after and one area where this is likely to be the case is the way we go about our work.

March 2020 –dawn of national homeworking

Whilst the Pandemic shut down large parts of society, notably, schools were not, remaining open throughout to attend to the education of key worker children. However, a significant element of the vital work took place not in a classroom, but remotely via video conferencing software such as Zoom. Not all staff members came into work and were forced to retreat to their homes and their laptops for over a year. National Homeworking, sort of, was born. It was as if the entire nation had been granted a form of flexible working.

Flexible working today

Flexible working is not new and there has been a statutory scheme in place in one form or another since 2003. Employees with at least 26 weeks’ continuous employment can make a request for flexible working for any reason.

- The employee triggers the procedure by making a written request.
- The employer then has the three-month decision period within which to consider the request.
- The employer must deal with the application in a reasonable manner.
- The employer can still only refuse a request for one (or more) of the eight reasons set out in the legislation (such as an inability to reorganise existing staff).
- The employee can complain to a tribunal if, for example, the employer fails to behave in a reasonable manner or does not have valid grounds.

An employer will often turn down a flexible working request because it just won’t work for the organisation. However, the Pandemic has essentially allowed us all to trial flexible working. We are seeing more and more queries from schools where the employee, understandably is saying “It’s worked for the last year, why not for the next one?”. It is a compelling argument.

Flexible working tomorrow

To complicate matters further, the Government is proposing to extend the right to flexible working further and make the right to request flexible working a “day one right” meaning everyone can ask for it immediately. They also want to make the employer suggest alternatives if a request cannot be granted. Culturally, the Government want to make WFH (Working from Home) the rule rather than the exception. This will likely lead to an increase in requests across all sectors including education.

Practical guidance –so what do we do?

It is important to remember that the right is to request flexible working. It is categorically not the right to do it. Schools in particular will be in a strong position to demonstrate that whilst flexible working worked during the Pandemic, it is not something which can be sustained

indefinitely. The following key practical steps will help schools navigate these issues and limit disruption and the possibility of claims:

1. Meet the statutory requirements –it is much easier to defend a claim related to flexible working if you have ticked the right boxes procedurally.
2. Avoid technical arguments –rejecting an application because of a technical breach in the process by the employee is a high-risk strategy.
3. Demonstrate serious consideration of a request –look at it seriously, objectively and be able to prove you have.
4. Take a positive approach –look to solve a problem of the employee issue that led to the request rather than treating the request itself as the problem.
5. Look at alternatives –it is really powerful to say, “We can’t do this... but we could do that?”
6. Explain the decision, fully, clearly and carefully.

The Pandemic will not be here forever, but its legacy will endure. The way we go about our working lives has changed forever and it is important we recognise that, learn and adapt and react accordingly.

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