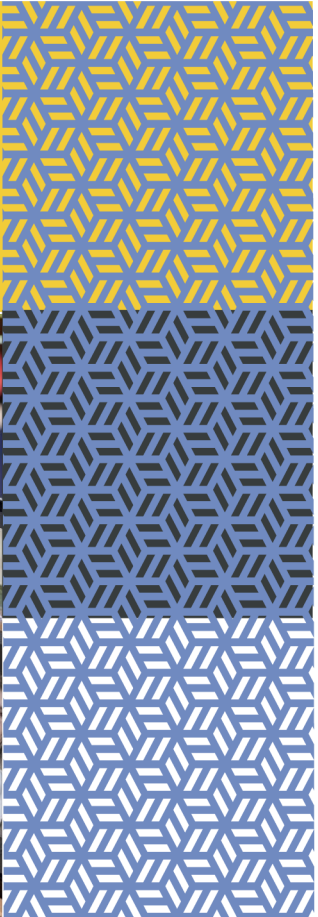
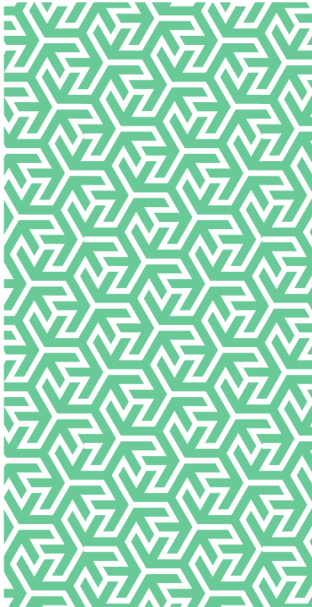




Risk control

Employment Relations (Flexible Working) Act 2023



In partnership with



Employment Relations (Flexible Working) Act 2023

Introduction

In the summer of 2023, the Flexible Working Bill achieved Royal Assent. While the legislation has now passed in parliament; the law on requesting flexible working has not yet changed and won't do so until sometime in 2024.

Until this point, it is still at the discretion of employers if they want to offer the right to request flexible working from day one of employment¹.

The Act delivers on a 2019 Manifesto commitment to encourage flexible working and will require employers to consider and discuss any requests made by their employee. Further details on the Act can be found here: [Employment Relations \(Flexible Working\) Act 2023 \(legislation.gov.uk\)](https://legislation.gov.uk)

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

Business and Trade Minister, Kevin Hollinrake said:

*"Not only does flexible working help individuals fit work alongside other commitments – whether it's the school drop off, studying or caring for vulnerable friends and family – it's good business sense too, helping firms to attract more talent, increase retention and improve workforce diversity"*².

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, flexi-time, 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 – shortening commute time.

When the legislation comes into force, the new measures in the Act will include:

- New 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 (rather than the current one request)
- Reduced waiting times for decisions to be made (within which an employer administers the statutory request) from three months to two months
- The removal of existing requirements 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.

Alongside the Act, the UK Government announced that workers will have the right to request flexible working from day one of a new job³.

Exploring the 'day-one' right

The day-one right to request a flexible working arrangement was not explicitly stated in the Act, but nonetheless, the UK Government has been unequivocal that it WILL be implemented. This will be delivered through secondary legislation.

It is anticipated that the UK Government will want to introduce the changes in the Act together with the statutory Acas code (currently under revision) at the same time and so the earliest date that both the new measures and the day-one right will come into force is likely to be the 6th April 2024.

Under the Act, employees will be able to ask for flexible working arrangements from their first day at a new job. This is a seismic shift from the current requirement of waiting 26 weeks before being able to make a request.

The Chartered Institute of Personnel and Development (CIPD) led a campaign - [#Flexfrom1st](#) in support of the day-one right after they reported that nearly half (46%) of British employees said they didn't have access to flexible working arrangements as part of their current role.

Peter Cheese, Chief Executive of the CIPD said:

*"This new right will help normalise conversations about flexibility at the start of the employment relationship, with significant benefits for employees in terms of wellbeing and work-life balance"*⁴.

You can find out more about the [#Flexfrom1st Campaign](#) here: [Flex From 1st | CIPD](#)

Achieving the right balance

For many employees, the new 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, around 37% of working adults worked from home in 2020. Since then organisations have adopted differing views on the post pandemic way of working with some employers claiming it makes staff unproductive and have ordered a return to the workplace.

Sports Direct owner – Frasers Group abolished working from home and Elon Musk has also informed staff at Twitter and Tesla that working remotely is no longer acceptable⁵.

Across the public sector, we have seen increased requests to return to office-based working, with senior managers leading the way, reportedly spending more than 60% of their working week in the office. Despite this, 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 office⁶.

In contrast, many organisations have closed offices, reduced workspace capacity and increased flexible, hybrid and home working arrangements. The decision to do this can largely depend on the nature of the work being delivered and so a 'one size fits all' model is unlikely to deliver successful results.

What are the 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 desire is to move away from delivering a 'flat refusal' without suitable and sufficient consideration of the proposal presented.

There is an element of anticipated exposure for employers arising from the new Act but also a driving force to 'get the house 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?

It also has the potential to reduce the risk of work related stress claims and it will be interesting to see how this plays out once the legislative requirements are implemented across the UK.

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 styles and patterns.

Any declination 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 at the outset with no specific reasoning.

The employer could face a claim for indirect discrimination by non-parent and carer employees for example, if it consistently gave more weight to requests from parents.

It is vital the organisation sets out 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 horizon scan for 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 test the four-day model and 92% of those that took part decided to continue the arrangement⁷. With such a high success rate, popularity will grow for such a model. Has your organisation considered this or assessed the risks and opportunities associated with such a model?

What support will be available?

The Advisory, Conciliation and Arbitration Service (Acas) have announced that in response to the new legislation, they are updating their statutory Code of Practice following a consultation exercise, which closed on the 6th September 2023.

The Code exists to provide employers, employees and representatives with a clear explanation of the law on the statutory right to request flexible working, alongside good practice advice on handling requests in a reasonable manner.

This will be a valuable resource for organisations navigating the requirements of the new legislation and will support their work in mapping out the changes required.

Further details on the consultation can be found here: [Acas consultation on the draft Code of Practice on handling requests for flexible working | Acas](#)

Next steps

Without the full detail to hand at this stage of what will be required, organisations can only undertake early preparatory work based on the expectations of the potential impact of the new measures. Steps that could be taken in advance include:

- Review existing HR and recruitment policies and procedures - identify what changes are likely to be required and the impact on process and training needs for managers as well as awareness raising steps to be taken for employees.

- Undertake an initial risk assessment involving a cross section of stakeholders within the organisation – this will help direct resource in readiness for spring 2024.
- Evaluate existing job roles to identify proactively positions that could benefit from flexible arrangements.

Conclusions

Embracing the Employment Relations (Flexible Working) Act 2023 will be more than just adherence to the regulations – it will mean 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 benefit from a wider talent pool and a more content and productive workforce.

References

1. [What does the Employment Relations \(Flexible Working\) Act 2023 herald for UK workers? | CIPD](#)
2. [Millions to benefit from new flexible working measures - GOV.UK \(www.gov.uk\)](#)
3. [What does the Employment Relations \(Flexible Working\) Act 2023 herald for UK workers? | CIPD](#)
4. [#Flexfrom1st – flexible working to be a day one right to request | CIPD](#)
5. [Employees can ask for flexible working from day one - BBC News](#)
6. [40% of civil servants 'consider quitting' over WFH edict \(thetimes.co.uk\)](#)
7. [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

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