

## Flexible Working Guide

### Overview

*Composite Legal Expenses Insurance provides advice to thousands of businesses and individuals each year through its legal advice helpline. The vast majority of calls to the helpline come from businesses seeking help on employment related matters.*

*Our expert lawyers have used their years of experience dealing with these matters to create this guide for you to use as a reference tool.*

*The guide has been condensed as much as possible to make sure you only get an overview of the area, for that reason it should not be viewed as comprehensive or as a substitute for specific legal advice.*

*If you have the benefit of a legal expenses policy with us, then the guide can be used in addition to the advice we provide and you should contact our advisors for advice in relation to any specific situations.*

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# FLEXIBLE WORKING

## Flexible Working

Originally flexible working was introduced as a concept whereby employees who had caring responsibilities or children could make a request to work more flexibly in order to help them to provide care.

On the 30<sup>th</sup> June 2014 the right was extended to all employees. Now the only requirement is that the employee must have been working for the organisation for at least 26 weeks. Requests are limited to one in any 12-month period.

Essentially, the employee will be making a request to change their working pattern and/or hours of work and the employer will need to consider whether or not they can agree. If the employer agrees, the changes become permanent, if not the employee continues to work under their original terms and conditions.

There are set grounds on which an employer can refuse a request. These grounds are however very wide. The most important thing, from an employer's point of view, is making sure the right procedures are followed.

### Making a request

In order to make a flexible working request the employee must make a written request that explains:

- The request is made in accordance with their statutory right and confirm they qualify to make the request
- The flexible working pattern they wish to work
- The effect, if any, they think the proposed change may have on the business and how the business could deal with any such effect
- The date on which they want the change to start
- The date of the application
- Whether they have made any applications in the past and if so, when

### Once a request is received

If you receive a flexible working request, as an employer, you have a duty to deal with it in a reasonable manner. In any event the request must be dealt with within 3 months, this includes making a decision and dealing with any appeal. It is possible to extend the time limit by agreement.

There is no longer a set procedure to follow, however, it would be reasonable to meet with the employee to discuss the request as soon as possible.

It will usually be appropriate to give the employee the opportunity to be accompanied by a work colleague or trade union representative at any meetings.

If you are unable to accommodate the request you will need to rely on one or more of the following grounds:

- The burden of additional costs
- There would be a detrimental effect on the ability to meet customer demand
- There would be an inability to reorganise work amongst existing staff
- There would be an inability to recruit additional staff
- There would be a detrimental impact on quality

- There would be a detrimental impact on performance
- There would be insufficient work during the periods the employee proposes to work
- There are planned structural changes

If you refuse the request it would be reasonable to offer the employee the right to appeal against the decision. The appeal should be dealt with by someone independent and ideally by someone more senior than the person who made the original decision.

### **Possible risks**

While there is no obligation to give anything more than the ground for refusal, it would be advisable to give a full explanation as to why the request cannot be granted.

If an employee is unhappy with the decision they can pursue a legal claim to an employment tribunal on the following grounds:

- The request wasn't dealt with in a reasonable manner
- The request wasn't dealt with within 3 months of the date of the application being made
- The statutory grounds for refusal were not used to decline the request
- The application was refused on the basis of incorrect facts
- The employer has treated the request as withdrawn when it was not entitled to do so

It is possible for a tribunal to order an employer to reconsider the request and can award compensation of up to a maximum of eight weeks pay, subject to the usual statutory maximum.

Employees have, in certain circumstances, been successful in pursuing constructive unfair dismissal claims and indirect sex discrimination claims that have been directly related to a flexible working refusal.

If there is any risk that discrimination could arise – for example, if an employee is returning from maternity, paternity or shared parental leave, objective justification as to the refusal will be crucial.

If in doubt, contact the advice line for assistance.