

## What will the Flexible Working Regulations 2014 mean for employers and employees?

**Sophie Beesley** 29th June 2014

Socio-Economic Rights and Labour Rights



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**“That which yields is not always weak” (Jacqueline Carey, *Kushiel’s Dart*).**

From 30 June 2014, changes to the Flexible Working Regulations mean that any employee meeting the minimum service eligibility criteria can request flexible working arrangements. The challenge for employers will be to implement a fair system that allows them to create opportunities for employees and themselves.

Previously, the right to request flexible working was only available to employees with children under 17 (18 for a disabled child) or carers. Requests broadly cover changing working hours, times or location. If agreed, the changes became permanent amendments to the employee’s contract. The procedure for deciding requests was set out prescriptively in a mandatory statutory procedure, much criticised, particularly for its complexity and strict timescales.

To help employees improve their work-life balance, and following the Children and Families Act 2014, the Flexible Working Regulations 2014 mean that, from 30 June 2014, there will be no requirement to be a parent or carer. Instead, all employees with at least 26 weeks’ service (and not having made a request in the previous 12 months) can request flexible working. Note, however, that the Regulations do not give employees the right to work flexibly, only the right to ask for it.

The prescriptive procedural requirements have also been replaced by a more flexible system which requires only that employers must consider requests in a *reasonable manner*. However with flexibility comes uncertainty – what is a *reasonable manner*? Helpfully ACAS has published a [Code of Practice and additional guidance](#) to help employers to get it right.

In the short term at least, if numbers of requests increase dramatically, employers may be safer sticking to their current structured procedures to ensure requests are treated fairly. And when requests are agreed, it may well be wise to do so on a trial basis, to ensure they can be amended if necessary.

A rush of requests may not be the only challenge employers will face. For example, many requests may be very similar, such as not to work Mondays and/or Fridays or to work at home, potentially causing operational and employee relations issues. Requests may also extend and complicate employers' responsibilities, for example an employee asking to work through their lunch breaks could breach H&S regulations, someone working at home will require a remote workplace assessment.

It is not yet clear how employers will be expected to manage competing requests. The Code of Practice suggests first-come-first-served: having approved the first request, the business context changes and the employer should take this into account when considering the second request, and so on. In practice, however, and against a backdrop of potential sex and disability discrimination claims, value judgements may be made, despite the Government's intention not to create tiers of rights of this kind.

Employers will still be restricted to the same eight business reasons for rejecting requests that applied previously: additional cost, impact on quality and/or performance, an inability to meet customer demand, to reorganise work or to recruit, insufficient work when the employee wants to work and planned structural changes.

Despite these challenges, looked at in the round, employers should welcome the changes. Research published by the CBI in July 2013 found organisations could save up to 13% of workforce costs through more sophisticated, less rigid working practices. Accommodating requests can also boost loyalty and productivity.

Flexibility is also critical for the future. Research conducted by the Equality and Human Rights Commission (EHRC) calls for a rethink of the traditional "sole breadwinner men, with stay-at-home wives" way work is generally organised in the UK. Its view is that flexibility is needed to accommodate the needs of a modern workforce, for example: after having children, growing numbers of women need/want to continue working in roles that recognise their experience and abilities, people want to work reduced hours approaching retirement and growing numbers of young people need to balance work and study. There are also the challenges of caring for an ageing population. The Working Parents & Carers Survey (2011) showed that 20% of men requested flexible working to care for children, compared to 40% wanting to care for a dependent parent or partner. For all these reasons, flexible working may give employers the key to recruiting and keeping the best people.

### Author profile



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