

*Paper to lay before both Houses of Parliament. ACAS shall issue the following Code of Practice in the absence of a resolution from either House within 40 days from the date that it is laid.*



## **Draft Code of Practice on requests for flexible working**

Issued by the Advisory, Conciliation and Arbitration Service under section 200 of the Trade Union and Labour Relations (Consolidation) Act 1992

December 2023



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Presented for laying before Parliament pursuant to Section 200(2) of the Trade Union and Labour Relations (Consolidation) Act 1992

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# Code of Practice on requests for flexible working

## Notes

This Code is issued under sections 199 and 200 of the Trade Union and Labour Relations (Consolidation) Act 1992 and was laid before both Houses of Parliament on [date to be confirmed]. It comes into effect by order of the Secretary of State on [date to be confirmed]. It replaces the 'Acas Code of Practice on handling in a reasonable manner requests to work flexibly' which was issued in 2014.

A failure to follow the Code does not, in itself, make a person or organisation liable to legal proceedings. However, employment tribunals will take the Code into account when considering relevant cases.

### 'Must' and 'should'

Throughout this Code the word 'should' is used to indicate what Acas considers to be good employment practice, rather than legal requirements. The word 'must' is used to indicate where something is a legal requirement.

# The Code of Practice

## Introduction

1. This Code provides guidance to employers and employees on the statutory right to request flexible working as set out in the Employment Rights Act 1996 (as amended) and regulations made under it.

2. Having a clear policy and procedure for handling statutory requests for flexible working can be helpful in making everyone aware of what is expected.

## Making a statutory request for flexible working

3. Every employee has a statutory right to request flexible working. This right applies from the first day of employment.

4. A request must be in writing and state that it is a statutory request for flexible working. It must include:

- the date of the request
- the change the employee is requesting to the terms and conditions of their employment in relation to their hours, times or place of work
- the date the employee would like the change to come into effect
- if and when the employee has made a previous request for flexible working to the employer

5. Employers should make clear to their employees that the above information must be included in any statutory request for flexible working.

6. An employee may make two statutory requests for flexible working within any 12-month period.

7. An employee may have only one live request for flexible working with their employer at any one time. Once a request has been made, it remains live until any of the following occur:

- a decision about the request is made by the employer
- the request is withdrawn
- an outcome is mutually agreed
- the statutory two-month period for deciding requests ends (see paragraph 37)

A request continues to be live during any appeal or any extension to the statutory two-month decision period that an employer and employee may have agreed.

## Considering a request for flexible working

8. Employers must handle every request in a reasonable manner. This should include carefully assessing the effect of the requested change for both the employer and the employee, such as the potential benefits or other impacts of accepting or rejecting it.

9. Employers must agree to a flexible working request unless there is a genuine business reason not to. A decision to reject a request must be for one or more of the following business reasons which are set out in the Employment Rights Act 1996:

- the burden of additional costs
- an inability to reorganise work amongst existing staff
- an inability to recruit additional staff
- a detrimental impact on quality
- a detrimental impact on performance
- a detrimental effect on ability to meet customer demand

- insufficient work available for the periods the employee proposes to work
- planned structural changes to the employer's business

10. In handling a request, and any information that the employee discloses as part of that request, employers must not discriminate unlawfully against the employee in relation to any of the protected characteristics set out in the Equality Act 2010. The protected characteristics are:

- age
- disability
- gender reassignment
- marriage and civil partnership
- pregnancy and maternity
- race
- religion or belief
- sex
- sexual orientation

11. If an employee seeks a reasonable adjustment for their disability through a request for flexible working, the employer must consider this in line with its legal obligations under the Equality Act 2010. Employers must make reasonable adjustments to remove any disadvantage related to a person's disability. The legal obligation to make reasonable adjustments is separate to the legal obligation to consider a request for flexible working.

### Consulting an employee

12. Employers must not reject a request without first consulting the employee. Unless the employer decides to agree to the employee's written request in full, they must consult the employee before they make a decision. In such cases, the employer should invite the employee to a consultation meeting to discuss the request.

13. A consultation meeting can help make sure that all relevant information is understood before a decision is made. It can also make clear whether a request may relate to a reasonable adjustment for an employee's disability (see paragraph 11).

14. The meeting should be held without unreasonable delay. The employee and employer should have reasonable time to prepare for the discussion, while taking into account the statutory two-month period for deciding requests including any appeal (see paragraph 37).

15. The employer should notify the employee of the time and place in advance of the meeting. The meeting should be held privately. It can be held in person or remotely via online video conferencing, or where neither of those are possible, via telephone call.

16. The content of the meeting and the way in which it is conducted should allow for a reasonable discussion and consideration of the request. It will usually be helpful to discuss, for example, the potential benefits or other impacts of accepting or rejecting the request, and any practical considerations involved in implementing the request.

17. If the original request cannot be accepted in full, the employer and employee should discuss if it may be possible to secure some of the benefits that the original request sought. They should discuss, for example, any potential modifications to the original request, or any alternative flexible working options, that may be available and suitable for both sides. It may be helpful to discuss whether a trial period may be appropriate to assess the feasibility of an arrangement.

18. The person holding the meeting should have sufficient authority to make a decision.

19. A written record of the meeting should be kept which provides an accurate reflection of the discussion that has taken place.

## Communicating a decision about a request

20. Once the employer has made a decision about the request, they must inform the employee of their decision. They should confirm the decision in writing without unreasonable delay, taking into account the statutory two-month period for deciding requests including any appeal (see paragraph 37).

### If the employer agrees to the request

21. If the employer agrees to the employee's request, or if a modified or an alternative arrangement is agreed after consulting with the employee, the written decision should confirm the details of the agreed arrangement.

22. The written decision should offer the employee an opportunity for a discussion to clarify any further information that may be helpful in implementing the agreed arrangement. This might include, for example, agreeing dates to review how the arrangement is working.

23. An accurate record of any such discussion should be kept in writing. The employer and employee may mutually agree that such a discussion is not necessary.

### If the employer rejects the request

24. If the employer rejects the employee's request, the written decision should clearly explain the business reason(s) (see paragraph 9). It should also set out any additional information which is reasonable to help explain the decision.

25. There is no statutory right of appeal against a decision about a request for flexible working. However, allowing an employee to appeal is good practice. The written decision should make it clear that the employee has the option to appeal the decision. This includes explaining how to appeal if the employee wishes to do so, and the timeframe for submitting any appeal.

## Handling an appeal

26. If an employee wishes to appeal the decision about their request, they should let their employer know the reasons for their appeal in writing. These may be, for example, that there is new information they wish to be considered, or they believe the employer has not handled their request in a reasonable manner.

27. If the employer receives an appeal, they should arrange an appeal meeting without unreasonable delay following the steps at paragraphs 14 and 15 of this Code.

28. The appeal should be dealt with impartially. The person holding the appeal meeting should have sufficient authority to make a decision. Wherever possible, it should be handled by a manager who has not previously been involved in considering the request.

29. Once the employer has made a decision about the appeal, they must inform the employee of that decision. They should confirm the decision in writing without unreasonable delay, taking into account the statutory two-month period for deciding requests (see paragraph 37). The decision should make clear what has been decided and why.

30. A written record of the appeal meeting should be kept which provides an accurate reflection of the discussion that has taken place.

## Allowing an employee to be accompanied

31. There is no statutory right of accompaniment at meetings held to discuss a request for flexible working. However, allowing an employee to be accompanied is good practice. This can be helpful in giving employees confidence to make requests and in supporting both parties to find a mutually agreeable solution.

32. If an employee makes a request to be accompanied at any meeting to discuss their flexible working request, and the request to be accompanied is reasonable, the employer should allow them to be accompanied by a fellow worker, a trade union representative, or an official employed by a trade union. The employer should inform the employee prior to the meeting that they may request a companion.

33. What is a reasonable request will depend on the circumstances of each individual case. A request to be accompanied does not have to be in writing or within a certain timeframe. However, an employee should provide enough time for the employer to deal with the companion's attendance at the meeting. Employees should also consider how they make their request so that it is clearly understood, for instance by letting the employer know in advance the name of the companion where possible and whether they are a fellow worker or trade union official or representative.

## If the employee does not attend a meeting

34. The employer's arrangements for a meeting should provide a reasonable opportunity for the employee to attend.

35. If the employer arranges a meeting to discuss the request, including any appeal, and the employee fails to attend both this meeting and a rearranged meeting without a good reason, the employer may consider the request withdrawn.

36. If the employer does consider the request withdrawn, they must inform the employee of this. This should be done in writing.

### Deciding requests within the statutory decision period

37. All requests, including any appeals, must be decided and communicated to the employee within a period of two months from when the employer first receives the request. The employer and employee may agree to extend this period. If an extension is agreed, the employer should confirm this in writing to the employee.

### Protection from detriment and dismissal

38. An employer must not subject an employee to any detriment or dismissal because of any of the following:

- the employee has made or intends to make a request for flexible working
- the employee has issued legal proceedings against the employer in relation to their right to request flexible working, or has stated that there are circumstances which could constitute a ground for them doing so