Acas response to the consultation on the Code of Practice for handling requests to work flexibly in a reasonable manner

January 2014
ACAS RESPONSE TO CONSULTATION ON THE CODE OF PRACTICE FOR HANDLING REQUESTS TO WORK FLEXIBLY IN A REASONABLE MANNER

Introduction

Acas held a 12-week public consultation on the draft ‘Code of Practice on Handling requests to work flexibly in a reasonable manner’, which closed on 20 May 2013. The public’s views were sought on a new draft Code which is designed to help employers manage requests to work flexibly from employees in a reasonable manner. It also sought views on the areas of good practice guidance employers thought would help support the Code to better manage the new right to request.

Acas is grateful to all those who sent in a formal response. The Acas Council has now had a chance to reflect on comments received and has produced a revised final version of the draft ‘Code of Practice on the right to request flexible working in a reasonable manner’. A copy of the final draft of the Code is attached below.

The following paragraphs summarise the responses that were received on the consultation and explains the decisions that Acas has taken on revising the Code in the light of the responses.

Responses to the consultation

There were 56 responses to the consultation. A full list of respondents is set out in Annex B. Of the 56 responses received:

- 8 from individuals (HR managers, consultants, individual solicitors)
- 48 from organisations comprising:
  - 24 employers
  - 5 trade unions
  - 18 intermediary and representative bodies
  - 1 anonymous organisation.

Question 1: Do you think the Code gives you enough information on the principles involved in managing the extended right to request flexible working?

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Thirty-two respondents considered the Code gives them enough information to manage the extended right, six saw the Code as a weakening of the current statutory process, a view expressed in all the trade union responses and 18 respondents did not express a view either way.
Acas Response

Whilst Acas welcomes the broad support for our principles-based approach to the Code that enables employers to manage requests in a reasonable manner, we acknowledge the concerns expressed by some respondents that the new process removes much of the current statutory process around appeals and any accompaniment of employees to meetings with the employer to discuss these requests.

We intend to amend the Code so as to be clear that it is good practice to allow an appeal (paragraph 11) and to enable employees to be accompanied by a work colleague (paragraph 4). We consider both to be in the interests of good employment relations and may be particularly helpful when, for example, an employee lacks confidence or where English is not their first language.

Question 2: Does the Code allow you to use your existing procedures to handle requests from employees who ask to work flexibly?

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Twenty-five respondents thought the Code allowed them to use their existing policies in managing the right to request. Twenty eight did not answer this question and three said no.

Six respondents were concerned that paragraph 7 of the draft Code indicated that employers should approach requests with a “presumption of approval”. Although there was agreement that requests need to be considered fairly and objectively, a view was expressed that this could mislead applicants into believing that approval was almost certain and this would be unhelpful to the employer as well.

Acas Response

Only a small number of respondents felt the Code allowed them to use their existing procedures, common to these organisations was a view that extending the right to request was unnecessary as many workplaces already allowed flexible working for all employees*.

Acas Council carefully considered the issues raised by respondents regarding the use of the term “presumption of approval” decided to remove it from the Code which remains clear about the importance of careful examination of requests and the fact that they can be rejected only on the basis set out in the legislation.
Question 3 - Are there any aspects of the Code you would like to see discussed in more detail in the good practice guide?

When asked what further guidance respondents would like to see in a companion good practice guide, almost all responders identified one or more of six common themes below and the first three appeared one or more times in 32 responses:

- how to handle multiple requests, prioritisation issues and being fair
- avoiding discrimination in deciding a request
- providing an explanation of the business reasons that are to be considered in requests – what do they mean, with examples
- refusing a request and giving how much information to divulge
- appeals against refusal and guidance on managing this process
- how to use trial periods and reviews after agreeing a change to check out if a flexible working request is feasible.

Acas Response

All these themes and others are addressed in Acas’ emerging good practice guide which has been road-tested in five regional workshops around the country that involved over 150 businesses. The guidance will contain examples to illustrate good practice and will be available on the Acas website from January 2014.

Next steps

As part of the Children and Families Bill, the aim is for the legislation to receive royal assent by January 2014. The draft Code will then lie in Parliament for 40 days after which, subject to Parliamentary scrutiny, the new Code can be brought into effect on a date to be specified by Ministers. The Government has already indicated that it is their intention to bring the new Code on the right to request flexible working into effect in April 2014.

* CIPD research from May 2012 suggests 96% of workplaces have some form of flexible working arrangements and 63% of workplaces already allow a right to request for all employees, not just parents and certain carers.
Introduction

1. Every employee has the statutory right to ask to work flexibly after 26 weeks employment service. An employee can only make a statutory request once in any 12 month period. This Code is intended to help employers deal with written 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

The Request

3. A request from an employee under the regulations must include the following information:

- The date of their application, the change to working conditions they are seeking and when they would like the change to come into effect.

- What effect, if any, they think the requested change would have on you as the employer and how, in their opinion, any such effect might be dealt with.

- A statement that this is a statutory request and if and when they have made a previous application for flexible working.

You should make clear to your employees what information they need to include in a written request to work flexibly – you may choose to ask for less information in requests and if so they will still be compliant with the regulations (for example if you wish to continue existing procedures).

What should you do with a request?

4. Once you have received a written request, you must consider it. 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.

5. You should allow an employee to be accompanied by a work colleague for this and any appeal discussion and the employee should be informed about this prior to the discussion.
**Discuss with employee**

6. 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 might benefit your business and the employee.

7. Wherever possible the discussion should take place in a private place where what is said will not be overheard.

**Consider the request**

8. You should consider the request carefully looking at the benefits of the requested changes in working conditions for the employee and your business and weighing these against any adverse business impact of implementing the changes, see paragraph 11. In considering the request you must not discriminate unlawfully against the employee.

9. Once you have made your decision you must inform the employee as soon as possible. You should do this 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 must be for one of the following business reasons as set out in the legislation:
   - 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
   - detrimental effect on ability to meet customer demand
   - insufficient work for the periods the employee proposes to work
   - a planned structural change to your business.

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.

14. If you arrange a meeting to discuss the application including any appeal and the employee fails to attend both this and a rearranged meeting without a good reason, you can consider the request withdrawn.
Annex B

List of Respondents

Age UK
Anonymous via DAC Beachcroft LLP (Law firm)
Association of Schools & College Leaders - ASCL
ATC Lasham Ltd

Birmingham Law Society
British Chambers of Commerce
British Retail Consortium

Chartered Society of Physiotherapy
Chwarae Teg
Cinesite Ltd
CIPD
Cobweb Ltd
Countrywide property services
Creative Max

Derek Hunt
Derek Speed

EEF – The Manufacturers Organisation
EHRC
Employment Lawyers Association

Fawcett Society
Federation of Small Businesses
Fisherman’s Friend
Food & Drink Federation
Ford Motor Company

GBRS Ltd
Gita Banerji

Julie Parker

Kirsty Fitzjohn

Law Society (The)
Lewis Silkin (Law firm)
London Clinic (The)
London School of Economics
Lucy Jeffries

Mothers Union

NHS Education for Scotland
Nicola Jones
OptiMums

Peninsula Business Services
Police Treatment Centres
Premier EDA Solutions Ltd
Prospect

Ringwood Town Council
Robson & Co (Law firm)
Royal College of Midwives

Severn Trent Water
Soniflex Ltd
St Bedes RC Secondary School
Steeles of Worthing

Transport for London (TfL)
Travers Smith LLP (Law firm)
TUC

UK Chamber of Shipping
Unite
University & Colleges Employers Association

Working Families
Workwise Healthcare Ltd