

UK COVID-19: DEALING WITH FLEXIBLE WORKING REQUESTS POST COVID-19

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As a result of the UK government's decision in the summer to lift restrictions in respect of office working, employers across the country have been re-opening their doors and encouraging their workforce to return to the office. However, with many employees reporting that they have enjoyed the benefits of working from home, and some saying they are also more productive when doing so, we are seeing a surge in requests for flexible working arrangements. This article considers the legal position in respect of flexible working requests and provides employers with some tips on how to respond to them post Covid-19.

THE CURRENT LAW

Irrespective of whether an employer has an agile working policy in place, employees with at least 26 weeks' continuous service can make a flexible working request under the UK's statutory flexible working scheme. The request to work flexibly can relate to a change in the hours they work, the days when they are required to work and their place of work. The request must be in writing and needs to explain what effect, if any, the requested change will have on the employer and how such effect could be dealt with. Employees are also only permitted to make one request within a 12-month period.

Where a valid request is received, the employer is required to deal with it in a 'reasonable manner' and provide their decision within 3 months from the date the request is made. An employer can also only refuse a request made in line with the statutory scheme on one of eight prescribed grounds. These grounds are broad and include the burden of additional costs, impact on quality of work and performance, customer-demand issues and inability to reorganise work.

Whilst the above reflects the current legal position, the UK government has launched a consultation to seek views on proposals to reform the regulations governing flexible working. The consultation sets out a number of proposals, one of which is that it should be a day one right.

RESPONDING TO FLEXIBLE WORKING REQUESTS POST COVID-19

Given the extensive use of flexible working over the last 18 months, many employers may find themselves grappling with how to deal with flexible working requests if their workforce has been working effectively from home. Below are some key considerations to bear in mind:

- Handle the requests as normal - Whilst Covid-19 has challenged office-based traditional working models, the law around flexible working requests has not changed (yet). We therefore recommend employers deal with post Covid-19 requests in the same way as they did before the pandemic. This will include having a clear and consistent process for dealing with requests, meeting with the employees to discuss their requests, dealing with the requests promptly, and, in instances where a number of applications are received, dealing with them on a first come first served basis.
- Consider the evidence on a case by case basis - It's likely many employees who request to work from home on a full time basis will assert that because they have worked effectively from home over the past 18 months they should be permitted to continue doing so. It is undeniable that this fact will mean going forward it may be more difficult to find grounds to refuse a request. However, there are still many circumstances which mean that working from home on a full time basis may not be permissible. For example, one reason working from home may have been so effective during the pandemic was because the entire workforce, together with that of their clients/customers, were also working remotely. Noting many people are now back in the office, albeit on a hybrid basis, it may be the case that employees can no longer work as efficiently from home as business contacts start to require face to face meetings.

It has also been widely recognised that junior members of the workforce have faced greater challenges when working from home and so in order to aid their professional development it may be necessary for them to be present in the office together with their team. Lastly, whilst workforces have been working effectively from home in difficult circumstances, they may not have been working at their optimal level. It is therefore necessary to consider a request on a case by case basis, having regard to (i) the reasons given by the employees for submitting their requests and (ii) the needs of the business as a whole. Employers should also be live to possible discrimination issues when considering the rationale they may have for rejecting a request, ensuring that the grounds for rejection are not tainted by discrimination.

- Establish whether there is a temporary or permanent need for the change - There are a number of factors that will change as we navigate our way through the Covid-19 pandemic. These include infection rates, level of risk when coming into contact with others, and peoples fear of returning to the office. The workplace will be in a state of change for some time. As such, employers should consider, taking into consideration the reasons given for the request in the first instance, whether the request should be approved on a permanent or temporary basis. A

trial period could be agreed, with a clear review date and understanding of the default position if an extension is not subsequently agreed.

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MEET THE TEAM



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