

Code of Practice on handling requests for flexible working (draft)

12 July 2023

About this draft

This draft Code of Practice was published on 12 July 2023 for public consultation. [Read more about the consultation.](#)

[A revised draft Code of Practice on requests for flexible working](#) was published on 11 January 2024, while it went through Parliament. [The final Acas Code of Practice on requests for flexible working](#) came into effect on 6 April 2024.

Foreword

The Acas statutory Code of Practice on handling requests for flexible working is set out in paragraphs 1 to 29 below. It is designed to support employers, employees and their representatives to understand their rights and responsibilities regarding the statutory right to request flexible working in the Employment Rights Act 1996.

Under the Employment Rights Act 1996, flexible working requests are requests for a change to an employee's contractual terms and conditions relating to their hours, times or place of work. The Code does not apply to other requests for flexible working where employees are not exercising their statutory right to request, though the processes it describes may be of use to employers in handling non-statutory requests as well.

Investment in flexible working can bring benefits to employers and employees, irrespective of sector, occupation, or workplace size. It can enable people to better balance their working lives alongside personal responsibilities and preferences, and can improve routes into employment for individuals. Providing greater flexibility can help employers address labour and skills shortages and can lead to more diverse and inclusive workplaces.

While not every type of flexible working will be suitable for every role and every organisation, flexible working can take many forms. Where possible and appropriate, employers should seek to build flexibility into job roles as part of their job design and recruitment processes, and advertise that they are open to talking about flexible working options. This can support early and constructive conversations with existing and prospective employees about options to work flexibly.

Welcoming and being open to all requests can help give employees the confidence to come forward with requests and help achieve the best outcome for everyone.

Consultation meetings about requests should be approached with an open mind to discuss what may be suitable. Meetings are an opportunity to listen carefully and engage meaningfully with each other so that a fully informed, evidence-based decision can be made. Employers must accept requests unless there is a genuine business reason not to, as specified in the Employment Rights Act and set out in paragraph 15 of the Code. The default position should not be to reject requests.

Where a request cannot be accepted, the reasons for the decision should be clearly explained to the employee. Clear communication helps maintain trust that a request has been handled reasonably. Further, being proactive in offering an appeal provides the opportunity for individuals to present any new information or raise any concerns relating to the way their request has been handled.

If an employee makes a reasonable request to be accompanied at any meeting to discuss a flexible working request, the employer 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.

The 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] and replaces the Code 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.

Further guidance on flexible working 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 to employers and employees on the statutory right to request flexible working as set out in the Employment Rights Act 1996.
2. Having a clear policy and procedure for handling statutory requests for flexible working can be helpful in setting out the different stages and requirements so that everyone knows what is to be expected.
3. The guidance in this Code will be taken into account by employment tribunals when considering relevant cases.

Handling requests in a reasonable manner

The statutory right to request flexible working

4. Every employee has a statutory right to request flexible working under the Employment Rights Act 1996 and regulations made under it. The statutory right applies from the first day of employment.
5. A request must be in writing and must include:
 - the date of the request
 - a statement that it is a statutory request for flexible working
 - the change to working conditions the employee is seeking

- the date on which the employee would like the change to come into effect
- if and when the employee has made a previous request for flexible working

The request should also state:

- if and when the employee has made a previous request for a predictable work pattern

An employer's procedure should make clear to their employees that the above information is to 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 the same employer at any one time. A request is live unless any of the following apply:

- a decision on the request has been made by the employer
- the request is withdrawn
- an outcome to the request has been mutually agreed by the employer and employee
- the statutory timeframe to respond to the request has expired without a decision, withdrawal or a mutually agreeable outcome

A request continues to be live during any appeal or any extension to the procedure that an employer and employee have agreed.

Giving consideration to a request for flexible working

8. Every request must be handled in a reasonable manner. This should include carefully assessing the effect of the requested change on the business and on the individual, including the potential benefits and impacts for both parties of accepting or rejecting it.

9. Employers must accept a flexible working request unless there is a genuine business reason not to, as specified in the Employment Rights Act (see paragraph 15). Where there is such a reason, it might be possible to agree a request with modifications, or to agree an alternative proposal that secures some or all of the benefits that the original request sought.

10. In handling a request, employers must not discriminate unlawfully against the employee in relation to any of the protected characteristics set out in the Equality Act 2010.

11. Any requests for a reasonable adjustment related to an employee's disability should be dealt with separately rather than as a flexible working request.

Consulting the employee and exploring alternatives

12. Employers must not reject a request without first consulting the employee. Employers should have a formal meeting with the employee after receiving the request. The meeting should be held without unreasonable delay. The person holding the meeting should have sufficient authority to make a decision.

13. Wherever possible, a consultation meeting should take place in a private place. It can be held in person or remotely via online video conferencing, or where neither of those are possible, via telephone call. In either case, the content of the meeting and the way in which it is conducted should allow a reasonable discussion and consideration of the request. An accurate record of the discussion should be kept in writing.

14. During the consultation meeting, the employer and the employee should carefully consider and discuss any alternative flexible working options that may be available and suitable for both the business and the employee.

15. 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
- a planned structural change to the employer's business

16. Even where the employer plans to accept a request, it is good practice to offer the employee a meeting. This can help make sure that all relevant information is understood so that an appropriate arrangement is agreed and implemented well. A discussion can also make clear, for example, whether a request may relate to a reasonable adjustment for an employee's disability and therefore should be dealt with separately.

Communicating the decision on a request

17. Once the employer has made a decision about the request, they must inform the employee of that decision. They should do so in writing without unreasonable delay, making it clear what has been decided and why.

18. If the employer accepts the employee's request, or accepts it with modifications, they should discuss with the employee how and when the changes might best be implemented.

19. If the employer rejects the request, they should provide the employee with a written decision which should clearly set out the business reason(s) (see paragraph 15). The employer should also set out such additional information as is reasonable to help explain the decision. They should allow the employee to appeal the decision and the written decision should explain how the employee may appeal if they wish to do so.

Handling an appeal

20. If an employee wishes to appeal the initial decision about their request, they should let their employer know the grounds for their appeal in writing. 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.

21. If the employer receives an appeal, they should arrange to meet with the employee without unreasonable delay.

22. The appeal should be dealt with impartially. In larger organisations, where possible it should be handled by a manager who has not previously been involved in considering the request. The employee should be informed in writing of the appeal decision without unreasonable delay.

Allowing the employee to be accompanied

23. If an employee makes a reasonable request to be accompanied at any meeting to discuss a flexible working request, 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 employee should be informed about this prior to the meeting so that they can make a reasonable request to be accompanied if they wish.

Deciding requests within the statutory decision period

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

writing to the employee.

25. 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. The employer's arrangements for a meeting should provide a reasonable opportunity for the employee to attend. If the employer does consider the request withdrawn, they must inform the employee of this. This should be done in writing.

Protection from detriment and dismissal

26. 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, or has stated that there are circumstances which could constitute a ground for bringing legal proceedings in relation to their right to request flexible working

The statutory right to request a predictable work pattern

27. Employees may have a separate statutory right to request a predictable work pattern under the Employment Rights Act 1996.

28. Where the purpose of a request is to improve predictability, employees and employers may wish to follow the procedure for requesting a predictable work pattern, as set out in that Acas Code. If such a request is made under the statutory right to request flexible working, it will count towards both:

- the limit of two statutory requests for flexible working (see paragraph 6), and
- the limit of two statutory requests provided for under the right to request a predictable work pattern

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

Read the Acas statutory Code of Practice on handling requests for a predictable work pattern for more information.