

In the Know....

# Flexible Working: Employer in Control



Two employees have recently lost tribunal claims based on their employer's flexible working decisions; both Employment Tribunals acknowledging that employers may put their needs above the employee's when considering the request.

## Right to Request

Employees with 26 weeks' service are entitled to make a request for flexible working, provided they have not made a request within the previous 12 months. It is important for employees to recognise that they have a legal right to request flexible working but there is no legal right to actually work flexibly.

Once a request is received, an employer is under a legal duty to consider it. Whilst there is no longer a statutory procedure in place requiring employers to deal with the request in a certain way, there is a statutory code of practice on flexible working which sets out guidance for how the request should be dealt with. If employers follow the provisions of the code, it will be held that they dealt with the request in a reasonable manner and within a reasonable timeframe.

## Decision making

Employers may refuse a request provided the reason for refusal falls into one of the reasons given as acceptable by the law. It is important to base a refusal on correct facts because if not, the employee will be entitled to make a claim to employment tribunal.

## Two recent cases

Two employers have recently successfully defended sex discrimination claims from employees who made claims because their flexible working requests had been refused.

In *Whiteman v CPS Interiors*, the employee worked as a designer for a company that refurbishes commercial property. She was to return from maternity leave after having twins and requested both a reduction in her working hours and a change to the times that she worked (the employee wanted to work in the evenings), and also wanted to work from home. The request to change the location and the times of work was rejected, though the employer agreed to the reduction in hours.

The reason given by the employer was that the changes would affect the quality of the work done. Specifically, it said that the nature of the work meant that a team of designers had to work collaboratively on designs; and sometimes designs need to be changed at short notice which would be difficult if the employee only worked at home in the evening. The employee resigned as a result of the refusal.

In the second case, *Smith v Gleacher Shacklock LLP*, the employee was a single parent and worked as a secretary for an investment bank. She made a request to reduce her working days, and to work from home on one day. Her request was refused because:

- Her role was unpredictable;
- Some tasks carried tight deadlines;
- Her proposed working pattern would put disproportionate pressure on the small team;
- The impact on the employer's ability to look at its clients was too great.

As in the previous case, the employee resigned after the refusal.

## Employment Tribunal's Decisions

In both cases, the Employment Tribunal Judges decided that the employer's position was justified and the potential disadvantage caused by the requested adjustments was outweighed by the needs of the business. Provided that the employer does not act in a discriminatory manner, the Judge in the first case said, employers are able to refuse a request provided that the refusal is on one of the specified grounds. The Judge also said that "although it may...be uncharitable to do so, it is not unreasonable for an employer to put its own interests above those of the employee".

**The content of this briefing is correct at the time of publishing.**

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