



Acas consultation on:

**Draft Code of Practice on
the extended right to
request flexible working**

February 2013

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Consultation on the draft code of practice for the extended right to request flexible working

About this Consultation

The right to request flexible working gives employees the statutory right to request a contract variation for flexible working arrangements, and places an obligation on their employer to consider the request in a reasonable manner. The right to request does not create a right to flexible working.

The right to request was first introduced in April 2003 for parents of children under six years old, or under 18 if the child has a disability. The right was extended to certain carers in 2007 and further extended to parents of all children under 17 in 2009.

In the Children and Families Bill the statutory procedure will be repealed and replaced by a duty to consider requests in a reasonable manner. The right to request will be extended to all employees who have worked for their employer for 26 weeks or more whatever their reason for asking. The new extended right will continue to require employers to judge requests on whether it can be accommodated on business grounds. Flexible working covers a wide range of different working practices and to help you in your consideration of the extended right, we describe in this consultation some of the common forms of flexible working found in many workplaces.

The Government asked Acas to produce a statutory Code of Practice to help businesses manage this new extended right to request flexible working which can be found in this consultation document. Acas is a non-departmental public body and is required by law to formally consult on the Code. We are very keen to hear from you and the following section tells you about the Code and how to take part in the consultation.

The consultation on the extended right to request flexible working

The Code is deliberately concise and is “principles-based” around how an employer should consider requests in a reasonable manner, making use of their existing company procedures. The new extended right removes much of the regulation seen in the earlier emanations of the right to request flexible working.

The Code is not intended to discuss good practice around the extended right to request flexible working. Acas will produce a non-statutory “good practice” guide with practical examples of managing requests in the workplace. This will be published at the same time as the statutory code.

How to respond

In addition to inviting views on the Code of Practice we particularly welcome responses to the following three questions:

1. Do you think the Code gives you enough information on the principles involved in managing the extended right to request flexible working?
2. Does the Code allow you to use your existing procedures to handle requests from employees who ask to work flexibly?

3. Are there any aspects of the Code you would like to see discussed in more detail in the good practice guide?

It is not necessary to respond to all these questions; you are welcome to provide answers only to those issues of most interest or relevance to you or on any other aspect of the Code.

This consultation will run for 12 weeks from 25 February 2013. The closing date for responses is **20 May 2013**. Responses should be submitted by letter or email to

Post: Right to Request Consultation

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London
NW1 3JJ

Email: righttorequest@acas.org.uk

When responding, please state whether you are responding as an individual, or representing the views of an organisation. If responding on behalf of an organisation, please make it clear who the organisation represents and, where applicable, how the views of members were assembled.

Confidentiality and data protection

Information provided in response to this consultation, including personal information, may be subject to publication or disclosure in accordance with the access to information regimes (these are primarily the Freedom of Information Act 2000 (FOIA), the Data Protection Act 1998 (DPA) and the Environmental Information Regulations 2004).

If you want other information that you provide to be treated as confidential, please be aware that, under the FOIA, there is a statutory Code of Practice with which public authorities must comply and which deals, amongst other things, with obligations of confidence.

In view of this, if you consider information you have provided to be confidential, it would be helpful if you could explain to us why this is the case. If we receive a request for disclosure of the information we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on Acas.

Acas will process your personal data in accordance with the DPA and in the majority of circumstances this will mean that your personal data will not be disclosed to third parties.



DRAFT

**Acas Code of Practice
on the extended right to
request flexible working**

ACAS DRAFT CODE OF PRACTICE ON THE EXTENDED RIGHT TO REQUEST FLEXIBLE WORKING

Introduction

1. Every employee has the statutory right to ask to work flexibly after 26 weeks employment service. This Code is intended to help employers deal with requests made by employees to change their working hours or place of work under the statutory right in the Children and Families Act to request flexible working.
2. The guidance in this Code, as well as helping employers, will also be taken into account by employment tribunals when considering relevant cases.

Keys to handling requests in a reasonable manner

What should you do with a request?

3. You should arrange to talk with your employee as soon as possible after receiving their written request. If you intend to approve the request then a meeting is not needed.
4. You should allow an employee to be accompanied by a work colleague at any discussion and the employee should be informed about this prior to the discussion.

Discuss with employee

5. You should discuss the request with your employee. It will help you get a better idea of what changes they are looking for and how they will benefit your business and the employee.
6. Wherever possible the discussion should take place in a private place where what is said will not be overheard.

Consider the request

7. You should always approach requests to work flexibly from the presumption that you will grant them unless there is a business reason for not doing so.
8. You should consider the request carefully and weigh the benefits of the changes in working conditions the employee is seeking both for them and your business against any cost of implementing the changes. In considering the request you should not discriminate against the employee.
9. Once you have made your decision you should inform the employee as soon as possible in writing as this can help avoid future confusion on what was decided.
10. If you accept the employee's request, or accept it with modifications, you should discuss with the employee how and when the changes might best be implemented.

11. If you reject the request it has to be for one of the following business reason as set out in the legislation:

- the burden of additional costs
- an inability to reorganise work
- an inability to recruit additional staff
- a detrimental impact on quality or performance or to meet customer demand
- insufficient work for the periods the employee proposes to work
- a planned structural change to your business.

Appeals

12. If you reject the request you should allow your employee to appeal the decision. It can be helpful to allow an employee to speak with you about your decision as this may reveal new information or an omission in following a reasonable procedure when considering the application.

Deal with requests promptly

13. The law requires that all requests, including any appeals, must be considered and decided on, within a period of three months from first receipt, unless you agree to extend this period with the employee.

END OF CODE

Flexible working is a label for a wide range of working practices and arrangements, examples of which are shown in the box below. Put simply, it is any agreement for an employee to work in a way that best fits their other responsibilities whilst also ensuring that the job gets done.

➔ Part-time:	employees are contracted to work less than normal full-time hours.
➔ Flexi-time:	employees work a standard core time, but can vary start, finish and break times each day within agreed limits.
➔ Compressed hours:	employees work their total number of contracted weekly hours in fewer than the usual number of working days each week by working longer individual days.
➔ Homeworking:	employees work all or part of their contracted hours from home.
➔ Annualised hours:	employees average out working time across the year so they work a set number of hours per year rather than per week. Normally, they are split into core hours that are worked each week and unallocated hours that can be used for peaks in demand.
➔ Term-time working:	employees' work follows school term patterns. They work as normal during term-time. During school holidays they do not go to work but are still employed.
➔ Structured time off in lieu:	employees work longer hours during busy periods and take an equivalent amount of time off (with pay) at a less busy time. There may be limits on the number of hours individuals can build up and when they can take time off.
➔ Job-sharing:	employees work part-time (which could be part-day, part-week or part-year) and share the duties and responsibilities of a full-time position with another worker.

About Acas

Acas stands for Advisory, Conciliation and Arbitration Service. We aim to improve organisations and working life through better employment relations. We promote good practice in the workplace through easily accessible advice and services. Our experienced national and regional advisers help organisations improve their employment practice, as well as solve problems when things go wrong.

Our authoritative and impartial advice is available free to individuals and organisations via our website and telephone helpline.

We offer an independent and trusted service for dealing with disputes between groups of workers and their employers (collective conciliation). We also deal with disputes where individuals claim their employer has denied them a legal right.

We provide authoritative advice and guidance on employment and work policies to the Government and social partners (trade unions and employers or their representative organisations). Acas produces three other statutory codes of practice, these are:

- ▶ Disciplinary and Grievance procedures;
- ▶ Disclosure of information to Trade Unions for collective bargaining purposes;
- and
- ▶ Time off for Trade Union duties and activities.

Although largely funded by the Department for Business, Innovation and Skills (BIS), Acas is a non-departmental body, governed by an independent Council. This allows us to be independent, impartial and confidential. Founded in 1975, we have over 35 years' experience of working with people in organisations of every size and type.

The Acas Council is responsible for determining our strategic direction, policies and priorities, and ensuring our statutory duties are carried out effectively. Chaired by Ed Sweeney, members are leading figures from business, trade unions, independent sectors and academics. Chair and Council members are part-time roles, appointed by the Secretary of State for BIS.

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