

# Code of Practice on handling requests for a predictable working pattern (draft)

25 October 2023

## About this draft

Draft: This Code of Practice is in draft form for public consultation.

[Read more about the consultation](#)

## Foreword

The Acas statutory Code of Practice on handling requests for a predictable working pattern is set out in paragraphs 1 to 83 below. This Foreword does not form part of the statutory Code.

The Code covers the statutory right to request a predictable working pattern as set out in the Employment Rights Act 1996. It provides guidance on the rights and responsibilities under the Act and sets out good practice for:

- agencies
- employers
- hirers
- workers and employees
- worker representatives

Flexible contracts, such as zero hours contracts or agency working, can benefit organisations and individuals where they meet the needs of both parties. For example, they can help businesses respond to fluctuating demands, and can give individuals the flexibility they may need to balance their work and home lives.

Flexible contracts should always be used responsibly and fairly. Organisations should regularly review these arrangements to make sure they are working in the interest of the business and its workers.

Workers may sometimes wish to have more predictability around their working pattern, such as around when they will be working or in relation to the length of their contract. They have the right to request this from their organisation, provided they meet the criteria explained in the Code.

All requests for a predictable working pattern must be handled in a reasonable manner and should be given careful consideration. This includes taking account of the reasons for the individual's request as well as the needs of the organisation.

Employers, agencies and hirers must accept a worker's request unless there is a genuine business reason not to. These business reasons are specified in the Employment Rights Act and are set out in the Code. They include, for example, where sufficient work is not available for the periods the worker proposes to work, or where there would be a detrimental effect on ability to meet customer demand.

Where the organisation is considering rejecting a request, they should consider whether there are alternative and suitable arrangements for providing more predictability. If there are, the Code recommends that they should discuss this with the individual.

Meetings about requests should be approached with an open mind. They provide an opportunity to listen carefully and engage meaningfully with each other so that a fully informed, evidence-based decision can be made.

Where the organisation rejects a request, the reasons for that decision should be explained clearly to the worker. Clear communication can help establish trust that a request has been handled reasonably. Where a request is rejected, the organisation should proactively offer the individual an opportunity to appeal the decision. This should allow individuals to present any new information they wish to be considered, or to raise any concerns relating to the way their request has been handled.

If a worker makes a request to be accompanied at any meeting to discuss a request, and their request to be accompanied is reasonable, the organisation should allow them to be accompanied by a fellow worker, a trade union representative, or an official employed by a trade union. This can be helpful in supporting both parties to find a mutually agreeable solution.

This Code is issued under section 199 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].

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

Further guidance which accompanies this Code is provided on the Acas website.

## Notes

### '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 on the statutory right to request a predictable working pattern as set out in the Employment Rights Act 1996.
2. The guidance in this Code will be taken into account by employment tribunals when considering relevant cases.
3. Throughout the Code, the following terms are intended to have the meanings referenced below:

- **Agency:** An organisation which assigns individuals to work for a hirer, as defined in the Agency Workers Regulations 2010
- **Employee:** An individual who works under a contract of employment, as defined in the Employment Rights Act 1996

- **Employer:** A person or organisation who employs an individual to work for them, as defined in the Employment Rights Act 1996
- **Hirer:** An organisation where a worker works on assignment, as defined in the Agency Workers Regulations 2010
- **Worker:**
  - **Section A of this Code** uses this term to describe an individual who has a contract with an employer, as defined in the Employment Rights Act 1996. This includes an employee
  - **Section B of this Code** uses this term to describe an agency worker ? an individual who has a contract with an agency who places them on assignment with a hirer, as defined in the Agency Workers Regulations 2010

The definitions in this Code are not intended to amend or replace those set out in law.

4. Having a clear policy and procedure for handling statutory requests for a predictable working pattern can be helpful in making everyone clear about what is expected.

5. The guidance in this Code is provided in two sections:

- [Section A: Requests to employers \(paragraphs 6 to 43\)](#)
- [Section B: Requests to agencies or hirers \(paragraphs 44 to 83\)](#)

## Section A: Requests to employers

6. Section A of this Code applies to requests by workers (including employees) to their employer, as defined in the Employment Rights Act 1996.

### The statutory right to request a predictable working pattern

7. A worker has a statutory right to make a request to their employer for a more predictable working pattern if their working pattern lacks predictability. A working pattern refers to the number of hours the worker works, the days and times they work, or the length of their contract.

8. To make a statutory request, a worker must have worked for the employer at least once in the month in the period before the 26 weeks leading up to the day of the request.

9. A fixed-term contract of employment for 12 months or less is one type of working pattern which lacks predictability. In this case, a worker may make a statutory request to their employer to have a longer fixed-term contract, or a permanent contract, provided all the criteria in paragraphs 7 and 8 apply.

10. A statutory request must be in writing and must include:

- the date of the request
- a statement that it is a statutory request for a predictable working pattern
- the change the worker is seeking to their working pattern
- the date on which the worker would like the change to come into effect
- if and when the worker has made a previous request to their employer for a predictable working pattern

If the worker is an employee, their request should also state:

- if and when they have made a previous request to their employer for flexible working (see paragraphs 14 to 16)

11. An employer's procedure for making requests should make clear to their workers that the above information is to be included in any statutory request for a predictable working pattern.

## The number of statutory requests allowed

12. A worker may make two statutory requests for a predictable working pattern within any 12-month period.

13. A worker may have only one live request for a predictable working pattern with their employer at any one time. Once a request has been made, it remains live, including during any appeal, until any of the following occur:

- a decision on the request is made by the employer
- the request is withdrawn
- an outcome is mutually agreed
- the statutory one-month decision period for requests ends (see paragraphs 35 to 36)

## The statutory right to request flexible working for employees

14. Employees have a separate statutory right to request flexible working under the Employment Rights Act 1996. They may make two statutory requests for flexible working within any 12-month period.

15. If an employee makes a statutory request for flexible working and the purpose of that request is to have a more predictable working pattern, it will count as both:

- one of the employee's two statutory requests for flexible working
- one of the employee's two statutory requests for a predictable working pattern (see paragraph 12)

16. Employees may have only one live request either for flexible working or for a predictable working pattern with the same employer at any one time.

Acas has a separate statutory Code of Practice on handling requests for flexible working.

## Considering a request for a predictable working pattern

17. Every request must be handled in a reasonable manner. This should include:

- consideration of the worker's current working pattern – this includes, for example, whether they have already been regularly working broadly the same hours, days or times, or working for the same employer under a series of fixed-term contracts
- assessing the effect of the requested change for both the employer and the worker, including the potential benefits and other impacts of accepting or rejecting it

18. An employer must accept a predictable working pattern 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
- a detrimental effect on ability to meet customer demand
- a detrimental effect on the recruitment of staff
- a detrimental effect on other aspects of the business
- insufficient work available for the periods the worker proposes to work
- planned structural changes to the business

An employer may also reject a request for other reasons where a worker's contract ends during the statutory one-month decision period for requests. See paragraph 38 for further information.

19. Where the employer is considering rejecting a request, they should consider whether there are alternative and suitable arrangements for providing more predictability. If there are, they should discuss this with the worker (see paragraphs 21 to 25).

20. In handling a request, an employer must not discriminate unlawfully against a worker 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

### Meeting to discuss a request

21. If an employer receives a request, they should arrange a meeting with the worker to discuss it. This can help make sure that all relevant information is understood before a decision is made. The person holding the meeting should have sufficient authority to make a decision.

22. The meeting should be held without unreasonable delay. The arrangement of the meeting should allow the worker and employer reasonable time to prepare for the discussion, while taking into account the statutory one-month decision period for requests (see paragraphs 35 to 36).

23. The meeting should be held privately. It can be held in person or remotely via a video call, or where neither of those are possible, via a telephone call.

24. The content of the meeting and the way in which it is conducted should allow for a reasonable discussion and consideration of the request. If the employer is considering accepting the request, or agreeing an alternative predictable working pattern, they should discuss with the worker how and when the changes might best be implemented.

25. An accurate record of the discussion should be kept in writing.

### Communicating a decision about a request

26. Once the employer has made a decision about the request, they must inform the worker of that decision. They should do so in writing without unreasonable delay, making it clear what has been decided and why. This decision should be communicated to the worker within a timeframe that will allow the worker reasonable time to appeal if they wish to, while taking into account the statutory one-month decision period for requests (see paragraphs 35 to 36).

27. If the request is rejected, the written decision should clearly set out the business reason(s) (see paragraphs 18 and 38). It should also set out any additional information which is reasonable to help explain the decision to the worker. The worker should be allowed to appeal the decision and the written decision should explain how the worker may appeal if they wish to do so, and the timeframe for receipt of any appeal.

### Handling an appeal

28. If a worker wishes to appeal the decision about their request, they should let their employer know the grounds for their appeal in writing. These include, for example, if there is new information they wish to be considered, or if they believe the employer has not handled their request in a reasonable manner.

29. If the employer receives an appeal, they should arrange a meeting with the worker to hear the appeal. The meeting should be held without unreasonable delay and at a time and place which should be notified to the worker in advance.

30. The appeal should be dealt with impartially. Wherever possible, it should be handled by a manager who has not previously been involved in considering the request.

31. Once the employer has made a decision about the appeal, they should inform the worker of that decision in writing without unreasonable delay, while taking into account the statutory one-month decision period for requests (see paragraphs 35 to 36). The decision should make clear what has been decided and why.

### **Allowing a worker to be accompanied**

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

33. If a worker makes a request to be accompanied at any meeting to discuss their request for a predictable working pattern, including any appeal, and their 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 worker about this prior to the meeting so that they can make a request to be accompanied if they wish.

34. What is reasonable 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, a worker should provide enough time for the employer to deal with the companion's attendance at the meeting. Workers 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.

### **Deciding requests within the statutory one-month decision period**

35. All requests, including any appeal, must be decided and communicated to the worker within one month of the date of the request.

36. If the employer arranges a meeting to discuss the request, including any appeal, they should provide a reasonable opportunity for the worker to attend. If the worker fails to attend, the employer should rearrange the meeting. If the worker fails to attend both meetings without a good reason, the employer may consider the request withdrawn. If the employer considers the request withdrawn, they must inform the worker of this. This should be done in writing.

### **Deciding requests where the worker's contract ends during the statutory one-month decision period**

37. If a worker has made a request and their contract ends during the statutory one-month decision period, the employer must still handle the request in a reasonable manner and decide the request within that one-month period (following paragraphs 17 to 36).

38. An employer must accept a request in these circumstances unless any of the following apply:

- the employer has a genuine business reason to reject the request, as set out in paragraph 18
- the worker ended their contract (but this reason may not be used if they had the right to end their contract without notice because of the employer's conduct)
- the employer ended the worker's contract because of the worker's conduct or capability, a redundancy, a legal duty or restriction, or some other substantial reason. (In these cases, the employer must have acted reasonably in deciding that they had sufficient grounds for ending the contract)

39. If the employer accepts the request in these circumstances, they must offer the worker a new contract with terms and conditions which both:

- reflect the change requested
- are, on the whole, not less favourable than those of the worker's contract at the time of their request

40. The employer must offer the new contract to the worker within two weeks of accepting the request. This offer should be made in writing.

### **Protection from detriment and dismissal**

41. An employer must not subject a worker to any detriment because of any of the following:

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

42. Detriment is generally defined as something that causes a disadvantage to a worker. It includes ceasing or reducing offers of work to a worker because they have taken any of the steps listed above. It does not include ceasing or reducing offers of work for a legitimate business reason, for example because there is genuinely no work available, or because the contract has come to an end as originally agreed.

43. For employees, if the detriment they suffer is dismissal, the Employment Rights Act 1996 provides a separate protection against unfair dismissal.

### **Section B: Requests to agencies or hirers**

44. Section B of this Code applies to requests by agency workers, as defined in the Agency Workers Regulations 2010.

#### **The statutory right to request a predictable working pattern**

45. A worker has a statutory right to make a request to their agency or hirer for a more predictable working pattern if their working pattern lacks predictability. A working pattern refers to the number of hours or the days and times the worker works under an assignment with a hirer, or the length of their assignment with a hirer.

46. To make a statutory request to an agency, a worker must have had a contract with the agency at some point in the month before the 26 weeks leading up to the day of the request.

47. To make a statutory request to a hirer, a worker must have worked in the same role with the same hirer for 12 continuous weeks within the 26 weeks leading up to the day of the request.

48. An assignment with a hirer for 12 months or less is one type of working pattern which lacks predictability. In this case, a worker may make a statutory request to their agency to have an assignment with the same hirer for more than 12 months, provided all the criteria in paragraphs 45 and 46 apply.

49. A statutory request to an agency or hirer must be in writing and must include:

- the date of the request
- a statement that it is a statutory request for a predictable working pattern
- the change the worker is seeking to their working pattern
- the date on which the worker would like the change to come into effect

- if and when the worker has made a previous request for a predictable working pattern to their agency (if the new request is to the agency) or to their hirer (if the new request is to the hirer)

50. An agency or hirer's procedure for making requests should make clear to their workers that the information described in paragraph 49 is to be included in any statutory request for a predictable working pattern.

### **A request for a contract directly with a hirer**

51. A request from a worker to a hirer for a predictable working pattern may be for either:

- a contract of employment with the hirer (this means to become an employee of the hirer)
- a worker's contract with the hirer to do work or provide a service personally (this means to become a worker of the hirer but not an employee)

52. A request to a hirer must be treated as a request for a contract to do the same or broadly similar work as the worker already does for hirer.

53. A request to a hirer must be treated as a request for a contract with terms and conditions which are, on the whole, not less favourable than either of the following:

- the usual terms and conditions, at the time of the request, of the hirer's employees (in the case of a request for a contract of employment) or the hirer's workers who are not employees (in the case of a request for a worker's contract) who are doing the same or broadly similar work to the agency worker and (where relevant) who have a similar level of qualification and skills
- the terms and conditions that would usually be expected to be included in such contracts if the hirer does not have any such employees or workers

54. A hirer may need to correspond with the agency to clarify relevant information when handling a worker's request. The hirer and the agency should ensure that this communication takes place in a timely manner so that the request is handled within the statutory one-month decision period (see paragraphs 75 to 76).

### **The number of statutory requests allowed**

55. A worker may make two statutory requests to their agency and two statutory requests to their hirer for a predictable working pattern within any 12-month period.

56. A worker may have only one live request for a predictable working pattern at any one time with their agency, and at any one time with their hirer. Once a request has been made, it remains live, including during any appeal, until any of the following occur:

- a decision on the request is made
- the request is withdrawn
- an outcome is mutually agreed
- the statutory one-month decision period for requests ends (see paragraphs 75 to 76)

### **Considering a request for a predictable working pattern**

57. Every request must be handled in a reasonable manner. This should include:

- consideration of the worker's current working pattern – this includes, for example, whether they have already been regularly working broadly the same hours, days or times, or working for the same hirer under a series of assignments
- assessing the effect of the requested change for the agency (if the request was to the agency) or hirer (if the request was to the hirer) and the worker, including the potential benefits and other impacts of accepting or rejecting it

58. An agency or hirer must accept a predictable working pattern 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
- a detrimental effect on ability to meet customer demand
- a detrimental effect on the recruitment of staff
- a detrimental effect on other aspects of the agency or hirer's business
- insufficient work available for the periods the worker proposes to work
- planned structural changes to the business

An agency or hirer may also reject a request for other reasons where a worker's contract or assignment ends during the statutory one-month decision period for requests. See paragraph 78 for further information.

59. Where the agency or hirer is considering rejecting a request, they should consider whether there are alternative and suitable arrangements for providing more predictability. If there are, they should discuss this with the worker (see paragraphs 61 to 65).

60. In handling a request, an agency or hirer must not discriminate unlawfully against the worker 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

### **Meeting to discuss a request**

61. If an agency or hirer receives a request, they should arrange a meeting with the worker to discuss it. This can help make sure that all relevant information is understood before a decision is made. The person holding the meeting should have sufficient authority to make a decision.

62. The meeting should be held without unreasonable delay. The arrangement of the meeting should allow reasonable time to prepare for the discussion, while taking into account the statutory one-month decision period for requests (see paragraphs 75 to 76).

63. The meeting should be held privately. It can be held in person or remotely via a video call, or where neither of those are possible, via a telephone call.

64. The content of the meeting and the way in which it is conducted should allow a reasonable discussion and consideration of the request. If the agency or hirer is considering accepting the request, or agreeing an alternative predictable working pattern, they should discuss with the worker how and when the changes might best be implemented.

65. An accurate record of the discussion should be kept in writing.

### **Communicating a decision about a request**

66. Once a decision has been made about the request, the agency (if the request was to the agency) or hirer (if the request was to the hirer) must inform the worker of that decision. The worker should be informed in writing without unreasonable delay, making it clear

what has been decided and why. This decision should be communicated to the worker within a timeframe that will allow the worker reasonable time to appeal if they wish to, while taking into account the statutory one-month decision period for requests (see paragraphs 75 to 76).

67. If the request is rejected, the written decision should clearly set out the business reason(s) (see paragraphs 58 and 78). It should also set out any additional information which is reasonable to help explain the decision to the worker. The worker should be allowed to appeal the decision and the written decision should explain how the worker may appeal if they wish to do so, and the timeframe for receipt of any appeal.

### **Handling an appeal**

68. If a worker wishes to appeal the decision about their request, they should let their agency (if the request was to the agency) or hirer (if the request was to the hirer) know the grounds for their appeal in writing. These include, for example, if there is new information they wish to be considered, or if they believe their request has not been handled in a reasonable manner.

69. If the agency or hirer receives an appeal, they should arrange a meeting with the worker to hear the appeal. The meeting should be held without unreasonable delay and at a time and place which should be notified to the worker in advance.

70. The appeal should be dealt with impartially. Wherever possible, it should be handled by a manager who has not previously been involved in considering the request.

71. Once a decision about the appeal has been made, the worker should be informed in writing of the appeal decision without unreasonable delay, while taking into account the statutory one-month decision period for requests (see paragraphs 75 to 76). The decision should make clear what has been decided and why.

### **Allowing a worker to be accompanied**

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

73. If a worker makes a request to be accompanied at any meeting to discuss their request for a predictable working pattern, including any appeal, and the request to be accompanied is reasonable, the agency or hirer should allow them to be accompanied by a fellow worker, a trade union representative, or an official employed by a trade union. The worker should be informed about this prior to the meeting so that they can make a request to be accompanied if they wish.

74. What is reasonable 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, a worker should provide enough time for the agency or hirer to deal with the companion's attendance at the meeting. Workers should also consider how they make their request so that it is clearly understood, for instance by letting the agency or hirer know in advance the name of the companion where possible and whether they are a fellow worker or trade union official or representative.

### **Deciding requests within the statutory one-month decision period**

75. All requests, including any appeal, must be decided and communicated to the worker within one month of the date of the request.

76. If the agency or hirer arranges a meeting to discuss the request, including any appeal, they should provide a reasonable opportunity for the worker to attend. If the worker fails to attend, the agency or hirer should rearrange the meeting. If the worker fails to attend both meetings without a good reason, the agency or hirer may consider the request withdrawn. If the agency or hirer does consider the request withdrawn, they must inform the worker of this. This should be done in writing.

## Deciding requests where the worker's contract or assignment ends during the statutory one-month decision period

77. If a worker has made a request and their contract or assignment ends during the statutory one-month decision period for requests, the agency (if the request was to the agency) or hirer (if the request was to the hirer) must still handle the request in a reasonable manner and decide the request within that one-month period (following paragraphs 57 to 76).

78. An agency or hirer must accept a request in these circumstances unless any of the following apply:

- the agency or hirer has a genuine business reason to reject the request, as set out in paragraph 58
- the worker ended their contract or assignment (but this reason may not be used if the worker had the right to end their contract or assignment because of the agency's conduct (if the request was to the agency) or the hirer's conduct (if the request was to the hirer))
- the worker's contract was ended by the agency (if the request was to the agency) or their assignment was ended by the hirer (if the request was to the hirer) because of the worker's conduct or capability, the qualifications required for the assignment, a legal duty or restriction, or some other substantial reason. (In these cases, the agency or hirer must have acted reasonably in deciding that they had sufficient grounds for ending the contract or assignment.)

79. If the request was to the agency and the agency accepts it in these circumstances, they must offer the worker a new contract with terms and conditions which both:

- reflect the change requested
- are, on the whole, not less favourable than those of the worker's contract at the time of their request

80. The agency must offer the new contract to the worker within two weeks of accepting the request. This should be made in writing.

## Protection from detriment and dismissal

81. An agency or hirer must not subject a worker to any detriment because of any of the following:

- the worker has made or intends to make a request for a predictable working pattern
- the worker has issued legal proceedings against the agency or hirer in relation to their right to request a predictable working pattern, or has stated that there are circumstances which could constitute a ground for them to do so

82. Detriment is generally defined as something that causes a disadvantage to a worker. It includes ceasing or reducing offers of work to a worker because they have taken any of the steps listed above. It does not include ceasing or reducing offers of work for a legitimate business reason, for example because there is genuinely no work available, or because the assignment has come to an end as originally agreed.

83. For employees, if the detriment they suffer is dismissal, the Employment Rights Act 1996 provides a separate protection against unfair dismissal.