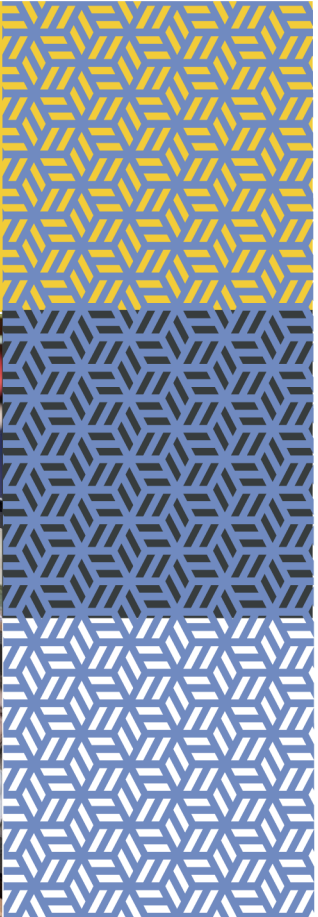
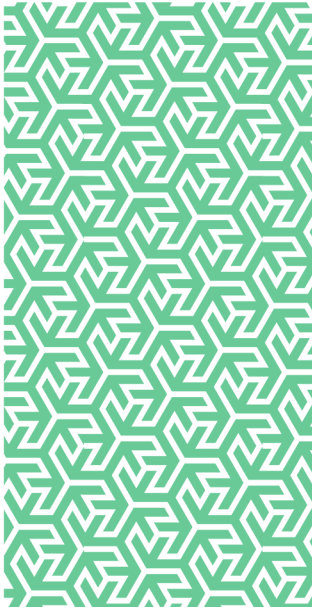




## Risk control

# Employment Relations (Flexible Working) Act 2023



In partnership with



# Employment Relations (Flexible Working) Act 2023

## Introduction

The Employment Relations (Flexible Working) Act 2023 (the Act) received Royal Assent in July 2023 and came into effect on 6 April 2024. In summary, the Act creates a legal right for employees to make a statutory request for flexible working from the first day of their employment.

The Act delivers on a 2019 Manifesto commitment of the then Conservative Government to encourage flexible working and requires employers to consider and discuss any requests made by their employee.

The benefits are believed to extend beyond the workforce cohort to the wider UK economy. It may be considered that organisations that embrace flexible working can attract more talent, improve staff motivation, and reduce staff turnover.

## The New Measures

Flexible working is a broad term and can relate to working hours or the pattern of work such as part-time, term-time only, flexitime, compressed hours, or adjustments to start and finish times. In addition, it can also include a level of flexibility over **where** someone is working, be that from home or a satellite office – reducing or eliminating commuting time.

The measures within the Act include:

- Requirements for employers to consult with the employee before rejecting their flexible working request
- Permission to make two statutory requests within any 12-month period
- Reduced waiting times for decisions to be made (within which an employer administers the statutory request) to two months
- Removal of the previous requirement that the employee must explain what effect, if any, the change applied for would have on the employer and how that effect may be dealt with

## Achieving the Right Balance

For many employees, the measures will enable the achievement of an optimum work life balance, and they may work as well for the employer – but what if the flexible request does not work for both parties?

During the height of the coronavirus pandemic working from home undoubtedly increased as employees were redeployed to their homes to reduce the risk of virus transmission. Since then, organisations have adopted differing views on home working with some employers claiming it makes employees unproductive.

Across the public sector, we have seen increased numbers return to office-based working, at least on a part-time basis, although the transition back to more traditional work patterns is not welcomed by all. A survey conducted by the PCS Union, representing civil servants, found that 40% of its members are now considering leaving the sector in response to the new expectation to return to the office.

## Emerging Risks

At the very heart of the new legislation is the encouragement for engagement between the employer and employee about flexible working arrangements. The motivation is to move away from delivering a 'flat refusal' without suitable and sufficient consideration of the proposal presented.

There is an element of exposure for employers arising from the new Act, but it is also a driving force to 'get houses in order.' It offers an opportunity to formalise what working styles have been loosely adopted across the organisation and how the required duty of care to employees can be suitably exercised. For example, are homeworking stations assessed? Are display screen equipment assessments fit for purpose for homeworkers to complete?

The Act also maintains the potential to reduce the risk of work-related stress claims, and so it will be interesting to see how this plays out over time.

Organisations will need to ensure managers are suitably trained - both in how they respond to flexible working requests, as well as how to manage a workforce with diverse working patterns.

Any refusal of a flexible working request potentially exposes the organisation to challenge if the process set out is not followed correctly and the request is not considered fairly.

Employers will have to explain why the flexible working request is being denied, whereas previously they could be denied with no specific reasoning.

The employer could face a claim for indirect discrimination by employees without parental duties, for example, if it consistently gave more weight to requests from those that do.

It is vital that organisations develop a clear decision tree and parameters for managers to follow to ensure each request is treated fairly.

As part of a wider risk assessment, organisations should proactively seek to identify emerging risks that could arise as an indirect consequence of the legislation – what are other organisations doing in this space?

The concept of a four-day working week is gaining momentum in the UK. This may not be suitable for all organisations and commercial and service delivery factors are likely to form part of any decision-making process to consider this.

In 2022, a trial was undertaken by 61 organisations to evaluate the four-day model and 92% of those that took part decided to continue the arrangement<sup>3</sup>. With such a high success rate, demand will likely grow for such a model. Organisations should consider these types of models in advance to establish risks and opportunities that may be created.

## Support

In response to the new legislation, the Advisory, Conciliation and Arbitration Service (ACAS) updated their statutory Code of Practice on requests for flexible working.

The revised version applied from 6 April 2024, and replaced the previous version published in June 2014.

A copy of the revised version can be found here:

[ACAS Code of Practice on requests for flexible working](#)

## Conclusions

Embracing the Employment Relations (Flexible Working) Act 2023 means more than just adherence to the regulations – it means fostering a workplace culture that prioritises employee wellbeing, efficiency, and inclusivity.

Organisations should be mindful of the risks and have strategies in place to manage these effectively but will likely benefit from a wider talent pool and a more content and productive workforce.

## References

1. [The Employment Relations \(Flexible Working\) Act 2023](#)
2. [40% of civil servants 'consider quitting' over WFH edict \(thetimes.co.uk\)](#)
3. [The Four-Day Working Week: How Does It Work? \(staffology.co.uk\)](#)

## Further information

For access to further RMP Resources you may find helpful in reducing your organisation's cost of risk, please access the RMP Resources or RMP Articles pages on our website. To join the debate follow us on our LinkedIn page.

## Get in touch

For more information, please contact your broker, RMP risk control consultant or account director.

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