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.

Part-time status need only be an effective cause of less favourable treatment to give rise to a claim

In *Augustine v Data Cars Ltd* the Supreme Court has made it easier for part-time workers to complain about being treated less favourably than a comparable full-time worker.

What happened in this case?

Part-time workers have a legal right not be treated less favourably than comparable full-time workers as regards their contractual terms or by being subjected to any other detrimental treatment. This protection applies where the less favourable treatment is "on the ground of" the worker's part-time status and is not justified on objective grounds. Previous case authorities in this area have disagreed about whether "on the ground of" meant the part-time status had to be the *sole* cause of the treatment or merely an *effective* cause.

In this case, Mr Augustine was employed by Data Cars as a part-time taxi driver. All taxi drivers had to pay the same weekly fixed fee of £148 to access the Data Cars booking system. Mr Augustine argued that, in practice, this meant he paid a higher fee per hour to drive than a comparable full-time worker. He said this amounted to less favourable treatment of him as a part-time worker.

What was decided?

The Employment Tribunal rejected the claim. Although it said there was less favourable treatment, it concluded that the fee was not charged on the sole ground of part-time status. Rather, charging of a fixed fee was standard practice within the industry to allow an employer to generate revenue.

Mr Augustine appealed to the Employment Appeal Tribunal (the **EAT**) and then the Court of Appeal. The EAT and Court of Appeal both found that Mr Augustine's part-time status was, at

least, one reasonfor the less favourable treatment. The EAT considered that the correct test was whether the part-time status was an *effective* cause of the treatment, and it did not need to be the sole cause. Yet both the EAT and Court of Appeal considered they were bound by an earlier decision of the Scottish Court of Session (being the highest court in Scotland), which had said that part-time status had to be the *sole* reason for the treatment for a claim to proceed. Accordingly, the appeals failed.

Mr Augustine appealed again to the Supreme Court. The Supreme Court allowed the appeal, overturning the previous case authority. The Court held that a claim is available where the part-time status is an *effective cause* of the treatment, and it does not need to be the sole cause. This aligns the law on part-time worker discrimination with the approach taken in other types of discrimination cases.

What does this mean for employers?

This decision makes it easier for part-time workers to get claims off the ground. Employers will not be able to avoid claims by pointing to additional explanations for the less favourable treatment in question. If the part-time status is one cause, then a claim is possible. However, it still remains open to employers to objectively justify the treatment, by showing it had a legitimate aim, and the treatment was a proportionate way to achieve that aim. Where there are additional causes for the treatment, they may be relevant to the question of whether the treatment is justifiable.

Employers should pause to assess their exposure to such claims. Although objective justification is available, it is

preferable to avoid such claims arising in the first places. Some areas employers may wish to look at immediately include:

- Are pay arrangements fair? A straightforward pro rating of pay and bonuses should avoid the risk of claims but where there is a meaningful difference in pay for full and part-time workers, employers should interrogate the reasons for this.

- Are benefit arrangements fair? It would be sensible to audit staff benefits such as pension entitlements, health insurance and staff discounts to check how part-time workers are treated in comparison to full-timers. Again, the starting point should be to offer the benefit on a pro-rata basis where possible. Where you have a benefit that cannot be pro-rated (e.g. a company car), consider offering it to them in full or offer an alternative (e.g. a pro-rated car allowance).

- Are holiday entitlements fair? Once again, the pro rata principle should apply to calculate holiday entitlements and this is standard practice. However, where you do not provide part-time workers with a pro-rata bank holiday allowance, this could generate complaints of less favourable treatment. The safest course of action is to provide a pro rata entitlement to the eight bank holidays for part-time workers but stipulate that if a

bank holiday falls on one of their working days, they must take annual leave on that day.

Employers should also note that there is a risk that the "effective cause" approach may cross over into claims of less favourable treatment brought by fixed term employers. Protection under the less favourable treatment of fixed-term workers operates in the same way as for part-time workers and so there is a respectable argument that the approach to causation in *Augustine* should be adopted in such claims. Accordingly, when auditing the position for part-time workers, it would be sensible to address how fixed-term workers are treated and consider the reasons justifying any material difference in treatment.

Augustine v Data Cars Limited

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Employment Rights Act 2025:

refusing flexible working requests comes under the spotlight.

On 5 February 2026, the Government opened a consultation on the flexible working changes included in the Employment Rights Act 2025. In particular, views are sought on the new statutory process that an employer must follow should it wish to reject a flexible working request.

What is the current position on flexible working requests?

All employees have the right to request a flexible working arrangement from Day 1 of their employment. Currently, 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, which means that 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.

In terms of process, from 6 April 2024 employers have been required to consult with employees *before* refusing a request. However, the nature of the consultation is not set out in law. Instead, the statutory Acas Code of Practice on requests for flexible working (the **Code**) sets out recommendations on the scope of such consultation. The Code suggests gathering all relevant information, holding a meeting with the employee

to discuss the request and considering alternatives if needed. A written record of the meeting should be kept, and a right of appeal is also recommended. A failure to follow the Code does not give rise to a claim, but Tribunals are able to take into account when considering relevant cases.

What changes will be made by the Employment Rights Act 2025 (the ERA)?

The ERA will make changes to the flexible working regime in 2027.

First, it will require an employer's refusal of a request to be based on one of the existing eight grounds and be an *objectively reasonable* one. The employer will need to notify the employee of the ground for refusing the request and explain why it considers that it is reasonable to refuse the application on a particular ground. Where an employer's decision is not reasonable, or where it fails to explain this to the employee, the employee will be able to complain to an Employment Tribunal. A Tribunal could order the employer to reconsider its decision and/or award compensation of up to eight weeks' pay (currently capped at £719 per week).

Second, the steps that an employer needs to take to consult with an employee before refusing a request will be set down in legislation for the first time. The aim is to introduce consistency for employees and clarity for employers.

The Government promised to consult about the detail of these changes before bringing them into force in 2027. The Consultation on improving access to flexible working was

launched on 5 February 2026 (the **Consultation**).

What does the Consultation say?

As far as the new reasonableness test is concerned, the Consultation simply seeks evidence on current approaches to handling flexible working requests. It is said that this information will be used to help shape guidance and resources for employers, employees and other stakeholders.

As to the new statutory process, views are sought on the proposed process that employers will need to follow. It is said that the proposed process represents a *"a series of light touch requirements"* which have been drawn from the current Acas Code of Practice.

The proposed statutory consultation process will require an employer that is considering refusing a flexible working request to meet with the employee. Views are sought on the following matters:

- **The objective of the meeting:** it is said that the purpose of the meeting is to discuss challenges with the request and explore alternative options. Views are sought on whether this is the right objective for the meeting.

- **Setting up the meeting:** it is said that the meeting must take place within the two-month period for making a decision (but that, in practice, it should take place within six weeks of the request to allow time for follow up conversations). The employee must be informed about the context of the meeting in advance to give them time to prepare. A person with authority to make a decision must attend the meeting and keep a record of the discussion. Views are sought on whether these requirements are right and how much notice should be given to the employee.

- **During the meeting:** it is said that the meeting must allow for sufficient discussion of the request and potential alternatives. The decision-maker must:
    - clarify whether the proposed arrangement should be treated as a reasonable adjustment under the Equality Act 2010;
    - explain any challenges with the original request and why it would not be feasible to accommodate it, referring to the relevant business reason;
    - consider whether there are any ways around the identified challenges;
    - consider alternative arrangements; and
    - consider allowing a trial period if the impacts of an arrangement are unclear.

View are sought on whether these are the right things to be addressed at the meeting.

- **Communicating the outcome in writing:** it is said that employers must provide written notice of the outcome of the meeting, including a summary of the discussion and any conclusions or next steps that were agreed. It must also provide written notice of its final decision on the request (i.e. whether it was approved, rejected or if an alternative arrangement is agreed). Views are sought on whether it is right to require employers to communicate both the outcome of the meeting and the decision on the request in writing. Views are also sought on whether the new process will take more, less or a similar amount of time to existing processes.

What will these changes mean for employers in practice?

We think the change to the reasonableness test means that employers will 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 considered the feasibility of recruiting additional staff, it is likely that a refusal on such grounds would be unreasonable. Or where a request is refused on the

basis of detrimental impact on quality or performance, again, 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. The end result is that more requests are likely to be accepted.

The impact of the changes to the consultation process is likely to be minimal. Employers are used to the requirements of the Acas Code of Practice, including the need to hold a meeting. That said, employers will need to take care not to trip up on the finer detail since mistakes could give rise to a Tribunal claim. Interestingly, unlike the Acas Code of Practice, the proposed statutory procedure does not provide that the employer should allow an employee to be accompanied to the meeting, nor offer a right of appeal.

What are the next steps?

Employers wishing to respond to the Consultation may do so online, by email or in writing by 30 April 2026.

The Government will finalise its proposals and publish a response in due course, to be followed by draft regulations. In addition, it is said that Acas may open a consultation on revising its Code of Practice and guidance on flexible working.

The reforms are due to come into force on an as yet

unspecified date in 2027.

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BDBF Webinar – Beliefs, backlash, and the workplace: navigating the new culture wars – 29 April 2025

In this 1-hour webinar, BDBF Managing Partner Gareth Brahams and Associate Emma Burroughs explore the legal rights and responsibilities surrounding belief expression in today's complex work environment. This webinar was originally delivered on 29 April 2025 and reflects our understanding as of that date. Do get in contact with either of the speakers if you would like to discuss any of the issues raised.

To view the PDF webinar slides please click on the image below, or view the recording of the webinar:



https://youtu.be/T36MMxkdRg4

Please contact Gareth Brahams (GarethBrahams@bdbf.co.uk), Emma Burroughs (EmmaBurroughs@bdbf.co.uk) or your usual BDBF contact, for further advice.

BDBF Webinar – Unlocking the future: what the Employment Rights Bill means for employers – 28 January 2025

In this 1-hour webinar, BDBF Managing Associate Tom McLaughlin and Principal Knowledge Lawyer Amanda Steadman discuss the "once-in-a-generation" changes the Employment Rights Bill will bring for UK employers. This webinar was originally delivered on 28 January 2025 and reflects our understanding as of that

date. Do get in contact with either of the speakers if you would like to discuss any of the issues raised.

To view the PDF webinar slides please click on the image below, or view the recording of the webinar:



https://www.youtube.com/watch?v=N8hsMp5dW7w

Please contact Tom McLaughlin (TomMcLaughlin@bdbf.co.uk), Amanda Steadman (AmandaSteadman@bdbf.co.uk) or your usual BDBF contact, for further advice.

The Employment Rights Bill: a closer look at the family-

friendly provisions

On 10 October 2024, the Government published the Employment Rights Bill, which will take forward many of its proposals for workplace reform. In the first in a series of articles analysing the Bill, we consider the proposals for family-friendly reform.

Running to more than 150 pages, the Employment Rights Bill (**the Bill**) puts forward a vast array of reforms affecting the workplace, including family-friendly rights, dismissals, equality law, contracts and pay, trade unions and industrial action and labour market enforcement. In the first in a series of articles explaining the Bill, we consider all the proposals in the family-friendly sphere.

Flexible working

Currently, employers may refuse flexible working requests where they consider that at least one of eight grounds specified in the Employment Rights Act 1996 (the **ERA**) 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. Employees are unable to challenge the decision on the basis that they feel the decision was an unreasonable one (albeit they may be able raise other claims such as automatic unfair dismissal or indirect sex discrimination).

The Bill proposes that the law is changed to require an employer's refusal of a request to be based on one of the existing eight grounds and be an *objectively reasonable* one. Further, 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. Where an employer's decision is not reasonable, or where it fails to explain this to the employee, the employee will be able to complain to an Employment Tribunal.

There is one further small change. From 6 April 2024, employers have been required to consult with employees before refusing a request. The Bill provides that, in future, regulations may be issued setting out the precise steps that an employer must take in order to comply with this consultation requirement.

What will these changes mean for employers in practice?

- 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, it is likely that a refusal on such grounds would be unreasonable. Or where a request was to be refused on the basis of detrimental impact on quality or performance, again, 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. The end result is that more requests are likely to be accepted.
- 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 £700 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. Indeed, in the recent case of Johnson v Bronzeshield Lifting Ltd, a Tribunal held that an employer's failure to take into account relevant information before refusing a flexible working request was a repudiatory breach. This was on the basis that the hours that an employee works has a major impact on their lives, and it also matters how flexible working applications are dealt with – the outcome is not the only thing of importance. It is not a stretch to see that a Tribunal could reach a similar decision where a request has been refused unreasonably.
- It looks like specific rules are on the way governing the form of consultation needed before refusing a request. The existing statutory Acas Code of Practice on requests for flexible working sets out recommendations on the scope of such consultation. The Code suggests gathering all relevant information, holding a meeting with the employee to discuss the request and considering alternatives if needed. A written record of the meeting should be kept, and a right of appeal is also recommended. A failure to follow the Code does not give rise to a claim but Tribunals will take it into account when considering relevant cases. Therefore, we think it is likely that the Code's provisions on consultation will be elevated into law.
- In due course, employers will need to update policies and practices to reflect the new rules on refusing

requests.

Family leave rights

There are three proposed areas of change in the field of family leave rights.

Unpaid parental leave

Currently, employees with one year's service have a right to take up to four weeks' unpaid parental leave per year in respect of children under the age of 18 (up to a maximum of 18 weeks' leave in total).

The Bill proposes to remove the service requirement and make unpaid parental leave a Day 1 employment right.

Paternity leave

Currently, employees with 26 weeks' service ending with the week immediately before the 14th week before the expected week of childbirth (or the week in which an adopter is notified of a match) have a right to take up to two weeks' paternity leave. The same service requirement applies in respect of eligibility for statutory paternity pay.

The Bill proposes to remove the service requirement for paternity leave, making it a Day 1 employment right. However, the Bill is silent on whether the service requirement will be lifted for statutory paternity pay, which suggests that it will remain.

Further, currently, where an employee is entitled to paternity leave and pay and shared parental leave and pay, the paternity leave and pay must be taken *before* the shared parental leave and pay. If the employee takes the shared parental leave and pay first, they lose their entitlement to paternity leave and pay. The Bill proposes to remove this restriction, meaning

that employees may take shared parental leave and pay first if they wish and retain their entitlement to paternity leave and pay.

Bereavement leave

Currently, employees have a Day 1 employment right to take two weeks bereavement leave if a child under the age of 18 dies (and those with 26 weeks' service ending with the week before the child died are also entitled to receive statutory parental bereavement pay). Employees taking parental bereavement leave are also protected from detriment and dismissal. However, there is no general right to take bereavement leave outside of this, for example when a spouse, parent or sibling dies. Of course, many employers do permit compassionate leave in such circumstances, but there is no legal requirement to do so.

The Bill proposes amending the parental bereavement leave rules (which are set out in the ERA) to turn "parental bereavement leave" into "bereavement leave", although some special rules will still apply where a child dies. Regulations will specify the relationships which will entitle an employee to take bereavement leave, however, we can expect it to cover most close relationships such as a spouse, civil partner, other life partner, grandchild, parent, sibling or grandparent. The Bill says that the bereavement leave entitlement must be not less than one week, however, the leave entitlement will stay at two weeks' where a child has died. It appears from the drafting of the Bill that the leave will be unpaid, save that statutory pay will remain available where a child dies.

What will these changes mean for employers in practice?

- The removal of the service requirements for unpaid parental leave and paternity leave will mean that a larger cohort of employees will become eligible to take these forms of leave. The result is that employers will

have to manage a higher number of these types absences than is currently the case. In due course, employers will need to adjust relevant policies to reflect the wider scope.

- Many employers already offer paid bereavement leave but the new statutory right will introduce rules around how such leave is managed and provide protections for those taking the leave. Employers will need to revise their bereavement leave policy in due course and will also need to consider whether to enhance the right and offer paid leave.

What are the next steps?

The Bill has just started its passage through Parliament, which will take time. Even when passed, the family-friendly provisions will not come in straight away; regulations will be needed to bring them into force. Regulations may also bring different parts of the Bill into force at different times. The Government may also consult on certain aspects of the proposals. Indeed, it has said that in relation to the flexible working reforms it is important to take into account a range of views and it will develop the detail of the approach *"…in consultation and partnership with business, trade unions and third sector bodies".*

It is also worth noting that at the same time as publishing the Bill, the Government published a document entitled Next Steps to Make Work Pay setting out its plans for further workplace reform outside the Bill. It acknowledges that some reforms will take longer to implement, including a full review of the entire parental leave framework and a review of the benefits of introducing paid carer's leave. No specific time frame for these reviews is given.

It also states that the Government will deliver some reforms through means other than legislation, such as taking forward a "right to switch off" through a statutory Code of Practice.

This suggests that there will be no statutory right to switch off – rather statutory best practice guidance which may be taken into account by an Employment Tribunal in relevant claims. This appears to be a watering down of the pre-election promise that a *right* to switch off would be introduced. Although not stated, it is likely that there will be a public consultation upon any such Code of Practice before it comes into force. However, as legislation would not be required, this could be introduced relatively quickly.

Stay tuned for our second article in the series, where we will consider the provisions of the Bill affecting dismissals.

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.

New guidance for employers on how to support disabled workers with hybrid working

The Equality and Human Rights Commission (EHRC) has published new guidance for employers on how to support disabled workers with hybrid working. Aimed at managers and leaders, it provides practical tips, conversation prompts, questions and case studies, and covers both recruitment and employment.

On 5 September 2024, the EHRC published new guidance for

employers on how to support disabled workers with hybrid working. The guidance recognises that working arrangements can bring benefits to disabled workers, including being better able to manage their health and wellbeing. However, it highlights that if it is not designed and implemented well it can also create difficulties like a lack of inclusion, isolation from colleagues or not having the necessary support or equipment in place to enable a worker to thrive in their role.

The guidance addresses the following topics in detail:

- What the law has to say about reasonable adjustments in employment.
- How to identify when a worker or job applicant may need reasonable adjustments.
- Identifying barriers to effective hybrid working.
- How to identify the adjustments needed to overcome the barriers.
- How to implement the adjustments.
- How to review how the adjustments are working.
- How to make your working environment inclusive and accessible for disabled workers.

It also discusses a number of types of adjustments to hybrid working arrangements for disabled workers including things like: digital support, IT equipment, furniture, online and hybrid meeting etiquette and travel to work. It includes various case studies designed to showcase different types of adjustments including:

- Adjusting a working pattern for a worker with depression to allow him to attend the office for 60% of his working time, rather than the standard 40%, as too much homeworking is exacerbating his condition.

- Providing specialist software and a large monitor for homeworking for a worker with a degenerative eye condition who is struggling to read emails and documents on his computer.

- Allocating a dedicated desk in a workplace which operates hotdesking to a worker with a musculoskeletal condition which necessitates specialist display screen equipment to minimise discomfort.

- Providing a quieter desk in an open plan office to an autistic worker who is struggling with the noise and recording the same in an “adjustments passport” to ensure future managers are appraised of her needs.

- Agreeing an accessible meeting standard for online meetings by turning on live captions and using the inbuilt accessibility checker on Powerpoint to enable workers with hearing and visual impairments to participate fully in such meetings.

Although non-binding, the guidance will be a useful reference document for all employers operating hybrid working arrangements.

Supporting disabled workers with hybrid working: Guidance for employers

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Flexible working requests and the dangers of overlooking menopausal symptoms

In *Johnson v Bronzeshield Lifting Ltd*, the Employment Tribunal held that an employer's failure to take into account an employee's menopausal symptoms when considering her flexible working request was an act of direct disability discrimination and a repudiatory breach of trust and confidence which resulted in her constructive unfair dismissal

What happened in this case?

The employer, Bronzeshield Lifting Ltd, is a small crane hire business with a predominantly male workforce. Ms Johnson was employed as an Administrator. She was a long-serving employee, having worked for the employer for over 25 years. In 2018, Ms Johnson began experiencing a wide range of menopausal symptoms including:

- low mood and volatile emotions;
- anxiety and low self-esteem;
- feelings of anxiety or panic when performing tasks that she had previously found easy;
- sleep problems causing tiredness and fatigue the following day; and
- "brain fog" which manifested as feelings of disorientation and made it difficult to concentrate.

These symptoms affected her general resilience and ability to cope with the stresses and strains of day-to-day work. This was exacerbated by the fact that she needed to help care for her elderly parents and uncle.

Ms Johnson's worked 32.5 hours per week between the hours of 9am to 4pm, Monday to Friday (she had a 30-minute unpaid lunch

break each day). In August 2021 she asked to changing her working hours to 9am to 5pm, four days per week, with Wednesdays off (totalling 30 hours per week). She said she would be happy to check and reply to emails from home on Wednesdays if required. The request was approved for a fixed period until 1 July 2022, after which the arrangement would be reviewed and either made permanent, or she would be expected to revert to her original working pattern.

The review did not take place in July 2022. However, around this time, Ms Johnson asked to if she could reduce her working hours further. She asked to work 9am – 4.30pm on Monday to Wednesday with no lunch break, 9am – 1pm on Thursday and to have Fridays off (totalling 26.5 hours per week). She suggested that another colleague could cover on Thursdays and Fridays. When making the request, she explained she needed the change to accommodate her caring responsibilities and her menopause issues. A meeting was held to discuss the request, during which Ms Johnson made mention of her menopause and caring responsibilities again.

The employer refused the request on the basis that it would be unfair to ask a colleague to cover and it was not feasible to recruit someone. In addition, the proposal would put the employer in breach of the rules on daily rest breaks and they would be left without cover on Fridays, which was considered to be their busiest day. No alternative proposal was put forward and the implication was that she would have to return to her original five-day week working pattern.

Ms Johnson resigned on notice, expressing her disappointment that her reasons for wanting to change her working patterns had not been taken into consideration, nor a compromise suggested. The employer wrote back offering a one-week

“cooling off” period and reminded her that she could appeal the decision. Although she then submitted a letter challenging the decision, the employer failed to treat this as an appeal as she had not labelled it as an appeal letter. Therefore, Ms Johnson’s employment terminated at the end of her notice period.

Ms Johnson argued that the employer had directly discriminated against her because of her disability and/or sex by:

- failing to take into account her menopause when determining the flexible working request; and
- refusing to grant the flexible working request.

She also claimed that both matters amounted to serious breaches of trust and confidence, meaning she had been constructively unfairly dismissed.

What was decided?

Shortly before the Employment Tribunal hearing, the employer conceded that Ms Johnson was disabled for the purposes of the Equality Act 2010, meaning this question did not have to be determined by the Tribunal.

In relation to the first discrimination complaint, the Employment Tribunal found that the employer had failed to take into account the fact that Ms Johnson was going through the menopause when determining her flexible working request. Given that she had explicitly referred to it in her written flexible working request, and in the meeting, it was not something that should have been missed. The Tribunal found that the employer would have treated an employee with a different but serious medical condition (e.g. cancer) in a different way. It would have made efforts to find out whether such a person would have needed treatment and what the link was between the condition and the working pattern. More generally, it would have taken the condition into account when determining the application. Therefore, the Tribunal concluded that Ms Johnson had suffered less favourable treatment because of the particular disability of menopause. However, it rejected the claim that she had been treated less favourably because of her sex.

In relation to the second discrimination complaint, the Employment Tribunal found that the employer had refused the flexible working request, but this was not because of her menopause (indeed, her menopause had not been taken into account when considering the request). Nor would the employer have treated an employee with a different but serious medical condition in a different way – their request would also have been refused. The Tribunal accepted the employers reasons for refusing the request were that it would mean they would be in breach of rules on daily rest breaks, and that it was not practicable for the business for Ms Johnson to have Fridays off. Accordingly, this disability discrimination complaint failed. The sex discrimination complaint failed for the same reasons as the first complaint.

Finally, the Tribunal held that the employer had committed a

breach of contract by failing to take into account her menopause when determining her flexible working request. The Tribunal notes that *"All that was really required was to ask the Claimant a few questions, listen to her answers and factor it all into the reasoning when coming to a decision upon the application."* The Tribunal considered this amounted to be a repudiatory breach of trust and confidence for the following reasons:

- the hours an employee works has a major impact on their life – all the more so where they have health problems and other commitments as was the case here;
- it matters how a flexible working application is dealt with – the outcome is not the only thing of importance;
- here, the employee had put her menopause "front and centre" of her request;
- the menopause was affecting the employee in a profound way but there was an absence of effort to try and understand how menopause was affecting her and its relevance to her application – there was no good reason for leaving this important factor out.

The refusal of the flexible working request itself was not a breach of trust and confidence – there was reasonable and proper cause for the refusal.

The Tribunal found that Ms Johnson had resigned in response to the repudiatory breach of contract, meaning her constructive unfair dismissal claim succeeded.

What does this mean for employers?

The employer in this case appeared to have sound reasons for refusing the flexible working request on the facts. Where they went wrong was in the process leading up to that decision.

If an employee signposts their motivations for making a flexible working request, an employer should explore this with them when discussing the proposal. This is all the more important where the employee has highlighted a health reason, including those that the employer may not immediately understand as being relevant to the request. Here, it was found that the employer would have taken other serious health conditions into account when considering the request. But because the employer did not properly understand the potential impact of the menopause, it failed to make the necessary connection and explore the issue further. This underlines the need for appropriate disability training, which includes menopause, to be given to appropriate staff.

As the Tribunal made clear, taking the underlying reason into consideration is not an especially onerous task. It could have required as little from the employer as discussing the matter with the employee and factoring this into their decision in a fair way. In cases where symptoms are unclear, it may mean medical advice is needed before a fair decision can be made.

In this case, the failure to get the process right amounted to direct disability discrimination and was also a repudiatory breach of contract. The latter finding should be of concern to employers when dealing with *all* flexible working requests – not just those motivated by health reasons. The Tribunal's comments about the major impact of working patterns in employees' lives, and the importance of how flexible working applications are dealt with, suggests that shortcomings in such processes could open the door to constructive dismissal claims. Not only would this be costly to deal with, it risks the loss of a valuable employee.

Although not argued in this case, employers should also remember that a rejection of a flexible working request by a disabled employee could attract other types of disability discrimination claim including failure to make reasonable adjustments, indirect disability discrimination and disability arising from discrimination.

Johnson v Bronzeshield Lifting Ltd

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What really matters to younger workers?

Deloitte has recently published the results of its Global 2024 Gen Z and Millennial survey. Over 22,800 respondents from 44 countries participated in the survey, which aimed to uncover their attitudes to work and the wider world. In this briefing, we distil the key points of interest for employers and consider what really matters to younger workers.

Stereotypes of Gen Z and Millennial workers (those born between 1995-2005 and 1983-1994 respectively) tend to present them as demanding, entitled, disengaged, lacking in loyalty and obsessed with technology. Like most stereotypes, these labels are unfair and are likely to lead to unjustified negative views of younger workers. Deloitte's Global 2024 Gen Z and Millennial survey seeks to cut through the labels, by using data to find out what actually motivates workers from these generations.

The survey made six key findings, which will be of interest to all employers of Gen Z workers and Millennials.

- **Work/life balance is the top priority:** work/life balance topped the list of priorities for when choosing a new job role. Conversely, poor work/life balance or feelings of burnout were commonly cited reasons for leaving a job. Two thirds of respondents had been mandated to return to office working post-pandemic. There were

mixed feelings about this. On the plus side, respondents liked the improved engagement, connection, collaboration and routine. Yet others reported increased stress levels, a drop in productivity and a negative financial impact. Overall, these workers prized flexibility in both where and when they worked and wanted employers to offer part-time working opportunities and four-day working weeks. Last year, a pilot scheme in the UK trialled a four-day working week – you can read more about this in our article here. More recently, UK flexible working laws have been overhauled to improve access to flexible working – you can read more about the reforms in our article here.

- **The cost of living is a major concern:** although just under half of respondents expected their personal finances to improve within the next year, financial insecurity was still a major concern for many. Around a third reported feeling financial insecure and over half were living from pay day to pay day. The cost of living remained the top concern for these workers, ahead of other concerns such as unemployment, climate change, mental health and crime. In our recent article, we explored way that employers support workers facing financial difficulties – you can read that article here. These concerns were exacerbated by social and political uncertainty, particularly in countries (including the UK) facing elections over the next year.

- **Stress and mental health at work needs to managed properly:** only around half rated their mental health as either good or very good, and stress levels remain high. Around 40% reported feeling stressed all or most of the time. Financial and family matters are major stressors, as are job-related factors such as long working hours, lack of recognition, overwork and not feeling decisions are made in a fair or equitable way. Although many reported that their employers took mental health at work seriously, only around 40% said they would feel comfortable discussing mental health with their manager or would be confident that the manager would know how to respond if they did raise it. Concerningly, around 30% said they feared their manager would discriminate against them if they raised concerns about mental health. Acas has recently published guidance on making adjustments for mental health, with specific guidance aimed at managers – you can read more about the guidance in our article here.

- **Purpose and values at work are important:** the vast majority of respondents (almost 90%) say having a sense of purpose is important to their overall job satisfaction and wellbeing. So much so, that around 40% of these workers had rejected roles with prospective employers who did not align with their values or beliefs on issues such as the environment, inclusivity and work/life balance. Others reported turning down specific tasks or projects with their current employer for the same reason – although around a fifth said they were not listened to and made to complete the task anyway, while others reported that detrimental treatment

followed. Emphasis was also placed on an employer's purpose beyond making profit, with three-quarters of respondents reporting that societal impact was an important factor when considering a future role. Respondents wanted businesses to champion protection of the environment, ensure that Generative AI was used ethically, and influence social equality, for example by creating inclusive employment opportunities.

- **Environmental sustainability affects career decisions:** in keeping with the focus on purpose and values, respondents also reported environmental sustainability as a top concern. Around 60% reported feeling worried or anxious about the environment in the past month. This group want employers to take more action to protect the environment and make sustainable choices. The actions that these workers wanted employers to take included educating staff about sustainability, renovating the workplace to become greener and committing to net-zero greenhouse emissions in the next decade. Again, workers in these groups were prepared to choose job roles which aligned with these values, with 20% saying they had changed jobs for this reason, and another 25% reporting that they intended to do so in the future. And around 70% said environmental credentials and policies were important when assessing a potential employer.

- **There are mixed feelings about the rise of Generative AI in the workplace:** only around a quarter of respondents use Generative AI all or most of the time at work, the remainder used it rarely or not at all. Less frequent or non-users were more likely to feel uncertainty about such tools, with women being more uncertain than men. In contrast, frequent users were more likely to feel trust and excitement about such tools, believing that they will free up time, improve work/life balance and enhance the way they work. However, such users also had concerns that Generative AI drive automation would eliminate jobs and make it harder for young people to progress in their careers. In response, some are focusing on reskilling and/or applying for roles that are less vulnerable to automation. Overall, only half of respondents felt their employer was providing sufficient training on the capabilities, benefits and value of Generative AI.

You can read the full results of the survey here.

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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.

- **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

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

New law passed which will shake up flexible working regime

On 20 July 2023, the Employment Relations (Flexible Working) Act 2023 received Royal Assent and became law. The Act introduces reforms to the flexible working regime, which are due to come into force in a year's time. The statutory Acas Code of Practice on flexible working will be updated to reflect the changes to the law.

What is the background to the reforms?

In September 2021, the Government published a consultation setting out its proposals for change to the flexible working framework. In particular, views were sought on whether the right to request flexible working should become a Day 1 employment right (currently, 26 weeks' service is required before a statutory request can be made).

The Government responded to the consultation in December 2022 and confirmed that it would make the right to request flexible working a Day 1 employment right. It is estimated that this will bring a further 2.2 million employees within the scope of

the flexible working regime.

Separately, the response confirmed that the Government would support the Employment Relations (Flexible Working) Bill 2022-23, a Private Members' Bill sponsored by the Labour MP, Yasmin Quereshi. The Bill received Royal Assent on 20 July 2023 and became the Employment Relations (Flexible Working) Act 2023.

What changes will be made to the flexible working framework?

The Act will make the following changes to the flexible working framework:

- Employees will no longer be required to explain what effect they think the requested change would have on their employer and how that effect might be dealt with.

- Employees will be permitted to make two flexible working requests per year rather than one.

- Employers will be required to consult with employees before refusing requests.

- Employers will have two months to make a decision on a flexible working request rather than three, unless an extension is agreed.

However, the Act does *not* take forward the Government's proposal of making the right to request flexible working a Day 1 employment right. The Government has said that secondary legislation will be introduced separately to implement this.

Are there any other changes employers need to know about?

On 12 July 2023, Acas launched a consultation on proposals to update its statutory Code of Practice on handling flexible working requests. Although the Code is not legally binding, it is taken into account by Employment Tribunals when considering relevant cases. The Code has been updated to reflect changes to ways of working since the Code was first introduced in 2014, and to reflect the new legal reforms. The draft Code encourages employers to approach requests with an open mind and engage in meaningful dialogue. It also:

- Provides clarity on what consultation should involve and recommends that meetings are held both when a request is to be rejected or accepted.

- Extends the categories of individuals who may accompany an employee at meetings to discuss a request (so that it mirrors the position for disciplinary and grievance meetings).

- Provides guidance on the information that employers should set out to help explain their decision.

- Encourages employers to allow for an appeal process where a request is rejected.

- Provides information about the planned new right for workers to be able to request more predictable working patterns (which is separate to the right to request flexible working).

The consultation on the draft Code close 6 September 2023. Acas has said it will also update its non-statutory guidance on flexible working, which complements the Code.

Separately, on 19 July 2023, the Government launched a call for evidence on "non-statutory" flexible working. This covers regular flexible working arrangements that have been agreed outside the statutory regime, as well as ad hoc arrangements which are occasional or temporary in nature. In particular,

the Government wishes to understand the extent to which individuals and businesses are using such practices, how and why they are using them, as well as the barriers and the benefits. It also wants to receive examples of best practice and case studies. The Government wishes to develop an evidence base in this area, which it says will inform the Government's future flexible working strategy.

What steps should employers take now?

The Act provides that the changes may come into force on a date or dates specified by the Secretary of State. The Government has said it "expects" the measures to come into force approximately a year after Royal Assent, in order to give employers time to prepare i.e. in July 2024. The intention is that the secondary legislation introducing the Day 1 right to request flexible working will be introduced at the same time.

Therefore, employers have a year to prepare for these changes. We would recommend that you consider taking the following preparatory steps:

- Consider whether you will specify what flexible working options would be suitable for a role in job advertisements and identify candidates' preferences in job interviews. Although this will not prevent an employee asking for something different on Day 1 of their employment, the hope is that discussing this upfront will allow a suitable pattern to be identified

from the off, rather than having to deal with a request in the first few months of employment.

- Revise your flexible working policies to reflect the legal reforms. Although employees are no longer required to explain the potential effect of their request, we would recommend that this is still encouraged on the basis that it may help speed up consideration of the request.

- Consider what your consultation process will look like. As the draft Code outlines, this should usually include a face-to-face meeting. Where you are tending towards rejecting a request, a meeting affords the employee an opportunity to make further submissions and allows time for consideration of alternatives. Where you are tending towards accepting a request, a meeting can add value by allowing an opportunity to discuss the request in more detail and think about ways to implement the arrangement successfully.

- Train HR and line managers on how these reforms will impact the handling of flexible working requests. When the Acas Code is finalised, HR and line managers should be asked to read it.

- Consider whether you need to devote further resource to the management of flexible working requests, in light of

the ability to make two requests per year, the shorter time frame for providing responses and that requests may be made from Day 1 of employment.

- Consider whether record-keeping procedures should be strengthened (for example, to record how many requests have been made within a 12-month period and to document what consultation has been undertaken).

In addition to the above, you may wish to contribute to the consultation on the Acas flexible working code and the call for evidence on non-statutory flexible working.

Employment Relations (Flexible Working) Act 2023

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Right to request flexible working to become a Day 1 employment right

Last month, we reported on proposals to make a number of reforms to the flexible working regime by way of a Private Members' Bill. Since then, the Government has announced it will make the right to request flexible working a Day 1 employment right.