

New law passed giving workers the right to request more predictable working patterns

On 18 September 2023 the Workers (Predictable Terms and Conditions) Act 2023 received Royal Assent and became law. The Act gives workers (and agency workers) a statutory right to request more “predictable” working patterns. Our briefing explains what the new right involves and the steps that employers will need to take to prepare.

When will a worker be able to make a request?

It is expected that workers will need six months’ service in order to be eligible to make a request, although this will not need to be continuous service. The service requirement will be set out in regulations which have yet to be published.

Where eligible, workers will be able to request a more predictable working pattern where their current work pattern lacks certainty in terms of hours, days and/or times worked. “Work pattern” also covers the length of the contract, and a presumption is made that a fixed-term contract of under 12 months lacks predictability. The purpose of the request must be to achieve a more predictable working pattern.

Are there any rules on how such requests must be made?

A request will need to be made in writing, state that it is a

request for a more predictable working pattern and set out the proposed change and the date on which the worker wants it to take effect. Further regulations may be made about the precise form that such applications must take.

Up to two applications may be made in a 12-month period, although these may not be made concurrently. It is worth noting that this limit includes any similar requests made under the separate flexible working regime (i.e. where the flexible working request is for a change that would have the effect of delivering a more predictable contract).

What duties will an employer have in relation to such requests?

Employers must deal with such requests in a “reasonable manner”, although this is not defined in the Act. Acas are set to publish a new statutory Code of Practice which will provide further guidance on how employers should handle such requests. We expect that employers will be asked to hold a meeting with the worker and give them the opportunity to make representations in support of their application.

The employer must notify the worker of its decision within one month of receiving the application. If the employer grants the request, the employer then has a further two weeks to offer the worker a new contract with terms and conditions that, overall, are not less favourable than the original contract and reflect the change that has been agreed.

However, employers do not have to accept requests. Requests may be rejected on one or more of the following grounds:

- The burden of additional costs.
- Detrimental effect on ability to meet customer demand.
- Detrimental impact on the recruitment of staff.
- Detrimental impact on other aspects of the employer's business.
- Insufficiency of work during the periods the worker proposes to work.
- Planned structural changes.
- Such other grounds as specified in regulations.

If the worker's contract is terminated during the one-month decision period the employer is still required to respond to the request, however, additional grounds for rejecting the request will then be available (namely, that the worker has resigned or been dismissed for a qualifying reason).

Employers are not obliged to offer a right of appeal but may choose to do so (and if they do, there are limits on how the appeal process should be run).

What rights will a worker have if something goes wrong?

If an employer fails to follow the statutory procedure for considering requests, or it rejects a request based on incorrect facts, then the worker will have three months to present a complaint to an Employment Tribunal.

The Tribunal may order the employer to reconsider the application and/or pay compensation to the worker of an amount it considers to be just and equitable. The maximum amount of compensation may be capped in regulations – we would expect this to mirror the maximum compensation available under the flexible working regime (i.e. 8 weeks' pay).

Workers will also be protected from detriment and/or dismissal for having requested a predictable working pattern or bringing proceedings to enforce the right to make such a request.

What should employers do now?

Employers do not need to take action just yet. Although the Act has passed into law, its provisions have not come into force straight away. The Government's press release indicates that the Act (and accompanying regulations) will come into force in Autumn 2024.

The draft Acas Code of Practice is due to be published shortly and will be subject to a public consultation. Once finalised, employers will be in a position to prepare policies setting out how such requests may be made and whether, for example, there will be a right of appeal. Employers will also need to devise processes for handling requests (noting the tight timetable for responding to them) and be ready to amend contracts where requests are accepted.

Although we think these preparations will be relatively straightforward, it is worth remembering that several other employment bills have recently passed into law and each will require employers to take preparatory steps over the next 18 months, namely the:

- **Carer's Leave Act 2023** – expected to take effect in April 2024. Read more [here](#).
- **Employment Relations (Flexible Working) Act 2023** – expected to take effect in July 2024. Read more [here](#).
- **Worker Protection (Amendment of Equality Act 2010) Bill** – expected to pass into law shortly and take effect in Autumn 2024. Read more [here](#).
- **Protection from Redundancy (Pregnancy and Family Leave) Act 2023** – expected to take effect by January 2025. Read more [here](#).
- **Neonatal Care (Leave and Pay) Bill** – expected to take effect in April 2025. Read more [here](#).

Workers (Predictable Terms and Conditions) Act 2023

BDBF is a leading 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 Amanda Steadman (AmandaSteadman@bdbf.co.uk) or your usual BDBF contact.