

Who can make a request?

From 6 April 2024, all employees will have a day-1 right to make a request for flexible working (the 26 weeks' qualifying service rule will no longer apply.)

There is still no right to work flexibly, only a right to make a request to do so. The aim of the legislation is to encourage a discussion between the employer and the employee and to facilitate flexible working where practicable.

The right to request flexible working is not limited to those with caring or childcare responsibilities: all employees can make a request, whatever their reason.

This can mean that employees make a flexible working request because they have caring responsibilities, for religious observance reasons, because they have a hobby or interest outside of work, because of sporting commitments, or simply to achieve a better work/life balance.

Steps to take if an employee makes a request

Ask for the request in writing and then arrange a meeting to discuss this with your employee. There is no legal right to be accompanied but if an employee asks to bring someone along, it's good practice to allow it. Look at other options if the request is not possible, only turn down the request if there's a valid business reason (see below.)

How quickly do I have to decide?

From 6 April 2024, employers will need to decide within 2 months.

What steps do I take if the request is agreed?

Confirm any changes, the effective date, and a review date (if applicable,) in writing within one month of the change taking effect. You may prefer to issue a new contract of employment.

Can I reject a request?

You can only turn down a flexible working request if there's a valid business reason. It's important to make your decision based on facts and not personal opinion.

By law, a request can only be turned down on one or more of the specified grounds below if:

- It will cost your business too much;
- You cannot reorganise the work among other staff;
- You cannot recruit more staff;
- There will be a negative effect on quality;
- There will be a negative effect on the business' ability to meet customer demand;
- There will be a negative effect on performance;
- There's not enough work for your employee to do when they've requested to work; or
- There are planned changes to the business, for example, you intend to reorganise or change the business and think the request will not fit with these plans.

Rejecting a request

Confirm your decision in writing, outlining your reasons. There's no legal right for an employee to appeal a flexible working request. But if you consider their appeal, it can help resolve any issues your employee might have, without them taking it further.

Are changes permanent or temporary?

Whilst the right is generally considered to be a right to request a permanent change to terms and conditions, there is nothing to prevent an employee requesting a temporary change, although in doing so they should state the desired duration of the change. You may also agree the changes on a trial basis before committing to a permanent change.

Potential barriers to flexible working

One of the greatest potential barriers to flexible working can be attitude. It is important to remember that a request to change hours does not mean a reduction in commitment to the job or the employer. Equally, the number of hours that an employee works does not necessarily directly relate to their productivity. Whilst some of your concerns may appear insurmountable at the outset, the process is designed to facilitate discussion between the employer and the employee to see if any of these hurdles can be removed.

Is it discriminatory to reject a request?

Most claims that arise from flexible working requests are discrimination claims. Compensation for discrimination is potentially uncapped (depending on an employee's losses).

Claims may arise in the context of a flexible working request for several reasons:

- Indirect sex discrimination – statistically, women are more likely to have childcare responsibilities and therefore may claim that requirements to work full-time, very flexibly or to undertake a lot of travel indirectly discriminate against women.
- Indirect religious discrimination – equally, an employee may allege that a requirement to work on particular days or at particular times indirectly discriminates against members of their religion or belief.
- A failure to make reasonable adjustments in respect of a disability.

Can an employee claim Constructive Dismissal if I reject a request?

If an employee alleges that discrimination has occurred, they may also claim that this constituted a fundamental breach of the implied duty of trust and confidence, entitling them to resign and claim constructive dismissal.

Compensation for constructive dismissal is assessed in the same way as for unfair dismissal and will include a basic award (calculated on the same basis as a statutory redundancy payment) and a compensatory award based on losses attributable to the constructive dismissal by the employer, including both past and future loss.

**if you need any further guidance please
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