

How far will Government go in enhancing flexible working rights?

Last month's consultation on flexible working is the first step towards the Government's manifesto commitment of making it the "default", writes David Mills of law firm Mills & Reeve. But what will that mean in practice?

The main change is likely to involve removing the six month qualifying period, so it becomes a day one right. That means that employers would need to think about flexibility much earlier in the recruitment cycle, though it remains to be seen how many employees will be bold enough to raise the issue formally so early in the employment relationship.

Secondly, it is possible that the procedural requirements will be relaxed, so a formal request can be made for temporary changes, rather than confining the statutory right to yearly requests for permanent variations of the employee's terms and conditions.

Thirdly, the relatively generous time limits in the flexible working regulations, which in effect give employers up to three months to respond, may be shortened to encourage them to deal with requests more quickly.

Finally, the Government is reviewing the eight broad business reasons which entitle the employer to turn down any request, to ensure they remain appropriate. However, there is only so far you can go with a right that is framed in terms of requesting changes to working arrangements, and it is expected that any change in wording will still give employers a broad discretion to turn down these requests for business reasons.

Arguably, there are other forces that will have a much

stronger impact on job flexibility. COVID has already accelerated the move to home working and a tightening labour market will continue to provide employers with an incentive to accommodate employees' requests for flexibility if at all possible.

In addition, claims against employers under our discrimination law continue to throw up examples of indirect discrimination against protected groups (including women and disabled people) which result from rigid policies on where and when employees are required to work.

- For more information about the flexible working consultation, and other related employment law changes in the pipeline, see this posting on Mills & Reeve's employment blog

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<https://www.mills-reeve.com/insights/blogs/employment/september-2021/gov...>

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