



## SmartHR - People Management Feature

Gail Yeowell - Managing Director, Smart HR Solutions Limited

### MANAGING FLEXIBLE WORKING REQUESTS

Flexible working requests can be received for a number of reasons, for example – to assist with managing childcare arrangements, or to support carer responsibilities.

Employees have a statutory right to make a flexible working request, provided that they meet certain eligibility criteria. They also have a right not to be subjected to any detriment for exercising their right to request flexible working.

***For the IOM, the eligibility criteria is the employee must:***

- Have at least 26 weeks' continuous employment with their employer at the date the application is made;
- Be making the request to care for a 'dependant'. It cannot be made for any other purpose. A dependant is:
  - the employee's husband or wife;
  - the employee's child under the age of 6 years or disabled (a child is 'disabled' if he or she is entitled to disability living allowance);
  - the employee's parent; or
  - a person who lives in the same household as the employee, but is neither an employee, tenant, lodger nor boarder of the employee, nor a child over 6.

***For the UK, the eligibility criteria is the employee must:***

- Have at least 26 weeks' continuous employment with their employer at the date the application is made;
- Be a parent, an adopter, or carer of an adult;

*If the request is being made by a parent or adopter:*

- he or she must have a child aged under 17 years, or under 18 years if disabled;
- be responsible for the child;
- be the mother, father, adopter, guardian, or foster parent of the child; or
- be the partner of the child's mother, father, adopter, guardian or foster parent.

The parent must have, or expect to have, responsibility for the child's upbringing and be making the application to enable them to care for the child.

*If the request is made by a carer of an adult he or she must:*

- be married to, or the parent or civil partner of the employee;
- be a near relative of the employee; or
- fall into neither category, but live at the same address as the employee.

**Making a Flexible Working Request:**

Employers normally require employees to submit their flexible working request in writing. It should:

- State that it is a flexible working request;
- State whether a previous application has been made by the employee to the employer, and if so, when;
- Specify the flexible working change applied for and the date on which it is proposed that the change should become effective;

- Explain what effect, if any, the employee thinks making the change applied for would have on the employer / company and how, in their opinion, any such effect might be dealt with;
- Explain how the employee meets the eligibility and qualifying conditions;
- Be signed and dated.

*A request may not be made within 12 months of a previous flexible working request being received.*

### **Managing the Request:**

Following receipt of a request, the employer should hold a meeting with the employee to discuss the flexible working request. The employer may either:

- Agree to all the changes requested and notify the employee in writing of this; or
- Arrange a meeting with the employee to discuss their application and how it might best be accommodated, or to consider alternative options.

The meeting should be held within 28 days of receiving the employee's request, and the employee is entitled to be accompanied at the meeting. Within 14 days of the meeting, the employer should respond to the employee in writing advising of the decision.

### **Agreeing the Request:**

Where the employer agrees to the flexible working application, a letter of confirmation should be provided to the employee (within 14 days of the date of the meeting) that details the contractual variation agreed to and the date on which the variation to the employee's terms and conditions of employment will be effective. The change will normally be a permanent variation to the employee's contract, unless it is specifically stated that it is for a certain period of time e.g. for 6 months and then the employee's terms and conditions / working hours will revert back to the employee's original contractual working hours.

Employees do not have a right to automatically revert back to their previous working arrangements e.g. when their child reaches a certain age or when their caring responsibilities cease.

As an alternative before agreeing to a request, you may decide to hold a trial period e.g. 4 weeks. If this is the case, then this should be clearly documented.

### **Refusing the Request:**

If the employee's flexible working request is refused, this should be confirmed to the employee in writing (within 14 days of the date of the meeting) and state which of the permitted grounds apply. It should also set out the appeals procedure. Where an employee wishes to appeal, this would normally be required in writing, be dated, and clearly state the grounds for appeal. The appeal would normally be required within 14 days of receiving the decision.

The flexible working application may be refused on one or more of several grounds, these being that the proposed changes will result in:

- a burden of additional cost;
- a detrimental effect on ability to meet customer demand;
- an inability to re-organise work among existing staff;
- an inability to recruit additional staff;
- a detrimental effect on quality or performance;
- an insufficiency of work during the periods the employee proposes to work; and
- planned structural changes.

### **Handling an Appeal:**

Following receipt of a notice of appeal, an appeal meeting should be arranged (within 14 days of the appeal notice being received), and the employee has the right to be accompanied again. Where reasonably practicable, the appeal should be heard by a person who has not previously been involved with the flexible working procedure. After the meeting, the employee should be advised, in writing, of the outcome of the flexible working appeal meeting. This should be within 14 days of the appeal meeting and this decision will normally be final from the employer.

Where the Company upholds the appeal, the employee will be advised, in writing, of the contract variation agreed to, and state the date on which it is to take effect. Where the Company dismisses the appeal, the notice will state the grounds for the decision.

*It is important that employers provide due consideration to flexible working requests received. If you require further advice or guidance on managing flexible working requests, then you should seek appropriate advice from a suitable qualified professional.*