

Flexible Working

Since 6 April 2003 the right to request flexible working became available to employees who care for children under 6 years, or disabled children under 18 years. The legislation which underpins flexible working is set out in the Employment Rights Act 1996 and two sets of regulations - The Flexible Working (Procedural Requirements) Regulations 2002 and the Flexible Working (Eligibility, Complaints and Remedies) Regulations 2002. Employers have a statutory duty to consider these requests seriously in accordance with a set procedure and can only refuse such requests where they have clear business reasons for doing so.

The right to flexible working is not an automatic right to benefit from flexible working arrangements. It is a right to have put in place a set of procedures with which the employer must comply. The aim of the legislation is to promote "dialogue" to facilitate discussion and encourage both the employee and employer to consider flexible working patterns and to find a solution that suits them both.

From April 2007, the right to request flexible working will be extended to employees with caring responsibilities for adults. Consultation on the new provisions, including the draft Flexible Working (Eligibility, Complaints and Remedies) (Amendment) Regulations 2006 took place earlier this year. The Government published its response on 9 November 2006 which included an announcement on the definition of "carer" to be used in the final regulations which will be: "an employee who is or expects to be caring for an adult who:

- Is married to, or the partner of the employee;
- Is a "near relative" of the employee; or
- Falls into neither category but lives at the same address as the employee."

According to the Government, the "near relative" option will cover the majority of those who care for others, which represents around 80% of all carers. A new definition of "partner" will replace the definition in the 2002 Regulations and will be defined as "the other member of a couple consisting of:

- A man and a woman who are not married to each other but are living together as if they were husband and wife, or
- Two people of the same sex who are not civil partners of each other but are living together as if they were civil partners."

The deadline for making a flexible working application is also to be simplified. Currently, an employee must make the request before the 14th day before his or her child's 6th birthday (or 18th if disabled). The new provisions will state that the request is made "before the day in which the child concerned reaches the age of 6, or if disabled, 18".

The draft regulations are to be laid before Parliament by the end of December and will come into force on 6 April 2007.

What impact will the new provisions have on existing rights?

Currently, it is possible for parents whose request has been turned down or who do not qualify for the new right to bring both direct and indirect sex discrimination claims and claims for constructive unfair dismissal. Discrimination claims are attractive since there is no qualifying period and the award is unlimited. With age discrimination now outlawed

from October this year, the extended rights to carers could also expose employers to claims of indirect age discrimination if they fail to properly manage the new provisions. In this situation, employers face the prospect of dealing with complaints by older employees who will argue that they have disproportionate responsibilities for elderly care, and that an employer allowing flexible working for the purposes of childcare, but not elderly care, is indirectly discriminatory against them.

What are the benefits of introducing flexible working arrangements?

There has been an increased interest in working flexibly due to a number of factors including its value as a recruitment and retention tool; the changing profile of the workforce; advances in technology and the increasing need for businesses to deliver services to customers on a 24/7 basis.

A number of benefits have been identified for employers, employees and customers/clients where flexible working policies and practices have been put into place. These include greater cost effectiveness and efficiency; improved competitiveness; attraction and retention of skills and talent; reduction in absenteeism; positive impact on employee relations, motivation and commitment and increased customer satisfaction and loyalty.

Implementing flexible working practices

The following tips can help businesses effectively implement flexible working:

- Establish a clear process for making and considering flexible working requests in the business;
- Ensure there are clear roles and responsibilities for employees, the line managers and HR;
- Assess the current levels of support that are offered to managers and ensure it is sufficient;
- Invest in ongoing communication and awareness raising e.g. through training
- Assess how conducive your business culture is to flexible working and take action accordingly
- Make use of pilots (when introducing new initiatives) and trial periods (for individual flexible working arrangements) in order to highlight potential problems with flexible working arrangements
- Build in opportunities and mechanisms to monitor and evaluate progress with flexible working.

It seems that flexible working arrangements do work and can play a valuable role in organisational performance as well as provide opportunities to strengthen relationships within the workplace. In light of the changes from April 2007, it seems that the Government is continuing its commitment to improving employees' "work life balance" and the time they are able to spend with their children and families. The Government has preferred a light touch, minimum standard approach to the legislation and claims that employers are often prepared to go beyond the minimum required in recognition of the benefits flexible working can bring to the workplace.

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