

Flexible working: Acas publishes new statutory Code of Practice and guidance for employers.

To accompany the recent changes to the flexible working legal framework, Acas has revised its statutory Code of Practice on requests for flexible working and its related non-statutory guidance. Our briefing sets out the key points for employers to note.

On 6 April 2024, the statutory right to request flexible working became a Day 1 employment right. On top of this, a number of changes were made to the flexible working process. The Government had indicated that the changes to the process would come into force later in the Summer, however, this was brought forward to coincide with the service requirement change. The statutory flexible working request process has been changed as follows:

- Employees do not have to explain what effect they think the requested change would have on their employer and how that effect might be dealt with.
- Employees are permitted to make two flexible working requests per year rather than one.

- Employers are required to consult with employees before refusing requests.
- Employers have two months to make a decision on a flexible working request (rather than three months as used to be the case) unless an extension is agreed. This two-month window includes dealing with any appeal, if offered,

You can read our full briefing on the reforms [here](#). We also discussed the changes in our recent webinar [here](#).

Statutory Code of Practice on requests for flexible working (the Code)

The revised Code came into force on 6 April 2024 and replaces the previous edition of the Code issued in 2014. The Code been updated to reflect changes to ways of working since the Code was first introduced in 2014, and to reflect the legal reforms discussed above.

Although the Code is not legally binding, it should be followed where an employee makes a statutory request for flexible working. It will be taken into account by Employment Tribunals when considering relevant cases and it may count against an employer where the Code has not been followed.

Here are some of the key points from the new Code for employers to note:

- **Keeping an open mind:** the Code includes a new foreword (which is not strictly part of the Code itself) which sets out the benefits of flexible working for both employers and employees. It urges employers to be constructive and keep an open mind and states that *“the starting point should be to consider what may be possible”*. Employers are also asked to build flexibility into job roles when designing jobs and highlight flexible working options when advertising roles.
- **Having a clear policy and procedure:** a recommendation is made for employers to have a clear policy and procedure for handling statutory flexible working requests. Employers should make it clear to employees what information should be included in any statutory flexible working request. It states that this can be helpful in making everyone aware of what is expected.
- **“Live” requests:** the Code clarifies that while employees may make up to two requests in a 12-month period, they may only have one “live” request ongoing at any one time. A request will be regarded as live during any appeal process. A request will only be regarded as

closed once either a decision is made by the employer, an outcome is mutually agreed, the request is withdrawn or the two-month period for deciding the requests ends (unless an extension has been agreed).

- **Considering requests in a reasonable manner:** the Code reminds employers that they must consider requests in a “reasonable manner”. This includes carefully assessing the effect of the requested change for both parties. In addition, the new non-statutory guidance (discussed further below), provides that employers should, amongst other things, consider requests in the order of the date they receive them, base decisions on facts not assumptions and make sure that managers understand the process.
- **Relationship with reasonable adjustments:** the Code reminds employers that the legal obligation to make reasonable adjustments for disabled employees is separate to the obligation to consider a flexible working request. This is important for employers to remember, since a failure to make a reasonable adjustment may give rise to a legal claim with no cap on potential damages. In addition, failing to make a reasonable adjustment may give rise to other uncapped claims including indirect disability discrimination.

- **Accepting requests:** where an employer accepts a request, it should confirm the decision in writing and offer the employee the chance for a discussion to clarify any information that may be helpful in implementing the agreed arrangements (and if such a discussion is held then a record should be kept). However, the Code recognises that the employer and employee may agree that a meeting is not necessary in these circumstances.

- **Rejecting requests and the need for consultation:** the Code provides that employers must not reject a request without first consulting the employee. The Code offers some clarity on what such consultation should look like:

- Invite the employee to a consultation meeting and give them a reasonable period of time to prepare. The meeting should be held without unreasonable delay.

- Allow the employee to be accompanied to the meeting, even though there is no statutory right to be accompanied. The Code recommends that employers permit an employee to be accompanied by either a colleague, a trade union representative or an official employed by a trade union.

- Hold the meeting privately either in person or remotely via video conferencing or telephone. The meeting should be chaired by someone with sufficient authority to make a decision.

- Conduct the meeting in a way that allows for a reasonable discussion and consideration of the request. If the request cannot be accepted in full, discuss possible modifications or alternatives and/or whether a trial period may be appropriate (which may necessitate an extension to the two-month consideration process). A written record of the meeting should be kept.
 - Confirm the final decision in writing without unreasonable delay and within the two-month period for deciding requests (unless an extension has been agreed). The decision letter should clearly explain the business reasons for rejecting the request, together with any additional information which is reasonable to help explain the decision. The eight specified business reasons for rejecting a request are unchanged.
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- **Appealing a decision:** the Code encourages employers to allow an appeal process where a request is rejected, even though there is no statutory right to an appeal. Where offered, employers should set out details of any appeal process in their decision letter. The Code goes on to set out guidance on how any such appeal should be conducted.

- **Protection for employees:** the Code includes a reminder to employers that they must not subject an employee to any detriment, or dismiss them, in connection with having made a flexible working request, or having issued legal proceedings about the same.

Non-statutory guidance (Guidance)

The new Guidance came into force on 6 April 2024, replacing all previous guidance from Acas on the subject. The Guidance is designed to accompany the Code and covers the following areas in detail:

- The benefits of flexible working for employers and employees.
- The different types of flexible working available – lots of examples are given including: staggered hours, remote working, hybrid working, flexitime, job-sharing, compressed hours, annualised hours and term-time working.
- The ways to agree flexible working – this covers both the statutory right to request flexible working and agreeing changes outside the statutory process.

- Dealing with changes related to a disability.
- Making and considering requests – both inside and outside the statutory process.
- Communicating your decision and what to do next, including how to handle an appeal.
- The benefits of having a flexible working policy and training line managers.

The Guidance also offers pointers on what to do when you receive multiple requests at the same time. It provides that employers should consider requests in the order that they receive them and apply a consistent procedure. Employers are told to look at what is possible in each case, rather than replicating decisions made in the past. Further, employers are told not to prioritise requests based on people's personal situations, save where someone is requesting a reasonable adjustment related to a disability.

However, in our view, employers would be well advised to consider an individual's personal reasons for wanting a flexible working arrangement and whether there may be other statutory rights to consider. For example, if a mother returning from maternity leave wished to work four days per

week in order to accommodate her childcare responsibilities, a refusal may give rise to an indirect sex discrimination claim. Contrast this with another employee who wished to work four days per week in order to accommodate their personal hobbies, where a refusal is less likely to give rise to a legal claim. If only one of these requests could be accommodated, the existence of statutory rights and the risk of a potential claim would indicate that a sensible employer should prefer the childcare reasons.

What are the next steps for employers?

Employers should ensure that HR teams are on top of the new Code and Guidance, and that line managers are briefed on the key points. Flexible working policies should also be updated to reflect the legal reforms that came into force on 6 April 2024. When doing so, it would be sensible to benchmark the policy against the provisions of the Code and the key points in the Guidance. In particular, the consultation process should match that set out in the Code. Employers should also give thought to introducing an appeal stage if not already offered – both the Code and Guidance stress that this is an important part of a fair process, even though there is no statutory requirement to have one.

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

[Acas non-statutory guidance on flexible working requests](#)

BDBF is a law firm based at Bank in the City of London specialising in employment law. If you would like to discuss any issues relating to the content of this article, please

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