

Briefing Note: Flexible Working

An Introduction to the Briefing Note

This Briefing Note outlines how your business should respond to a flexible working request from one of your employees.

This Briefing Note should not be relied upon as legal advice and you should contact us for advice on your specific circumstances.

Who can make a request?

The right to request flexible working is available to employees who have been continuously employed by your business for at least 26 weeks.

Only employees can take advantage of the statutory right. It includes fixed term employees but not self employed contractors, consultants or agency workers.

Only one request can be made in any 12 month period from the date on which a previous request was made.

What kind of change can be applied for?

Your employee will need to make a written request for flexible working. It must be dated, state that it is made under the statutory procedure and whether the employee has previously made an application to you and if so, when. They must set out their proposed pattern of flexible working, when they wish the change to take effect and how they believe your business can accommodate it. In making a request, your employee can ask to change the:

- Hours they work.
- Times they work.
- Location they work (for example, by asking to work from home).

The scope of the legislation includes applications for part time working, full time working (if currently part time) annualised hours, compressed hours, flexi time, home working, job sharing, self rostering, shift working, staggered hours and term time working amongst others. There is no problem on an employee requesting a temporary change, although they will need to state the duration of such a desired change.

Rejecting or refusing the request

Your business may have legitimate reasons for being unable to accommodate a flexible working request. In rejecting a request, you must identify one or more of the following grounds as the reason for doing so:

- It would have a detrimental impact on the quality of your product or service.
- There is insufficient work available during the times when your employee wants to work.
- You are planning structural changes to the organisation of your business.
- The work cannot be re-organised among existing staff.

Briefing Note

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Summary:

Responding to a request for flexible working.

For detailed advice on all employment law matters please contact:

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- There would be a detrimental impact on your business' performance.
- You are unable to recruit the additional staff that your employee's proposal would require.
- There would be a detrimental impact on your business' ability to meet customer demand.
- The burden of additional costs that would be incurred.

You must deal with a request in a reasonable manner and notify the employee of the position within three months from the date the request is made or such longer period as the parties may agree.

The ACAS code suggests that you should arrange to talk with the employee as soon as possible after receive a written request unless of course you intend to approve the request in which case a meeting is not necessary. Such discussion will enable you to get a better idea of the requested changes and how those might benefit both the employee and your business.

It is also important for you to ensure that the employee is fully aware of the impact of the change on their terms of employment; if the changes have an impact on the employee's benefits it may be appropriate to suggest to the employee that he or she seeks advice from the appropriate benefit provider.

You should also take account of operational and day to day issues. It may be necessary to include new contractual provisions to address any issues and so as to avoid future confusion for example, if the employee is to be working from home will their manager need them to attend the office for meetings? It may be appropriate to agree a trial period of the flexible working requested by the employee or a variation of that request by way of a trial period.

You should consider any request carefully looking at the benefits and the risks. It is important to weigh up the known benefits against any disadvantages to help you decide whether the request is viable or whether or not you need to negotiate on certain aspects so as to minimise any adverse impact. Having considered the pros and cons, the possible costs and potential logistical implications in granting the request, you must then let the employee know of your decision in writing which will be either accepting the request, confirming a compromise agreed during any discussion, or rejecting the request because the employee is not eligible to make a request or for one or more of the applicable business reasons set out above.

Although there is no express requirement for you to allow an employee to appeal against the rejection of a request ACAS suggests that a right of appeal may come to be seen in many cases as an essential part of dealing with a flexible working request in a reasonable manner.

Flexible working policies

A Flexible Working Policy should explain to employees how they can make a request, to whom it should be made and what should be covered, include a statement that the employer will consider such request, state who can accompany the employee at any meeting regarding the request, explain the arrangements for an appeal and set out the time limits on dealing with such request.

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If you would like to know more about this topic or our other legal services, please contact Paul Maynard on 01323 435900 or by email pcm@gabyhardwicke.co.uk.

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