GOVERNMENT CONSULTATION ON MODERN WORKPLACES

Acas welcomes the opportunity to respond to your consultation on modern workplaces particularly on the issue of flexible working. As we all know organisations are under constant pressure to produce goods and services, of the right quality and the right price, as and when customers want them. This pressure can often mean that new ways of working have to be found to make the best use of staff and other resources. Flexible patterns of work can help organisations address these pressures by maximising the available labour and improving customer service and can also help individuals to balance their working and home lives in a more productive and satisfying way.

Developments currently underway in the workforce will make flexible working a key issue in the decades ahead. For instance the rising numbers of older people in the workforce may well require employers to approach flexible working in more innovative ways if they are retain staff who might no longer wish to follow a “nine to five”, full time regime. Some commentators have also predicted that elder care will replace childcare as the major work-life issue by 2020 and that the next generation will be expected to spend more years caring for ageing parents than their own children. This development could have a major impact on both flexible working and requests for flexible leave.

In responding to the consultation the Acas has chosen to concentrate on those questions where it feels it can comment from its own experience and expertise. For over 30 years Acas has produced a wide range of advisory publications including three codes of practice which are regularly used by employers, employees and employment tribunals to deal with issues around discipline and grievance, time off for trade union duties and activities and information disclosure. We have therefore confined our comments to the questions posed around codes of practice and guidance on flexible working.

Kind regards.

John Taylor
ACAS RESPONSE TO GOVERNMENT CONSULTATION ON MODERN WORKPLACES

Flexible working

Q25. Should a Code of Practice be principle-based (ie, requiring requests to be considered in a reasonable manner and time) or provide a ‘safe harbour’ (ie, where employers following the process precisely get protection)? Please explain your response.

We have no recommendation as to whether any code of practice should be principle based or provide a safe harbour. However, the Government may be interested to note that our own code of practice on disciplinary and grievance procedures adopts the principle based approach. It was decided to adopt this approach when the code was revised in 2009 following the government’s decision to repeal the statutory workplace disciplinary and grievance process.

We have recently commissioned an independent review of our new code which has shown that the principle based approach was deemed successful. The code strikes a balance in providing guidance without being overly prescriptive and offers flexibility in procedural detail, such as timeframes and communication of decisions, allowing employers to tailor procedures to better suit the organisation. Importantly, it frees employers from imposing disproportionate formality and using unnecessary senior staff time to do so. Freedom to use the most appropriate process for a given case also helps to bring the substantive issues within a case back to the fore.

The research did, however, reveal some dissatisfaction with the flexibility of a principles-based code amongst some participants. This stemmed from uncertainty about the legal status of the code and the interpretation required in the guiding principles of ‘fair’ and ‘reasonable’, terms which are used in a number of places in the code. Some employee representatives were also concerned about the lack of any obligation for employers to comply with a principle based code.

There are clearly pros and cons to the differing approaches. It might therefore be worth considering whether there is any way of combining them in a single code. We would be happy to share with the government our experience of operating a principle based code. We would also be very happy to help the government in producing a code and perhaps to develop some practical guidance which might underpin a code.

Q27. Do you agree with our proposal on the prioritisation of multiple flexible working requests that cannot all be accommodated? Please explain your response

1 Evaluation of Acas Code of Practice on Disciplinary and Grievance Procedures Ref 06/11.
Within the consultation proposals employers are not required to prioritise competing requests for flexible working according to a particular hierarchy. In most instances this approach will probably be sufficiently robust. However it is right that employers should be given advice and support in this area to help them maintain good employment relations and prevent the perception that this is an additional burden on them.

Besides the business reasons for deciding on requests, we are of the view that there should be guidance that stops short of prioritisation of requests but helps an employer avoid inadvertent and unlawful discrimination between employees. We recognise that the consultation document acknowledges this point on the first paragraph of page 40 by saying the “wider principles of discrimination law would need to be respected”. However, this risks being insufficient given the potential for complexity in this area.

Acas provides advice on flexible working in its booklet “Flexible Working & Work Life Balance” that sets out how employers can manage this in the workplace. Our guidance suggests that in areas like this where the employer finds they cannot choose between the two requests then they use some form of random selection. Whilst this may well leave the unsuccessful applicant feeling unhappy, it is unlikely to be discriminatory.

The key advice is that employers manage decisions consistently according to a flexible working policy. This is a crucially important aspect as it prevents perceptions of unfairness in the decisions managers will reach when there are conflicts of requests.

Q32 What support do you think employers need to enable them to operate flexible working?

To make best use of the business advantages of flexible working, the employer needs access to guidance and advice on the different forms of flexible working. They also need guidance on how these different forms can best favour certain types of organisation and particular types of job. As the consultation acknowledges, Jobcentre Plus are well placed to be the main provider of this advice along with private recruitment agencies. However Acas provides a unique survey tool in our guidance “Flexible Working & Work Life Balance” that looks at the issue through the lens of effective employment relations. Our advice is for employers to consult widely with staff and their representatives on the sorts of flexible working available. Also to encapsulate this within a Flexible Working Policy that sets out a consistent and agreed approach that the employer will use in determining all requests (see question 27 above) and how the employer will deal with any appeals or complaints

We think this is very important in order not only to deal with these matters fairly but to be “seen to be” doing so.

Q34 What support is required to help people undertake varied hours
working?

Besides a general awareness of the forms of flexible working available our view is that some form of guidance would be beneficial to enable varied hours workers to manage their working times effectively. Such guidance could in particular help employees and their employers recognise that flexible working can mean more than just part-time working. For instance, it can mean working compressed or annualised hours or working flexibly around school term times. Enabling employers and employees to think more broadly about flexible working in this way would allow them to better align the business requirements of the organisation and the training and development needs of the employees who work there.