Our response to the Good Work Plan: Proposals to support families

Consultation details

Title of consultation: Transparency: Flexible working and family-related leave and pay policies

Source of consultation: Department for Business, Energy and Industrial Strategy

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Contents

Executive summary ................................................................................................ 2
Summary of key recommendations ........................................................................ 4
Our consultation response ...................................................................................... 5
Executive summary

The Equality and Human Rights Commission (the Commission) is a statutory body established under the Equality Act 2006. It operates independently to encourage equality and diversity, eliminate unlawful discrimination, and protect and promote human rights. The Commission enforces equality legislation on age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation. It encourages compliance with the Human Rights Act 1998 and is accredited at UN level as an ‘A status’ National Human Rights Institution in recognition of its independence, powers and performance.

As part of this role we are responsible for highlighting issues of concern, inform and guide good practice, engage others in solutions and influence change in employment practice. Work is an important aspect of personal fulfilment, and the right to work and fair conditions at work are fundamental human rights. However, some groups face disproportionate disadvantage and discrimination at work. As such, one of the Commission’s priority aims is that people in Britain have equal access to the labour market and are treated fairly at work.

The Commission is pleased to see Government progressing its commitments in the Good Work Plan, and in the Gender Equality Roadmap\(^1\), which have the potential not only to create more family friendly workplaces but also contribute to the participation of other under-represented groups in the workplace. We welcome the opportunity to respond to this timely and important consultation.

Background

Part time and flexible working are important ways of enabling many people to participate in the labour market, for example those with caring responsibilities, young people and disabled people. However part-time work is predominantly only available for low paid, low skilled jobs where women, disabled people and ethnic minorities are

\(^1\) Gender Equality Roadmap, GEO 2019
over-represented. This is a key causal factor in gender, disability and some ethnicity pay gaps.\textsuperscript{2} Similarly, in too many instances this ‘flexibility’ is one-sided in favour of the employer, and we welcome this consultation on rebalancing in favour of workers.

Employees currently have the right to request flexible working after 26 weeks of service. Requests to work flexibly (such as job-share, home-working, compressed or annualised hours) must be considered objectively, and an employer can only refuse them if there are business reasons for doing so. However, some employers do not offer flexible ways of working for full-time roles, or do not offer part-time or flexible working in senior roles.

The Commission calls for part-time, job-share and other types of flexible working to be available at all levels of organisations, even for the most senior roles. Flexible and part-time working should not be an obstacle to career development and promotion.

Whilst there are many good reasons for encouraging flexible working for the individual, the benefits to employers are equally significant. Research from Working Families’ shows that striving for more flexible and family-friendly workplaces pays dividends for employers. Nearly three in five parents (58\%) in the 2019 Modern Families Index\textsuperscript{3} reported having a flexible and family-friendly employer would make them more likely to stay. Over half (55\%) said it would make them more motivated and productive. The Women’s Business Council similarly found that 76\% of employers reported that flexible working improved staff retention and 73\% reported that it improved staff motivation\textsuperscript{4}.

Taking action to provide flexible working options at all levels will increase opportunities for women. It will widen the pool of talent available to employers, particularly for women but also for fathers who increasingly seek greater work/life balance. Increasing opportunities for flexible working in higher grades will also help address occupational segregation, helping to reduce pay gaps.

\textsuperscript{2} Fair Opportunities For All: A strategy to reduce pay gaps in Britain
\textsuperscript{3} 2019 Modern Families Index Report
\textsuperscript{4} Women’s Business Council (June 2013) Maximising women’s contribution to future economic growth
Flexible working and part time working has also been shown to be a useful way of helping older people in work, keeping valuable skills and knowledge in the workplace. This is particularly important for women returning from maternity leave or adoption leave, or for those who are ‘sandwich carers’, with additional responsibilities for older or disabled family members. Research by Saga Populus on behalf of the Department for Business, Energy and Industrial Strategy (BEIS)\(^5\), found that over three-quarters (78 per cent) of respondents said they would like more flexible hours, and 73 per cent said they wanted to see more part-time positions offered. The Centre for Ageing Better estimates there are approximately a million people aged between 50 and 64 who are involuntarily out of work\(^6\) and with better flexible working options these could help to address the shortage of candidates reported by 48\% of UK employers in a 2018 survey\(^7\).

Employers should also recognise that flexible working can be a reasonable adjustment that supports disabled people to stay in work and access development opportunities. Increasing the opportunities for flexible or part-time work at higher job levels will also contribute to reducing pay gaps. EHRC research\(^8\) found that disabled people believed they could have stayed in their jobs if offered appropriate support or adaptation, particularly opportunities for flexible working.

Current estimates are that up to 20\% of the UK population report a disability or long term health condition\(^9\). Taking action to address an issue affecting such a large proportion of people will go some way towards reducing the £100 billion the UK loses each year from people being out of work, and would make a positive impact on the ability of disabled people to participate in the workplace.

**Summary of key recommendations**

The Commission believes that the Government should:

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\(^5\) People Management (16 November 2018) [Majority of older employees want flexible working, research finds](#)
\(^6\) Centre for Ageing Better, [Worklessness and employment](#)
\(^7\) Recruitment & Employment Confederation press release
\(^8\) Fair Opportunities for All: A strategy to reduce pay gaps in Britain
\(^9\) Government disability statistics
• Legislate to extend the right to request flexible working to apply from day one in all jobs unless there is a genuine business reason that means this isn’t possible

• Require employers to offer and advertise all jobs, including the most senior, on a flexible and part-time basis unless there is a genuine business reason that means this isn’t possible

• Take steps to raise awareness of the right to request flexible working amongst all employees, including men and fathers, and promote the Happy to Talk Flexible Working resource for employers

• Make publication of narrative and time-bound action plans in conjunction with pay gap data a mandatory requirement. Flexible working policies should be built in to this action plan.

Our consultation response

1. Requirement to publish flexible working policies (whether this should be mandatory or voluntary, and whether the GPG portal should be used)

The Commission agrees that in principle a mandatory requirement to publish flexible working policies would increase transparency and enable prospective employees to make informed decisions about which roles to apply for. However, transparency alone does not necessarily drive change, and it is by no means clear that a requirement to publish policies will lead to an increased offer of flexible working opportunities by employers, and if this will then result in an increased uptake of flexible working by employees.

Despite the current legislative framework and the compelling reasons for introducing flexible working there remains an issue with requesting and being granted flexible working patterns. This is often cultural. Some employers do not offer flexible ways of

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10 Working Families, Happy to talk flexible working
working for full-time roles (such as job-share, homeworking, compressed or annualised hours), or do not offer part-time working in senior roles. A 2013\textsuperscript{11} survey showed that over one third of employers restricted part-time work and, of these, half did not allow it for ‘managerial employees’. This is compared with only 4\% who did not permit this for non-managerial employees (BEIS, 2014)\textsuperscript{12}, and has clear implications for the opportunities for women, disabled people and some ethnic minorities to advance into more senior roles.

Our research into the experiences of working mothers found that half (51\%) of women reported discrimination or disadvantage as a result of requesting flexible working arrangements. Women reported there being a ‘price to pay’ for having requests approved, such as being given fewer opportunities for development than their peers\textsuperscript{13}.

New research by TUC has also found that nearly a third of requests for flexible working are being turned down. The polling reveals that flexible working is not available to many workers and that people in working-class jobs are most likely to miss out on it. The survey\textsuperscript{14} shows:

- Flexi-time is unavailable to over half (58\%) of the UK workforce. This number rises to nearly two-thirds (64\%) for people in working-class occupations.
- Nearly Three in 10 workers (28\%) say their desire for more flexible hours is one of the main reasons they might look for a new job.

The Commission believes that requiring employers to publish flexible working policies will not lead to increased flexibility within the workplace for employees. Whilst gender pay gap reporting has been an important step in making workplace pay inequalities more transparent, and we recognise that meaningful change will take some time, we know that this approach has yet to have a real impact as the gender pay gap has not decreased significantly. Publication of this data alone does not give us information about the possible causes of any pay gaps, nor how

\textsuperscript{11}Fair Opportunities for All: A strategy to reduce pay gaps in Britain
\textsuperscript{12}Fair Opportunities for All: A strategy to reduce pay gaps in Britain
\textsuperscript{13}Pregnancy and maternity discrimination: experience of Mothers EHRC 2016
\textsuperscript{14}Working mums, TUC study shows flexi hours are still not available to many workers, particularly those in working class jobs
employers have analysed the data to understand these possible causes and draw
together actions to mitigate them – nor, most importantly, what they plan to do to
reduce them.

Narratives and time-bound, target driven action plans are important tools for
employers to demonstrate to staff, customers, shareholders and other partners their
commitment to reducing inequalities in the workplace. They are also an opportunity
for employers to demonstrate progress they have made in tackling the root causes of
pay gaps, evaluating any interventions they have identified for their effectiveness.

We have consistently recommended that Government make the publishing of a
narrative and a time bound action plan in conjunction with pay gap data a mandatory
requirement. Flexible working policies should be built into this action plan.

2. Requirement to consider advertising jobs as flexible

The Commission believes that the Government should introduce the right for all
employees to request flexible working from day one, and require employers to offer
all jobs, including the most senior, as open to flexible or part-time working, unless
there is a justifiable business reason to prevent it. 15 This will enable employers to
address gender, disability and ethnicity pay gaps, improve access to work for older
workers and those with mental health impairments, and contribute towards closing
the disability employment gap. Simply requiring employers to consider offering roles
as flexible from day one will not lead to an increased offer or uptake, and will not
address the barriers certain groups face to equal participation in the workplace.

Should this requirement be introduced, we also recommend that the Government
promotes ‘Happy to Talk Flexible Working’ resources to employers, so that they are
able to access information on how to manage flexible working within their
organisation. Using these resources and the associated strapline will also provide
clarity on the employer’s commitment to flexible working to prospective employees.

15 Is Britain Fairer? EHRC 2018
3. Enforcement of reporting requirement

We note too that any new requirements can only be effective if they are robustly enforced. However the Commission has concerns as to how a requirement to publish flexible working policies and a requirement to consider advertising jobs as flexible could be enforced effectively.

If employers were simply required to publish their flexible working policy, enforcement would simply be on a binary ‘reported or not’ basis, and it would be unlikely that a potential breach of the requirement would be detected from a policy alone, especially as an employer would be unlikely to publish a policy which does not meet the statutory minimum. Further, reviewing the policies as part of enforcement activity would not be effective either. Discrimination usually arises from the application of policies, rather than the terms of the policy itself.

In addition, as we set out in our response to the recent Women and Equalities Committee Inquiry Enforcing the Equality Act: the law and the role of the EHRC\textsuperscript{16}, the Commission was not established, and indeed has never been resourced, to support large numbers of individual discrimination cases or high-volume enforcement activity. If enforcement is to be through the Gender Pay Gap portal, and if employers would be required to publish a narrative as we have recommended, the existing resource requirements for GPG enforcement at the Commission would need to be reviewed and enhanced. In addition legislative provision would need to be made to enable the Commission to use its enforcement powers in accordance with s34 of the Equality Act 2006.

\textsuperscript{16} Enforcing the Equality Act: the law and the role of the EHRC Women and Equalities Committee 2019
We recognise the clear benefits to individuals and employers in terms of increasing awareness of rights and obligations in relation to flexible working, but believe that making it mandatory for employers to offer flexible working from day one as standard, and to advertise jobs as flexible, would be more effective in widening the participation of under-represented groups in the workplace. We also note and welcome Government proposals to address the poor uptake of shared parental leave, which will also facilitate more equal participation for women and men both in work and at home. The Commission will respond to that consultation separately.