**Making flexible working the default**

A response by the Recruitment & Employment Confederation (REC)

November 2021



The Recruitment & Employment Confederation

The Recruitment & Employment Confederation (REC) is the leading voice for the UK's dynamic and entrepreneurial labour market. As experts in the world of work, our members place someone into a new permanent role every 21 seconds[[1]](#footnote-1) - and just under a million people into temp assignments every day[[2]](#footnote-2). The REC is committed to working with Government to make the UK's labour market the best in the world.

**Introduction**

As the trade body for the recruitment sector, the REC has valuable insight into the way flexible working can impact recruitment businesses, their staff, their clients and their candidates. The government's proposals to reform flexible working regulations (The Flexible Working Regulations 2014) will have a large impact on the sector and the REC has liaised with our members to formulate our response based on the needs of the industry and the wider UK labour market.

The government's proposals build on previous flexible working legislation. In 2003, legislation came into force which provided parents and certain other carers with a right to request a flexible working arrangement, which covered work location, working hours and working pattern. In 2014, the right to request a flexible working arrangement was extended to all employees with 26 weeks continuous service. This proposal would now make the right to request flexible working a day one right for all employees, and considers the mechanisms around how a request should be responded to as well.

The REC is supportive of the benefits of flexible working in helping people into work, and allowing for a more diverse workforce, and in many cases a more productive workforce. However, the desire to boost flexible working in the UK needs to be balanced against the needs of employers to operate in an effective and well-prepared manner.

Our responses to the consultation questions raised by the government are listed below.

**Section 1: Who are you?**

1. Are you:
* An individual
* An employer
* Representing employer's or employee's interests
* Other (please specify)
1. Are you:
* An employer or someone who is responding on behalf of an employer
* Employed
* Self-employed
* Unemployed - Looking for work
* Unemployed – Not looking for work
* Retired
* Not looking for work - other
1. If you are an employer, how would you classify your organisation?
2. If you are an employee, what type of organisation do you work for?
* Private sector organisation
* Public sector
* Charity/voluntary sector
* Other (please specify) - Not for Profit
1. If you are an employer, how many employees work for your organisation?
2. If you are employed, how many people work for your organisation?
* Micro-business (0-9 employees)
* Small business (10-49 employees)
* Medium-sized business (50-249 employees)
* Large-sized business (250+ employees)
1. If you represent employers or employees, who do you represent?
* A trade union
* An industry or employer association
* Other (please specify)

**Section 2: Making the Right to Request Flexible Working a day one right**

1. Do you agree that the Right to Request Flexible Working should be available to all

employees from their first day of employment?

* Strongly agree
* Agree
* Neither agree nor disagree
* Disagree
* Strongly disagree
* Don’t know
1. Please give reasons for your answer, including any considerations about costs and

benefits that may affect employers and/or employees.

The REC supports greater flexibility for workers and thinks that this needs to be managed responsibly between the employer and employee. Flexible working can allow workers from different backgrounds and with different needs to access the UK labour market and promote diversity and inclusion in the workforce. However, this need for flexibility needs to be balanced against the needs of employers as well. Allowing employees to make a day one request for flexible working affects the ability of employers to control how their workforce is structured. An employer could assess the needs of their workforce and decide they need a full-time employee to fulfil a particular requirement, and advertise a full-time position based on this fact. However, upon hiring a person on a full-time basis, this individual could potentially change the nature of the role as planned. requirement for a full-time staff member by submitting a flexible working request. This makes it harder for employers to set in stone their workforce and resource plans. Furthermore, allowing the flexible working request to be made on day one does not allow for any time for the employer and employee to assess the work and performance of the employee in the role. Allowing for flexible working requests to be made without this information seems counterintuitive.

Many employers are already open to having conversations with their employees regarding flexible working at timescales shorter than 26 weeks. However, this is most appropriately considered on a case-by-case basis depending on the circumstances of any given employer, role, and employee. Entrenching a statutory right that applies to all employers is too one size fits all to apply equally across the UK's labour market. Employers should be encouraged to have conversations with their staff regarding flexible working using common sense and appropriate discretion. Entrenching the right to request flexible working as a day one right in legislation is impractical, unnecessary, and in many cases may be unfair to the employer.

If the government was to introduce the right to request flexible working as a day one right, this would need to remain applicable to only employees as set out in the current flexible working provisions of the Employment Rights Act. Agency workers who are supplied via an employment business to do work for a third party should be excluded from the right to request flexible working from day one. Allowing agency workers to request flexible working as a day one right would undermine the fundamental nature and purpose of temporary work. Agency work has an inherent flexibility built into it so there is no additional requirement for further statutory rights to grant flexible working.

1. In your organisation, do you currently accept requests for flexible working arrangements from employees that have less than 26 weeks continuous service?

Please answer this question from the perspective of the employer.

* Yes
* No
* Don't know

**Section 3: Whether the eight business reasons for refusing a Request all remain valid**

1. Given your experiences of Covid-19 as well as prior to the pandemic, do all of the business reasons for rejecting a flexible working request remain valid? Please answer this question from the perspective of the employer.
* Yes, the list of business reasons remains valid.
* No
* Don’t know
1. If yes, please give reasons for your answer.

The wording of all 8 reasons is broad enough that they can be applied to any number of flexible working requests and the circumstances under which these could be submitted or rejected. The membership of the REC reported that the most commonly used reasons for rejecting a flexible working request would be "flexible working will negatively affect quality" and "flexible working will negatively affect performance" but there are scenarios where all 8 reasons could be applied. For smaller businesses in particular, an inability to reassign work or recruit additional staff to cover gaps can be particular barriers to granting flexible working requests. Additionally, there are several industries such as retail, hospitality and driving where the nature of the work makes certain types of flexible working incompatible with the type of work being done. Employers should still be permitted to fully reject requests, where there is a sound business reason for doing so, citing one or more of the eight reasons set out above.

1. If no, please state which reasons from the list above are no longer valid and why.

Not applicable

**Section 4: Requiring the employer to suggest alternatives, where possible**

1. Do you agree that employers should be required to show that they have considered

alternative working arrangements when rejecting a statutory request for flexible working?

* Strongly agree
* Agree
* Neither agree nor disagree
* Disagree
* Strongly disagree
* Don’t know
1. Please give reasons for your answer.

We agree there should be consideration, but we stress that there is a big difference here depending on the exact wording used regarding a requirement to consider alternative arrangements versus a requirement to suggest alternative arrangements.

Where the legislation states that employers are required to show they have considered the arrangement, this is less onerous, but the amount of work required will depend on how this is enforced. More information would be needed for the level of record an employer needs to have to demonstrate a genuine consideration of alternative arrangements. If the requirement for evidence is too overly officious this will create extra work for employers and employees and will make the request longer to process and resolve.

We do not support the requirement to suggest an alternative flexible working arrangement as this is even more burdensome. By requiring the employer to suggest an alternative to a rejected request, this effectively changes the right to request flexible working to a right to have flexible working. Employers will be compelled to grant workers some level of flexible working where this requirement is implemented, regardless of the employer's own needs. In addition, there is currently no proposal to introduce a reasonableness test when it comes to looking at the employer’s decision on whether or not to grant a request. Without a clear and robust test, it will not be possible to measure whether an employer has handled a request 'reasonably.' A lack of clarity around this could result in unintended consequences, such as employees bringing indirect discrimination claims for mishandling a request.

However, employers and employees should be free to discuss alternative arrangements and negotiate a compromise where possible, taking the needs of both employer and employee on board. Employers should be encouraged to have these conversations by way of good practice but making this a statutory requirement is an overly officious step.

1. Would introducing a requirement on employers to set out a single alternative flexible working arrangement and the business ground for rejecting it place burdens on employers when refusing requests?
* Yes
* No
* Don’t know
1. If yes, would this requirement have an effect on the time taken by employers to handle a request?
* Yes, it would take additional time

It is impossible to state exactly how much additional time this will take. The length of time to respond to a request is dependent on the circumstances of any given request. Size of company, their resources, the nature of the request and industry (among other factors) can all impact the length of time a request takes to address. If a requirement to suggest an alternative is implemented, this will increase the time and work needed by the employer further.

* No
* Don’t know

**Section 5: The administrative process underpinning the Right to Request Flexible Working**

1. Do you think that the current statutory framework needs to change in relation to how often an employee can submit a request to work flexibly?
* Yes
* No
* Don’t know
1. Please give reasons for your answer.

Employers should be able to consider additional flexible working requests on a case-by-case basis, but this should not be mandatory under legislation. Giving workers a statutory right to make multiple flexible working requests will increase the administrative burden on employers to respond to the requests, particularly when you consider the additional admin proposed in suggesting alternatives.

Guidance should be issued to encourage employers to consider additional requests where an employee’s circumstances have changed, or the nature of the request is materially different, but employers need to be protected from employees submitting the same request repeatedly. This allows employers the flexibility to adapt to the personal circumstances of their employees as they change without being overly officous. The increased flexibility to allow multiple requests does not need to be entrenched in legislation, as this will remove the ability of employers and employees to consider additional requests on a case-by-case basis.

Guidance should also be issued to encourage businesses to consider flexible working requests in advance of the 26-week period, but this does not need to be a statutory right that is enforceable from day 1. Flexible working should be encouraged, and employers should be open to these conversations, but statutory mandates on how and when to handle flexible working requests are overly officious.

1. Do you think that the current statutory framework needs to change in relation to how quickly an employer must respond to a flexible working request?
* Yes
* No
* Don’t know
1. Please give reasons for your answer.

The current 3-month response time is not helpful to employers or employees as it does draw the process out in many scenarios and leaves employees who have submitted requests in limbo whilst they wait for a response. Having a one month response time would allow In most cases enough time for an assessment to be made and or a compromise to be achieved.

1. If the Right to Request flexible working were to be amended to allow multiple requests, how many requests should an employee be allowed to make per year?
* No amendment is required
* Two requests
* Three requests
* There should not be a limit on the number of requests an individual can make
* Other, please specify
1. Please give reasons for your answer, including any consideration about costs, benefits and practicalities.

Please refer to answer 19.

1. If the Right to Request flexible working were amended to reduce the time period within which employers must respond to a request, how long should employers have to respond?
* No amendment is required
* Less than two weeks
* More than two weeks, less than one month
* More than one month, less than two months
* More than two months, less than three months
* Other, please specify
1. Please give reasons for your answer, including any consideration about costs, benefits and practicalities.

Please refer to answer 21.

**Section 6: Requesting a temporary arrangement**

1. Are you aware that it is possible under the legislation to make a time-limited request to work flexibly?
* Yes
* No
* Don’t know
1. What would encourage employees to make time-limited requests to work flexibly? Please provide examples.

No comment

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1. REC, Recruitment Industry impact report (Publish 18 February) [↑](#footnote-ref-1)
2. REC, Recruitment Industry Status Report (December 2020) [↑](#footnote-ref-2)