

New flexible working rules to take effect from Autumn 2027

In September 2026, the Government published the response to its consultation on improving access to flexible working. From Autumn 2027, new rules will prescribe that a meeting must be held with an employee before refusing a request and must be conducted with a view to reaching agreement. A refusal must be on one of the eight prescribed grounds and, in future, be objectively reasonable, with the decision confirmed in writing.

What is the current position?

Currently, employees have a Day 1 right to request flexible working and may make two statutory requests in 12 months. Employers normally have two months to decide.

Employers may refuse flexible working requests where they consider that at least one of eight grounds specified in the Employment Rights Act 1996 applies. This includes things like the burden of additional costs, an inability to reorganise work among existing staff or detrimental impact on quality or performance. Importantly, this is a *subjective* test. In other words, as long as an employer considers that one of the eight grounds applies, and that view is based on correct facts, that is a sound basis upon which to reject a request. There is no statutory right to appeal a refusal, but many employers offer an appeals process.

What will change and when?

From Autumn 2027, an employer's refusal of a request must be based on one of the existing eight grounds and be *objectively* reasonable. Acas intends to publish detailed guidance by the end of this year explaining this new reasonableness test.

When refusing a request, the employer must notify the employee of the ground for refusing the request and explain why it considers that it is reasonable to refuse the application on that ground.

A consultation meeting will also be required before rejecting the request. At the consultation meeting, the employer must discuss whether the original request can be accommodated and address any difficulties. If it cannot be accommodated, the meeting should explore suitable alternatives *"with the view to reaching an agreement with the employee."* Employees must receive fair notice of that meeting and be told the purpose of the meeting beforehand.

Employers will also have to communicate both the outcome of the consultation meeting and the final decision in writing. If an agreement is reached during the meeting, one written communication may cover both.

Acas will consult on an updated statutory Code of Practice on flexible working in Summer 2027, with the legal changes coming into force in the Autumn of 2027.

What is not changing?

There are several things the Government considered but decided not to make statutory requirements.

- Employers will not be obliged to discuss trial periods, review periods or temporary arrangements at the meeting, although these may be needed in order for a refusal to meet the standard of being objectively reasonable.
- There will not be a statutory right to bring a colleague or trade union representative to the consultation meeting, although guidance will encourage employers to permit it.
- The person who ultimately makes the decision is not required to attend the consultation meeting, although it will often be good practice for them to do so.
- There will also not be a new statutory right to appeal a flexible working refusal, although the Acas Code recommends employers allow appeals.

What does this mean for employers?

The biggest change is that refusing a request becomes more demanding for the employer. From Autumn 2027, an employer considering saying “no” will need to have a meaningful discussion aimed at reaching agreement, consider the feasibility of the proposal and alternatives, and then be able to explain in writing both the statutory reason for refusing and why refusing is objectively reasonable in the circumstances.

We think that employers are going to have to go further to be able to justify the ground or grounds for refusal. For example, if a request is refused on the basis of an inability to reorganise work among existing staff or recruit additional staff, and the employer has not consulted with existing staff about the possibility of doing so or attempted to recruit additional staff, a refusal on such grounds may be unreasonable.

Where a request is refused on the basis of detrimental impact on quality or performance the question will be: what is the evidence for this view? Unless there is some historical evidence (e.g. if an employee has worked the same or similar pattern in the past and it was unsuccessful), it is likely that an employer would need to allow a trial period of the proposed working pattern for a reasonable period of time in order to assess whether there was, in fact, such a detrimental impact.

Where an employer breaches the rules governing flexible

working requests, an employee may complain to an Employment Tribunal. The Tribunal may order the employer to pay compensation of up to eight weeks' pay (currently capped at £751 per week) and require the employer to reconsider the application. Where an employer's refusal is found to have been unreasonable, we can expect Tribunals to more readily order employers to reconsider requests.

Further, if a refusal is unreasonable, this could assist the employee in other potential claims. For example, if an employer has adopted an unreasonable position this may be sufficient to amount to a repudiatory breach of contract, justifying constructive dismissal. It may also assist in indirect sex discrimination claims.

In due course, employers will need to update policies and practices to reflect the new rules on refusing 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 contact Principal Knowledge Lawyer Amanda Steadman (amandasteadman@bdbf.co.uk) or your usual BDBF contact.