

Making Flexible Working the Default

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Closes 1 Dec 2021

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Making the Right to Request flexible working a day one right

Introducing a day one right would mean that an employee is able to make a statutory request for flexible working from the first day of their employment.

The objective in making the right to request flexible working the default a day one right would be to bring more employees into the scope of the legislation. It will also help to encourage, or nudge, certain behaviour changes from employers so that they consider flexible working options early in the job design/recruitment process and give employees more confidence to make a request.

We estimate that around 10% of employees have changed their jobs, or started one, within the last six months. That is 2.2 million people who currently are unable to make a statutory request for flexible working.

The existing 26-week qualifying period was introduced, in part, to balance off some of the potential business burdens of administering statutory requests for flexible working. However, a long qualification period has negative consequences for making flexible working the default. For instance, it can help reinforce the commonly held perception that flexible working is something an employee must earn or may receive as a "perk".

This consultation therefore seeks views about whether the qualifying period may be removed and what benefits this might deliver.

1. Do you agree that the Right to Request Flexible Working should be available to all employees from their first day of employment?

- ☐ Strongly Agree
- ☐ Agree
- ☒ Neither agree nor disagree
- ☐ Disagree
- ☐ Strongly disagree
- ☐ Don't know

Please give reasons for your answer, including any considerations about costs and benefits that may affect employers and/or employees

Employees need time to settle into their role, receive induction and relevant training. The role a specific employee has will also have an impact as to if they are able to work flexibly whilst still fulfilling the needs of the employer.

2. In your organisation, do you currently accept requests for flexible working arrangements from employees that have less than 26 weeks continuous service? Please answer this question from the perspective of the employer.

- ☐ Yes
- ☒ No
- ☐ Don't know

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Whether the eight business reasons for refusing a Request all remain valid

There are some circumstances where businesses will not be able to offer flexible working. That is why the Government is clear that employers should still be able to reject a request if they have sound business reasons and will also respect freedom of contract rather than prescribing specific arrangements in legislation

The Post Implementation Review of the current legislation suggests that only a minority (9%) of statutory requests are in fact rejected. We do accept that people will naturally filter requests – why would you put in a statutory request if you felt your employer was simply going to reject it? – but, on balance, we are broadly content that the current list of reasons for refusing a request do not present a disproportionate barrier to flexible working and do not see a case for fundamentally changing them.

Nevertheless, we are aware that employers' experience of flexible working has changed dramatically since the Right to Request Flexible Working was first brought in, particularly over the course of the pandemic. This consultation therefore seeks views on whether the business reasons for rejecting a request that were considered reasonable in 2014 remain so.

▼ Reasons for refusing a flexible working request

The current statutory framework provides a specific but broad set of business grounds on which an employer can reject a statutory request to work flexibly. These are:

- extra costs that will be a burden on the business
- the work cannot be reorganised among other staff
- people cannot be recruited to do the work
- flexible working will negatively affect quality
- flexible working will negatively affect performance
- the business' ability to meet customer demand will be negatively affected
- there is a lack of work to do during the proposed working times
- the business is planning structural changes.

3. Given your experiences of Covid-19 as well as prior to the pandemic, do all of the business reasons for rejecting a flexible working request remain valid? Please answer this question from the perspective of the employer.

- ☒ Yes
- ☐ No
- ☐ Don't know

If you answered yes, please give reasons for your answer

For Okehampton Town Council some of the reasons for rejection are valid and depend on the role of the employee. Some job elements are specific to the role and cannot be shared whilst others are depending on customer demand.

If you answered no, please state which reasons from the list (see 'Reasons for refusing a flexible working request' above) are no longer valid and why

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Requiring employers to suggest alternatives, where possible

To support the aim of making flexible working the default, we want to ensure that the legislation genuinely supports an informed discussion between the employer and employee.

That could involve whether and how different flexible working arrangements might be accommodated. If an employer felt that an employee's request was not possible, there might be a way to find another option.

To encourage a culture where employers give full consideration to requests for flexible working and what might be possible – rather than simply rejecting the immediate proposal which has been put forward – we would like to explore how practical it is to ask employers to set out, when rejecting a request, that alternatives have been considered.

► Examples of suggesting alternatives

4. Do you agree that employers should be required to show that they have considered alternative working arrangements when rejecting a statutory request for flexible working?

☐ Strongly Agree

☒ Agree

- ☐ Neither agree nor disagree
- ☐ Disagree
- ☐ Strongly Disagree
- ☐ Don't know

Please give reasons for your answer.

Agree that the employee should know that every possibility of their request has been explored with reasons as to why they are/are not feasible and why the application has been rejected. They should also be given an opportunity to suggest alternative arrangements for consideration.

5. Would introducing a requirement on employers to set out a single alternative flexible working arrangement and the business ground for rejecting it place burdens on employers when refusing requests?

- ☒ Yes
- ☐ No
- ☐ Don't know

Please give reasons for your answer

Does not appear to be a practicable solution as it may not be possible for all employers to do.

6. If you answered yes to question 5, would this requirement have an effect on the time taken by employers to handle a request?

- ☒ Yes, it would take additional time (please state estimated additional minutes/hours in the box below)
- ☐ No
- ☐ Don't know

unable to quantify how long it would take, depends on the complexity of the employees role

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The Administrative process underpinning the Right to Request flexible working

While there are business burdens in administering statutory requests to work flexibly, we want to explore whether allowing employees to make more than one statutory request per year would make the legislative framework more responsive to changes in an individual's circumstances and introduce more dynamism into the process.

We want to ensure that the legislation is not placing unnecessary barriers to accessing flexible working among those whose personal situation may have changed within twelve months – newly disabled people or new parents, for example.

This consultation also considers whether the existing 3-month deadline for responding to requests remains appropriate.

▼ Current administrative process

Currently an employee may make one statutory request every 12 months and an employer has three months to consider whether that request can be accommodated.

The intention behind introducing the three-month deadline for responding to requests in the existing legislation is to ensure that requests are dealt with promptly, whilst acknowledging that there may be challenging organisational issues to work through – such as rearranging shift patterns to accommodate a specific request.

7. Do you think that the current statutory framework needs to change in relation to how often an employee can submit a request to work flexibly?

- ☒ Yes
- ☐ No
- ☐ Don't know

Please give reasons for your answer

Yes to allow employees to submit a request if they have changed roles within an organisation or if their circumstances have changed significantly; or example illness

8. Do you think that the current statutory framework needs to change in relation to how quickly an employer must respond to a flexible working request?

- ☐ Yes
- ☒ No
- ☐ Don't know

Please give reasons for your answer

Three months seems reasonable, especially if there is a process that has to be followed and approvals gained. However in some circumstances; ie long-term illness of the employee or a dependent responses should be speeded up.

9. If the Right to Request flexible working were to be amended to allow multiple requests, how many requests should an employee be allowed to make per year?

- ☐ No amendment required
- ☒ Two requests
- ☐ Three requests
- ☐ There should not be a limit on the number of requests an individual can make
- ☐ Other, please specify

Please give reasons for your answer, including any consideration about costs, benefits and practicalities

Allowing no limit for requests could permit employees to continually submit requests if a previous one has been rejected which would increase the strain on the business in term of time and costs.

However, more than one request in a 12 month period should be permitted under exceptional circumstances ie long-term illness.

10. If the Right to Request flexible working were amended to reduce the time period within which employers must respond to a request, how long should

employers have to respond:

- ☐ No amendment is required
- ☐ Less than two weeks
- ☐ More than two weeks, less than one month
- ☒ More than one month, less than two months
- ☐ More than two months, less than three months
- ☐ Other, please specify

Please give reasons for your answer, including any consideration about costs, benefits and practicalities

Timescale needs to allow for the responsible persons holiday, sickness and other commitments as well as the in-house process for consideration.

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Requesting a temporary arrangement

The current legislative framework already provides for a temporary arrangement to be agreed between the employee and employer.

However, we believe that this ability to request a contractual change for a defined, time-limited period is under-utilised.

► Example

11. Are you aware that it is possible under the legislation to make a time-limited request to work flexibly?

- ☒ Yes
- ☐ No
- ☐ Don't know

12. What would encourage employees to make time-limited requests to work flexibly? Please provide examples.

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