

Flexible Working and Facilitating Working Away from the Office

DIAGNOSIS:

Background to the extension of the Right to Request Flexible Working

Flexible working describes working arrangements that fall outside the traditional view of work as being full-time and 9 to 5. It includes part-time working, shift working, remote working and job shares.

Working patterns are becoming increasingly more flexible - whilst 22.7 million people in the UK work full time, around 8.4 million employees work part time – and the UK has some of the most diverse ranges of working arrangements in Europe. The OECD rates the UK as one of the most flexible place to operate a business.

Flexible working is essentially an agreement between an employer and employee for the employee to work in a way that best fits their other responsibilities whilst also ensuring that the job gets done. It can either be an informal arrangement, e.g. for a time limited period or on a trial basis, or the employee can make a formal request to work flexibly under the statutory Right to Request Flexible Working.

Flexible working has tended to be concentrated amongst women and mothers and at lower level jobs. It is sometimes perceived as a benefit for parents; or more often a benefit for mothers, because they are often the primary carer.

Flexible working can also be seen as a concession to employees; one that illustrates a reduced commitment to the workplace with negative impacts on the labour market position of those who work this way. Some groups of employees are concerned that working flexibly is not for them and will harm their career prospects, and so are less likely to ask to work flexibly.

Whilst employers who have embraced flexible working have seen – and frequently report – the benefits, others have told the Department for Business through informal consultation that they do not provide the ability to work flexibly because they are not aware of the benefits it can bring, or believe that the benefits are restricted to parents, carers or lower level jobs.

Extension of the Right to Request Flexible Working to All Employees

It was against this backdrop that the former coalition Government extended the Right to Flexible Working to all employees with 26 weeks qualifying service in June 2014 – previously the Right to Request Flexible Working was limited to parents and carers. The extension aimed to address negative perceptions of flexible working by making the right to request available to all, rather than a subset of employees, and also improve the flow of information about flexible working options between employees and employers.

The extension of the Right to Request Flexible Working doubled the number of employees who are able to make a request to over 20 million. The Department for Business estimate that this will lead to a further 80,000+ requests a year - leading to 60,000+ new working arrangements.

This is good news for business as well as individual employees. Employers have access to the widest possible pool of talent, and the ability to recruit and retain this talent helps contribute to the UK's skilled and flexible workforce.

The former coalition Government also made it easier for employers to consider requests for flexible working. The previous, more onerous, statutory procedure was replaced by a duty on employers to consider requests 'in a reasonable manner' – supported by a statutory Code of Practice and Acas guidance. Employers are now able to use their own informal processes for considering requests, as long as they can show that the way they considered the request was 'reasonable' in the circumstances. In essence this change was a deregulatory measure which was intended to facilitate discussion between employers and employees without the process for that discussion getting in the way.

Extending the Right to Request Flexible Working to all employees with 26 weeks service, helped to raise the profile of flexible working and give employers and their employees the information that they need to decide if it can work for them.

It empowered employees to ask for flexible working whilst at the same time putting the onus on them to demonstrate that the pattern of work that they have proposed can work for their employers' business.

Whilst employers are free to say 'no' to a request to work flexibly they must have sound business reasons for refusing a request and these reasons are set out in the legislation. These are:

- the burden of additional costs
- an inability to reorganise work amongst existing staff
- an inability to recruit additional staff
- a detrimental impact on quality
- a detrimental impact on performance
- a detrimental effect on ability to meet customer demand
- insufficient work for the periods the employee proposes to work
- a planned structural change to the employer's business.

Flexible working has increased independently of the legislation

Flexible working is becoming steadily more popular in the UK labour market. For example at the time of the fourth Work Life Balance Employee Survey (WLB4 2011), 60% of employees have done some form of flexible working in the last year (up from 56% in 2006).

The majority of employees (92%) reported that at least one flexible working arrangement was available in their workplace and two thirds of employees (66%) reported that 3 or more flexible working arrangements were available in their workplace, (WLB4 pp. 253 and 257).

30% of employees said that working from home was available in their workplace, 68 per cent said this was not available and two per cent were not sure or did not know whether this was available or not. (WLB4 pp. 54).

A greater share of employees in the banking, insurance, professional and support services (51%) and transport storage and communications (46%) sectors reported that working from home was available in their workplace compared with the economy average in Great Britain (30%). The lowest reported availability was among those in the distribution, retail, hotels and restaurants (10%) (WLB4, pp. 55 and 248).

22% of employees had made a request to change their working arrangements in the last two years. 79% of employees had their request to change their working arrangements accepted. One in fourteen employees (7%) making a request asked to work from home regularly, (WLB4, pp. 68-9).

12% of employees said they had not made a request to work flexibly due to business reasons including that it would not suit their job, their employer would not allow it, and concerns about their career, job security and the effect on colleagues. Male employees (13%) were slightly more likely to cite businesses reasons for not making a request than female employees (11%).

Benefits of flexible working

95% of employees who work flexibly believe it has positive consequences for them and employers who offer flexible working also report benefits, e.g. lower turnover of staff, reduced absenteeism and an increase in productivity.

For businesses, holding onto experienced and skilled staff is important in maintaining quality and containing costs. Offering flexible working can help retain staff and widen the talent pool, so employers are able to recruit people with more skills; it can also increase commitment and loyalty of staff members. This can in turn translate into improved productivity and by extension improved profitability. Evidence also shows that flexible working arrangements can effectively reduce absence.

For employees, flexible working allows them to better balance their work life with their family responsibilities or other commitments, e.g. it can enable people with caring responsibilities to stay in work and enable a phased return to or exit from work. Being able to work flexibly is likely to help some groups into work, or to stay in work when the alternative would be to give up work. Academics think this may help boost labour supply through this effect.

It is too early to evaluate the new Right to Request Flexible Working but we would expect to see an increase in the number of requests for flexible working as a result of extending the right to more employees – particularly as survey data shows flexible working has increased independently of the legislation, with both business and employees reporting benefits.

ACTION/PLANS:

The Right to Request Flexible Working has been available to parents and carers for a number of years and employers and employees were reporting seeing benefits from flexible working. There was, however, still a stigma associated with flexible working and it was seen as something that was just for parents (particularly mothers) and carers.

Allowing all employees with 26 weeks service to access flexible working ensured that more employers and employees became aware of and had access to the reported benefits of flexible working.

At the time that Government consulted on the new Right to Request Flexible Working we consulted on a range of policies which were intended to promote female participation in the UK labour market by giving dads and partners access to parental leave and access to time off work in connection with the mother's pregnancy or the adoption process. This included the new statutory right to Shared Parental Leave and Pay which enables mothers to share up to 50 weeks of leave and up to 37 weeks of pay with the child's father/her partner, giving parents more choice and flexibility about who works and who cares for their children in the first year.

The Government has recently announced that it will extend Shared Parental Leave and Pay to working grandparents - recognising that grandparents often provide informal childcare in the first year of the child's life. This will enable the mother or adopter to share leave and pay with the child's grandparents and the child's father/partner. In essence it gives working families even more choice and flexibility. We are aiming to introduce this policy in 2018.

IMPLEMENTATION:

The new Right to Request Flexible working was introduced in June 2014. It is a statutory right to request, not a right to have, as the intention behind the policy is that the arrangement or pattern of work that is ultimately agreed should work for both the employee and the business that they work for. For the same reasons the legislation places an onus on the employee to demonstrate how the proposed arrangement/work pattern could benefit the business or at least not be detrimental to the employers' business.

Whilst employers are free to refuse a request to work flexibly the Government wanted to ensure that requests were treated seriously and, therefore, prescribed in statute the circumstances where an employer could decline a request. At the same time the Government wanted to remove the burdens on business that resulted from the former, more onerous, statutory procedure for dealing with Rights to Request Flexible Working by parents and carers. This procedure was replaced with a duty on the employer to consider requests in a 'reasonable manner' supported by a new Statutory Code of Practice and Acas guidance.

VALUE FOR MONEY:

An impact assessment for the extension to the Right to Request Flexible Working was published in 2012. Average annual benefits resulting from the extension are estimated at £55.8m. These include savings in staff turnover costs, productivity benefits, and reduced absenteeism costs, as well as business savings from the removal of the former, more onerous, statutory procedure for dealing with request.

Average annual costs are estimated at 39.8m, covering procedural costs (the administration cost of processing requests) and accommodation costs (workplace changes required to be able to implement a request). One-off implementation costs (associated with businesses familiarising themselves with the law and communicating the changes to employees) were estimated at £15.3m. These estimates are based on assumptions about the impact on the flexible working request rate of the extension of the right to request. These assumptions are based on survey data relating to the impact on take-up reported via survey data following previous extensions to the Right. Further detail on the estimate and associated assumptions can be found in the published impact assessment.

TESTING AND EVALUATION:

We will review the extension to the Right to Request Flexible Working in April 2019. It is planned that the Work Life Balance series of surveys will continue and these can be designed to inform this. In addition data will be available from other survey sources such as the Labour Force Survey and Employment Tribunals Service. We also intend to seek stakeholder (Business groups and Trade Unions) views.

