Flexible working: new draft Acas Code of Practice offers more detail on how employers must handle requests from Autumn 2027

Last month we reported on the Government's detailed plans for reforming the flexible working framework. From Autumn 2027, new rules will prescribe the process that employers must follow before refusing a flexible working request, and, in future, any refusal must also be objectively reasonable. You can read our full briefing on the proposals here.

The next step in the process was for Acas to open a consultation on a revised draft of its statutory Code of Practice on flexible working requests (the **Code**). The consultation on the revised draft has been published and offers practical guidance on what will be expected from employers. Although a breach of the Code does not give rise to any legal claims, tribunals must take the Code into account where it is relevant to a case.

New reasonableness test

Paragraphs 48 to 59 of the Code set out how employers should approach making a "reasonable" decision about a flexible working request, highlighting that employers will be expected to apply the four principles discussed below. However, the Code also recognises that what is reasonable may depend on the

circumstances, including the size and resources of the employer.

The four key principles are:

- **Reaching decisions based on evidence:** employers are expected to use evidence to make their decisions and be able to explain *what* evidence they used and *why* it supports their decision. Examples of evidence that employers could rely on include workforce or customer data, comparable situations elsewhere in the organisation, or discussions with managers or other team members. In other words, the decision should be based on more than just an individual manager's preference.

- **Adapting to enable the request:** employers should look at how to make reasonable changes to prevent, manage or reduce any negative impacts of the request that they consider may apply. This could include redistributing work or changing work patterns or using technology to support a different working pattern. It will not be enough for an employer to say that the current working model cannot accommodate the request; it must consider *changing* the working model to allow the request.

- **Finding solutions together:** where an employer has concerns about a request, the expectation is that they will work with the employee and their manager to find a solution. This could include offering a trial period or agreeing a time-limited change.

- **Transparency and consistency:** where an employer wishes to refuse a request because of the impact they believe it would have, they should provide the employee with an explanation of the anticipated impact and why that impact is significant enough to justify refusing the request. Employers should also be clear about the process that will be followed and how they will make their decision, for example, by adopting a flexible working policy.

New process

In terms of the process, the key points for employers to note are as follows:

- A **consultation meeting will be required** before rejecting a request. Employees must receive **fair notice** of that meeting in writing. The Code also notes that employers should *"take account of any particular urgency or*

requested start date" when arranging the meeting (e.g. due to a change in caring responsibilities). In other words, it may be necessary to accelerate the usual process.

- The employee should be **told of the purpose of the meeting** beforehand, i.e. to consider the request, address challenges where possible and explore alternatives if the arrangements are not feasible.

- Although there is no statutory right to be accompanied to the meeting, the Code says it is **good practice to allow the employee to bring a companion** and it can help employers handle requests fairly, transparently and consistently. If the employer *is* prepared to permit a companion, the employee should be notified of this before the meeting.

- The consultation meeting should be conducted with a view to reaching agreement with the employee. There should be an opportunity to make sure the request is understood. The employer must clearly explain any challenges that have been identified in accommodating the request, referring to the relevant statutory reason for refusing the request. The employee should be given a

chance to respond and any points in response should be discussed.

- The meeting should **explore possible solutions and alternatives** where appropriate.

- Following the meeting, the employer must **provide the employee with a written summary of the meeting** covering the key points discussed and any agreed action points, including when the employer expects to make its decision. This summary must be given to the employee without unreasonable delay.

- Once a final decision is made, this must be **communicated to the employee in writing**.

- **If the request (or an alternative arrangement) is agreed**, the decision letter must set out the agreed arrangement and the date on which it will take effect. The employer should also offer the employee a further discussion to clarify any information, for example, any

review dates.

- **If the request is refused**, the decision letter must set out the statutory business reason or reasons relied upon, explain why they apply, explain why the employer considers it is reasonable to refuse the request on that basis and state whether any alternative arrangement is agreed. Importantly, the Code says that the explanation should be detailed enough to help the employee understand the decision.

- There remains **no statutory right of appeal**, but the Code says it is good practice to offer one and it can help employers handle requests fairly and make a reasonable decision. If an appeal is offered, the written final decision should confirm that there is an option to appeal and explain how to do that and the relevant timeframe.

- All requests, including any appeal if offered, must still be **decided within two months of receiving the request** (unless there is agreement to extend this period).

What does this mean for employers?

Although employers should familiarise themselves with the draft Code, it is important to remember that this is not the final version. The consultation closes on 17 December 2026, with the final version expected to be available by Summer 2027. In addition, Acas plans to update its more detailed non-statutory guidance on flexible working, which will supplement the Code.

It would be sensible for employers to begin work on revising flexible working policies and procedures to align with the new rules, so that compliant policies are ready to go in Autumn 2027. Further, line managers involved in responding to flexible working requests should be given training on the new process and, crucially, the principles that will underpin a reasonable decision.

Although a breach of the rules governing flexible working requests is unlikely to result in a substantial compensation award (a tribunal may order an employer to pay compensation of up to eight weeks' pay, subject to a statutory cap on a week's pay, which is currently £751 per week but due to increase in April 2027), there are other consequences to consider.

First, the Tribunal can require the employer to reconsider the request. Where a refusal is found to have been unreasonable, we can expect tribunals to more readily order employers to reconsider requests.

Second, if a refusal is unreasonable, this could strengthen other claims brought by the employee. For example, depending on the circumstances, an unreasonable refusal could contribute to a repudiatory breach of contract, potentially giving rise to a constructive dismissal claim. It could also assist the employee in an indirect sex discrimination claim, on the basis that the employer's handling of the request was not proportionate. Compensation for unfair dismissal will be uncapped from 1 January 2027 and compensation is already uncapped in discrimination claims.

Draft Code of Practice on requests for flexible working

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 contact Principal Knowledge Lawyer Amanda Steadman (amandasteadman@bdbf.co.uk) or your usual BDBF contact.