

Flexible working requests

Can you refuse them and what are the risks? **Rebecca Blake** provides clarification

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A good work-life balance is hard to get right at the best of times, and with the increased pressures of the digital age, employers are seeing a rise in flexible working requests from their employees.

It is therefore important that practice owners and managers know what their obligations are when such requests are made, and whether they can legally refuse them.

Flexible working requests can take many forms, but the most common types include a reduction in hours or days, or flexi-time. There are certain criteria that employees must meet before they can make a request; however, you should be aware that employees have a statutory right to make a flexible working request and requests can only be refused in certain circumstances.

The right to make a flexible working request

To make a flexible working request the individual must be an employee. Only employees with 26 weeks' continuous service at the time the request is made have the statutory right to make a request.

If they have the requisite service then they can make a request for any reason; however, they are not entitled to make a further request within 12 months. There is no legal obligation for employers to consider requests from employees with less than 26 weeks' service; however, in some circumstances it may be beneficial to do so.

How to respond to a flexible working request

Ideally every practice owner should have a flexible working request policy in place. Having a policy ensures that employees are aware of their right to make such a request and that they know how to go about making one. It also allows for them to know what their employer's obligations are as well. This allows for a more consistent approach to dealing with requests and ensures that all employees are treated fairly.

Flexible working requests should be discussed with the employee as soon as possible and a decision must be made within three months from the date that the request is made. A flexible working request meeting should be held with the employee and they should be advised of their right to be accompanied by a colleague or trade union representative to any meeting that is held.

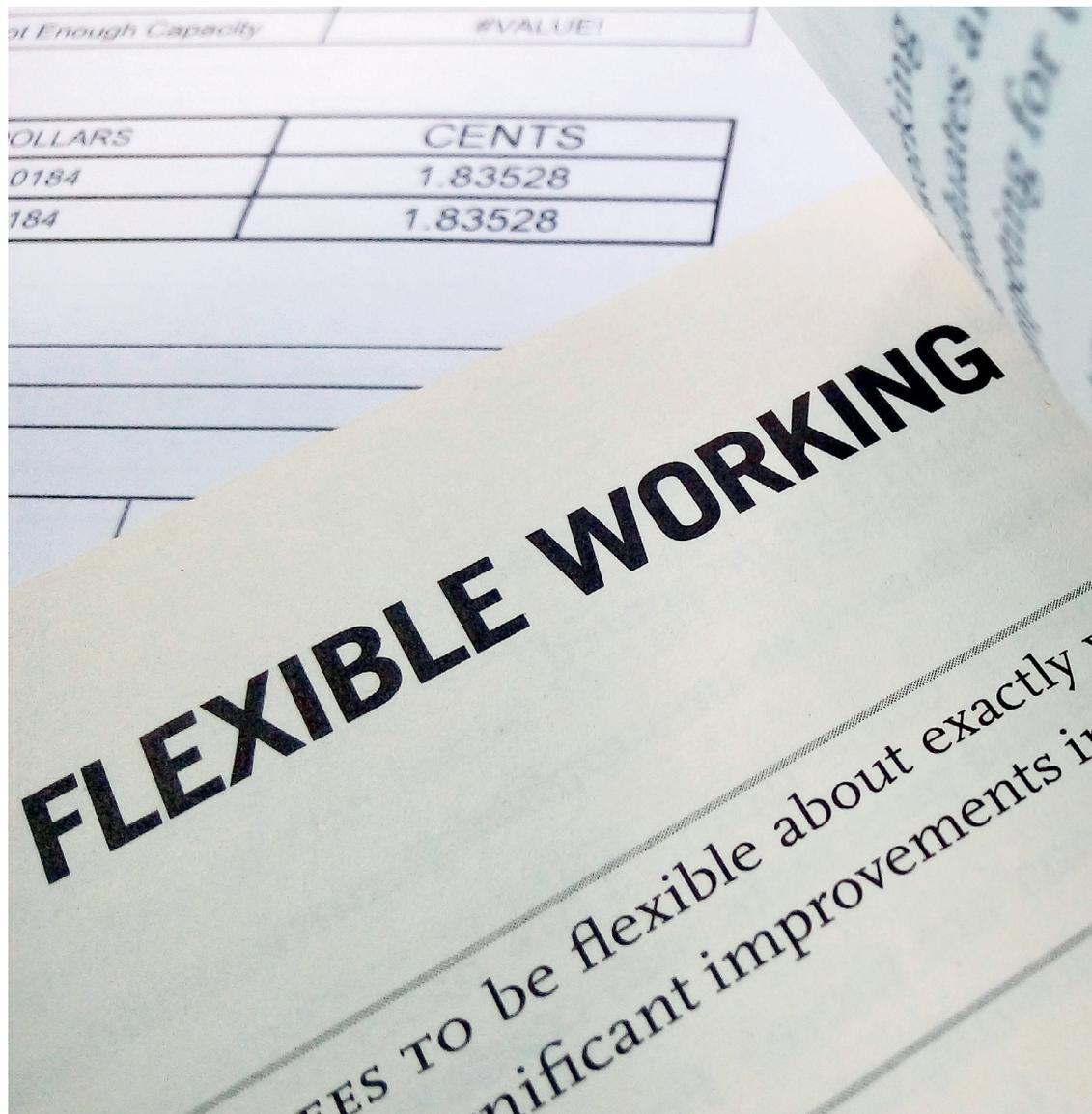
The meeting is an opportunity for the employer to fully explore and understand the reasons behind why the request has been made, and therefore may be helpful when they are deciding whether or not they are able to grant the request.

Meeting with the employee also creates an opportunity for a compromise to be reached if the employee's original request cannot be accommodated, and also allows for alternative arrangements to be considered, which may better suit the needs of the practice. You may also need to carry out further investigations following the meeting in order to assess whether the request is feasible for the business.

Once a decision has been reached, it should be clearly communicated to the employee in writing in order to avoid any confusion.

In what circumstances can a request be refused?

Flexible working requests must be dealt with in a reasonable manner and can only be refused for one or more of the eight business reasons provided for by



statute, namely:

- 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
- Detrimental effect on the ability to meet customer demand
- Insufficient work for the period the employee proposes to work
- Planned structural changes to the business.

Providing the decision to refuse falls within one of the above-named reasons, then you are entitled to refuse the request; however, we always advise to seek legal advice before doing so in order to ensure that you are correctly applying the reasons and that your outcome letter is correctly worded (you would be surprised at how many employers trip themselves up by saying something discriminatory).

If you decided to refuse the request, then you should allow the employee to appeal if they feel their request was not handled reasonably.

Multiple requests

You may go through periods where no flexible working requests are made at all. Alternatively, you may go through periods where you receive a number of requests. It is important that you behave fairly when considering multiple requests.

An example of a fair approach would be to take each request on a first come, first served basis.

Avoiding discrimination claims and part-time workers

You should be aware that in refusing a flexible working request, you could potentially face a claim for discrimination and the potential for a constructive unfair dismissal claim, should the employee resign as a result of the refusal.

Most often discrimination claims are brought on the grounds of either sex, religion, or disability. An example of when a disability discrimination claim could succeed is where the employee could successfully argue that granting a flexible working request would be a reasonable adjustment to make under the Equality Act 2010 and therefore the employer has failed in their duty towards their employee.

To avoid any potential claims when considering whether to grant a flexible working request, it is best practice to ensure that the requests are managed consistently and fairly, and that if the request cannot be accommodated, that the reasons for the refusal are communicated clearly to the employee after considering appropriate alternative arrangements.

If you are considering a flexible working request and are in doubt about whether you can reasonably refuse it, we would advise that you seek expert legal advice at the earliest opportunity. **D**

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