

FLEXIBLE WORKING:

Labour's pledge to make the workplace fairer and more family-friendly by making flexible working the default.

Under the current legal framework, flexible working is recognised as a day-one entitlement due to legislation enacted by the previous Conservative administration. This change allows employees to submit requests for flexible working from the onset of their employment rather than after a 26-week probationary period.

However, an employer can deny flexible working requests provided they cite one or more legitimate business justifications outlined in the legislation. These justifications encompass: incurring additional costs, negative impacts on customer demand fulfilment, challenges in reorganising workloads among current staff, recruitment difficulties for contingent roles, adverse effects on service quality, impacts on overall performance, inadequate work availability during the proposed hours, and anticipated structural changes.

The Bill aims to implement two significant modifications. Firstly, it stipulates that an employer may only refuse a flexible working request if such refusal can be deemed reasonable. Secondly, employers will be required to explicitly state the rationale for their denial and substantiate the reasonableness of this decision. Furthermore, they must respond to the request within two months.

The core components of the existing flexible working provisions will remain unchanged. The eight delineated business grounds for denial will continue to apply, as these criteria are sufficiently broad, granting employers substantial discretion in rejecting requests. Moreover, the penalty for non-compliance with the statutory flexible working framework will remain at eight weeks' pay.

What actions can employers take moving forward?

To justify grounds for refusing flexible working requests, employers must adopt a more rigorous approach. Failing to consult with current employees regarding the grounds for refusal could render the decision unreasonable.

For refusals based on alleged detrimental impacts on performance or quality, employers must provide solid evidence to substantiate their claims. In the absence of historical evidence, such as if an employee has worked the same or similar pattern and was unsuccessful, employers could implement a trial period for the proposed working arrangement. This trial could allow for an impartial evaluation of the potential impact on productivity.

Furthermore, in cases where an employer violates the established regulations governing flexible working requests, employees have the recourse to complain to an Employment Tribunal. The Tribunal holds the authority to award compensation of up to eight weeks' pay, presently capped at £700 per week, and may mandate the employer to reassess the original application. If a Tribunal determines that an employer's refusal was unwarranted, it is anticipated that they will more frequently instruct employers to reconsider such requests.

Additionally, employers could revise their policies and practices to align with the updated legislative framework surrounding the refusal of flexible working requests.

The "right to switch off" provision is notably absent from the current Bill. The government has reiterated its commitment to introducing a right-to-disconnect measure in the future. Should this right become enshrined in law, it is prudent for employers to proactively prepare for its implications.

Firstly, employers might consider implementing a right-to-disconnect policy. Despite the lack of formal legal mandates surrounding a right-to-disconnect, establishing such a policy can effectively communicate organisational values, foster a positive culture and clarify the expectations of both employees and management.

In conjunction with this policy development, businesses could also conduct a thorough review of existing frameworks, particularly those pertaining to flexible working arrangements and leave policies. Employers should also explore additional strategies to facilitate employees' ability to unwind from work.

Additionally, companies can use culture audits, which can provide valuable insights into the workplace environment and enable the identification of any toxic behaviours or habits that may exist within specific teams or departments.