Workers to be given the right to request more predictable working patterns

Workers to be given the right to request more predictable working patterns

The Government has announced that it is supporting the Workers (Predictable Terms and Conditions) Bill that would give workers and agency workers a statutory right to request a more "predictable" working pattern.

Last November, we reported on the Government's plans to pursue employment law reforms by way of backing a series of Private Member's Bills. You can read more about the proposals to improve redundancy protection **here** and expand harassment law **here**. And you can read about four further proposals **here**.

Continuing this theme, the Government has recently announced that it is supporting a further Private Member's Bill – the Workers (Predictable Terms and Conditions) Bill – which would entitle workers (and agency workers) to request a more "predictable" working pattern. In this briefing, we consider how the new right will apply to workers.

When will a worker be able to make a request?

Only workers who are employed by the same employer at some

point during the month immediately preceding a “prescribed period” ending with the request will be able to make a request. The “prescribed period” will be set down in regulations but is expected to be 26 weeks. In other words, a worker will need six months’ service before a request may be made.

Workers will have the right to make a request for a more predictable working pattern where:

- Their work pattern lacks predictability. In this context, “work pattern” refers to the number of hours worked, the days of the week worked and the times on those days that the worker works (e.g. someone working under a zero hours contract or who works an irregular shift pattern). “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 change requested relates to their working pattern.

- The purpose of the request is to achieve a more predictable working pattern.

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

Applications must be made in writing, state that it is a request for a more predictable working pattern and set out the date on which the worker proposes the change will become effective. The draft Bill states that further regulations may be made about the 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 extends to requests made under the separate flexible working regime, 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?

The draft Bill provides that employers must deal with such requests in a "reasonable manner". This is not defined in the draft Bill, but probably means that employers will need 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 (the "decision period"). If the employer grants the request, the employer has a further two weeks to offer the worker a new contract with terms and conditions that, taken as a whole, are not less favourable than the original contract and reflect the change that has been agreed.

Employers do not have to accept requests; however, a request may only be rejected on one 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 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 – meaning one of the five potentially fair reasons for dismissal).

Employers will not be 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 the employer does not adhere to 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. The draft Bill passed its second reading in the House of Commons on 3 February 2023 and is due to progress to the Committee stage and then the Report stage and third reading. It will then have to repeat the process in the House of Lords. So, there is still a long way to go before this Bill becomes law – and additional regulations will be needed. Therefore, it seems unlikely that the right will come into force before 2024. However, employers should keep an eye on the progress of the Bill and ensure that relevant staff, such as line managers and members of HR, are kept updated.

If and when the Bill becomes law, employers will need to introduce new 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 amending contracts where relevant.

Workers (Predictable Terms and Conditions) Bill 2022 – 23

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.