

Employment Relations (Flexible Working) Bill

Second Reading Friday 28 October 2022

Introduction

1. The Equality and Human Rights Commission has been given powers by the UK Parliament to advise the UK Government on the equality and human rights implications of laws and proposed laws, and to publish information or provide advice, including to Parliament, on any matter related to equality, diversity and human rights.

Our analysis

2. The Employment Relations (Flexible Working) Bill amends part 8A (sections 80F and 80G)¹ of the Employment Rights Act 1996.² It will allow an employee to make two statutory flexible working requests within a 12 month period and remove the requirement on them to explain what impact the request might have on the organisation, and how it could be mitigated. The Bill also introduces a requirement on employers to consult with the employee before rejecting a flexible working request, and reduces the time within which an employer has to respond to a request from three to two months.
3. These changes are important. Increasing the number of flexible working statutory requests an employee can make from one to two requests every 12 months is welcome, as the current regime is insufficient and restrictive as people's circumstances and job roles within an organisation can change.
4. The proposal to decrease the timescale for employers to respond to a request from 3 months to two months is also helpful and mirrors other situations where a time limit is in place. For example, an employee who wishes to return from maternity leave early has to give eight weeks' notice.
5. Increasing flexible working options will not only improve access to employment for women and help reduce pay gaps, but will support fathers who want to continue working flexibly as a result of their experiences with location and hours-based flexibility during the pandemic³, which may help address the gendered

¹ [Employment Relations \(Flexible Working\) Bill Explanatory Notes](#), October 2022

² [Part 8A Flexible Working Employment Rights Act 1986](#)

³ [Fathers Lockdown Study](#) Fatherhood Institute 2021

imbalance of caring responsibilities. It will also provide sought after flexibility for older workers⁴ and can be a valuable reasonable adjustment for disabled workers, contributing towards closing the disability employment and pay gaps.

6. Greater flexible working opportunities can also help to increase productivity and job satisfaction, improving trust and working relationships. It can widen the pool of talent available to employers, and help them attract and retain a more diverse workforce⁵, contributing to greater productivity and ultimately better economic growth – particularly as worker expectations have changed since the pandemic.
7. Despite the benefits for employers of flexible working 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 and progression than their peers.⁶
8. The importance of flexible working was recognised by the UK Government in its 2019 manifesto commitment to make it the default, and in its subsequent consultation on making the right to request flexible working a day one right.⁷ Currently an employee can only make a request for a flexible working arrangement if they have been employed for 26 weeks. This places employees at a particular disadvantage if they require flexibility and may deter people from applying for career progression opportunities.
9. The outcome of that consultation is yet to be published, but we understand it will include a commitment to amend existing regulations and make the right to request a day one right. We urge the Government to confirm when the change to regulations will be made as a matter of urgency.

Other measures to strengthen flexible working

10. In addition to amending the existing regulations to introduce the right to request as a day one right, there are other measures that would make flexible working more of a reality for all employees. This could include requiring employers to offer and advertise all jobs, including the most senior, on a flexible and part-time basis

⁴ [What are the benefits of flexible working?](#) The Centre for Aging Better 2020

⁵ [Hybrid Working](#), Acas 2021

⁶ [Pregnancy and maternity discrimination: Experience of mothers](#) EHRC 2016. A 2021 survey by the TUC showed continuing problems for working mothers, with over half of respondents saying their flexible working had been rejected or only partially met, and 86% experiencing discrimination if they had a flexible working arrangement in place. [Denied and discriminated against: The reality of flexible working for mums](#), TUC 2021

⁷ [Making Flexible Working the Default](#), UK Government September 2021

unless there is a genuine business reason that means this isn't possible. Not doing so may deter people seeking to work flexibly from applying for jobs.

11. In addition an employee's ability to challenge the refusal of a flexible working request should be strengthened. Currently, unless an individual takes a claim for discrimination, such as failure to make reasonable adjustments or indirect sex discrimination, if they take a complaint to the Employment Tribunal, the tribunal only considers if their employer has failed to deal with their flexible working request in a reasonable manner, or if their decision is based on incorrect information. There is little other scrutiny of the employer's refusal to grant flexible working and compensation is limited to 8 weeks' pay.
12. We recommend that the Government strengthens the right to bring a complaint for failure to grant flexible working by introducing a requirement for employers to act reasonably when deciding whether or not to grant a request, and provide a sufficient explanation for their decision. It should also look to increase the amount of compensation available if a claim is successful.
13. This will address the fact that the current, and soon to be amended, right to request flexible working favours women with childcare responsibilities, and does little to promote the right to request to other workers. We encourage the Government to consult on these with a view to introducing such measures at a later date.

Further information

The Equality and Human Rights Commission is a statutory body established under the Equality Act 2006. Find out more about our work on the [Equality and Human Rights Commission website](#). For more information, please contact:

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