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The Right to Request Flexible Working – Now a ‘Day One’ Right

By Gill Reid, Head of Employment

Prior to the changes on 6th June 2023, a statutory request for flexible working could only be made by an employee who had at least 26 weeks’ continuous employment. Additionally, employees were only allowed to make one request in any 12-month period. From 6th June 2023, the right to request flexible working arrangements was extended. It now also applies to employees, or a member of their immediate family or household, experiencing family and domestic violence; and employees who are pregnant.

What are the key changes?

The right to request flexible working is now a ‘day one’ right (there is no longer a 26-week minimum service requirement). There is now a new requirement for employers to consult with an employee and consider options before rejecting their request. Employees can now make two requests in any 12-month period (instead of one as previously). The decision period within which employers must respond to a request is reduced from three months to two months. There is no longer a requirement for an employee to explain what effect the change would have on their employer and how that might be dealt with.

Refusing a request

Employers can still refuse a request. The eight reasons employers have to refuse a statutory flexible working request will remain the same as before. These can be found at

What should employers do?

Under the new obligations employers will need to:

- Discuss the request with the employee;
- Make a genuine effort to identify a working pattern which can accommodate the employee’s circumstances;
- Consider the consequences of refusing a request for the employee,
- Write to the employee within two months to record the decision which should include a clear explanation of the reasonable business grounds on which the refusal was based; other changes which could be made that would accommodate the employee’s circumstances or which confirms there are no changes. And, confirmation that there is a right of appeal against the decision, if the request is refused.

If an employer and the employee have discussed the request and agreed to make changes to the employee’s working arrangements that are different to what the employee requested, the employer now needs to confirm these agreed changes in writing within 21 days of the request.

Tips for employers

- Carefully consider all flexible working requests.
- As before, it’s advisable that employers should keep clear records about the reasoning behind their decision.
- Consider offering a trial period to assess whether the new flexible working pattern is working in practice for both parties.
- Review and amend your flexible working policies and staff handbooks to ensure they are up to date with the changes.

You can contact one of the Team
on **01904 528200**.

