

## FACTSHEET 4

# FLEXIBLE WORKING REQUESTS

## WHAT'S CHANGING?

Flexible working has been a hot topic for years, and the *Employment Relations (Flexible Working) Act 2024* made the right to request flexible working a day-one right (no 26-week service needed).

Other 2024 changes include no more requirement for the employee to explain the effect of their request on the business, increasing from 1 to 2 requests each year, and cutting the timeframe for responses down from three months to two.

The Employment Rights Act 2025 ('ERA 2025') goes a step further in strengthening flexible working rights culture. The core change in ERA 2025 is that when an employer is going to refuse a flexible working request, the refusal must meet a test of reasonableness – not just

fit into one of the prescribed business reasons, but also be reasonable in the circumstances. The employer will have to provide an explanation not only of which business ground applies (e.g. 'cannot reorganise work among staff') but also why that refusal is reasonable.

Let's break that down: Currently, when someone makes a formal flexible working request, you as an employer can refuse for one of 8 broadly-defined business reasons (like burden of additional cost, detrimental effect on performance, inability to meet customer demand, etc.). You're expected to handle the request in a 'reasonable manner', but there's no explicit legal requirement that the refusal itself be objectively reasonable. If you cite one of the 8 reasons and haven't obviously based it on incorrect facts or discrimination, you're on safe ground.

ERA 2025 changes this by effectively writing in that the decision itself must be reasonable, not just the process. It stops short of giving a right to flexible working, but it tightens the employer's obligations.

Practically, this could mean that if an employee challenges a refusal, a tribunal will look at evidence of *why* you said no, and judge if a reasonable employer would have made that decision. It's a subtle shift but important. It pushes employers to genuinely consider requests and perhaps even think of compromises, rather than reaching for a quick 'no' with a stock reason.

The vision is to make flexible working the default unless there's a solid reason not to accommodate it. While ERA 2025 doesn't go so far as to say every job is flexible by right, it nudges employers in that direction by upping the standard for turning requests down.

## HR IMPACT – WHAT TO DO NOW:

The government's 'roadmap' for implementation of ERA 2025's provisions anticipates that the flexible working changes will not come into effect until some time in 2027. In advance of this, expect a consultation on what a 'reasonable refusal' should look like – and an updated Acas Code of Practice.

ERA 2025's changes aim to create a more collaborative negotiation around flexibility, rather than a top-down approval. If your culture embraces that now, you'll glide through these changes. I think that *in a few years, refusing a flexible working request will be as noteworthy as refusing someone holiday – it'll happen only for good reason.* We're moving towards that norm.

As HR, champion the mindset: 'Yes, if possible', rather than 'No, unless absolutely forced to.' The law is pushing us there, and

the post-COVID workforce expects it. Use this legal change as additional leverage to get any stubborn stakeholders on board with flex. It's good for retention, broadening talent pools (think of those who can work if flexibility is allowed), and diversity and inclusion.

Often employees themselves may not know how to propose an arrangement that works for both parties. If you guide them ('Frame your request with how you'll manage your responsibilities'), you'll get better proposals that you can accept.

Most HR teams are familiar with handling flexible working requests – ERA 2025 changes mean we need to tune up our approach. Here are six tips.

- 1. Update your Flexible Working Policy:** If your current policy still says 'eligible after 26 weeks' or uses outdated process (3-month decision), update it to reflect day-one eligibility and the new two-month timeline. More importantly, include a line that any refusal will include an explanation of why the employer considers it reasonable and that a request will be genuinely considered in consultation with the employee. It's good to set that tone internally. You might also want to express openness to trial periods, i.e. instead of outright refusing a novel arrangement, trial it for 2 months. Demonstrating willingness to try will be part of showing you acted reasonably.
- 2. Educate managers (again!):** Front-line managers often are the ones formulating the 'yes or no' initially. Make sure they understand that a knee-jerk 'no because I don't like it' won't fly. They should be prepared to provide clear reasons and evidence if refusing (or recommending a refusal). For example, if a manager says 'I can't let Mary go part-time because we couldn't cover her clients on Fridays,' push them to consider: could we redistribute clients? Hire a part-time cover? Is it truly

impossible or just inconvenient? The law expects employers to consider adjustments seriously. Managers should also know that they need to engage with the employee – the 2024 Act introduces a duty to consult with the employee before rejecting a request. That might involve a meeting to discuss possible alternatives. So, train managers on how to have those conversations: listening to the employee's needs, explaining business concerns, and perhaps arriving at a middle-ground arrangement.

### 3. Prepare 'business reason' evidence

**templates:** This might sound odd, but think about preparing a brief guide for each of the 8 business refusal reasons, outlining what kind of evidence or explanation would support that reason. For instance, if 'detrimental impact on quality' is the reason, the manager should explain *what quality issue* would arise – e.g., 'if we approve this, between 3pm and 5pm our phone lines will have only 2 staff instead of 3, which historically leads to 10% more missed calls, impacting customer service. We considered reallocating tasks but due to XXX it wasn't feasible.' That level of detail shows reasonableness. Having a guide prevents flimsy one-liners. Essentially, HR should act like an internal tribunal and push back: ask 'But *why* is it reasonable to refuse? Is there something we could do to make it workable?' If you're not convinced, a tribunal probably wouldn't be either.

### 4. Encourage creative solutions:

Rather than a black-and-white yes or no, encourage discussing modifications. The law doesn't explicitly require you to offer an alternative, but reasonableness might imply that if the exact request won't work, a reasonable employer might offer a compromise ('We can't approve work-from-home 5 days a week, but we could do 3 days from home, 2 in office – would that help?'). Start

fostering a culture where granting some flexibility is seen as the norm.

### 5. Tackle Misconceptions:

One I'm sure you often hear: '*If we grant one person's request, do we have to grant everyone's? We can't have everyone off on Fridays!*' The law still allows you to consider each case on its merits. You might have a situation where you granted one person a 4-day week but later refuse another – if you have a reasonable business explanation (maybe coverage was fine with one person off on Friday, but not if two are off). The key is to be consistent and fair, and when you differentiate, explain why. Another misconception: '*Our business (e.g. manufacturing, frontline services) can't do flexible working.*' Flexibility doesn't only mean remote work or dramatic schedule shifts. It could be slight changes in start/end times, or job-sharing, or different break patterns. There are almost always ways to introduce some flexibility. Don't allow a blanket 'not possible here' stance – that could itself be deemed unreasonable. Instead, evaluate case by case and document the specifics.

### 6. Systems and admin:

The increase to two requests a year and a shorter decision deadline means HR needs to track requests even more diligently. If an employee puts in a request, mark the calendar for the deadline (likely 2 months). If you offer an appeal or review process internally, make sure that can fit in the timeframe. And if someone made a request six months ago, they are allowed another one now – so don't dismiss it thinking 'we already dealt with that this year'. Update any request forms to remove the section where employees had to explain effects on colleagues/customers (that's no longer required of them).

## FAQS FROM MANAGERS:

- *'Does this mean employees can get whatever working arrangement they want?'* Not automatically. It means they have a stronger chance and voice. Employers can still refuse on business grounds – the same 8 reasons remain in law – but you need to back it up with reasoning. Legitimate business needs (cover, skills, customer service, etc.) are still legitimate. The change is we must articulate those needs and show we've weighed them against the request.
- *'What if approving one person's request sets a precedent that harms business?'* You can cite 'detrimental impact on ability to meet demand' or 'on performance' if doing for one has a knock-on effect. But again, you need evidence. If five people all ask to not work Mondays, and you truly can't run with that many off on the same day, it's reasonable to maybe approve two and not the others. How to choose? Possibly first-come, or by role criticality, or rotate (one gets Mon off, another gets Fri off, etc.). Reasonableness might also entail exploring fair distributions of flexibility.
- *'Will we see more appeals or tribunal claims on flexible work?'* Possibly, yes. If an employee feels you didn't *really* consider their request, they might challenge it. But remember tribunal compensation for a flexible working claim is relatively low (capped at 8 weeks' pay). Most people won't rush to tribunal unless they sense unfairness or discrimination. By handling requests thoughtfully and documenting, you can avoid most disputes. Some employees might use the extended process (two requests) to tweak and reapply. You should be prepared to engage repeatedly if needed; not to treat it as a nuisance, but as part of normal employer-employee dialogue in a modern workplace.