

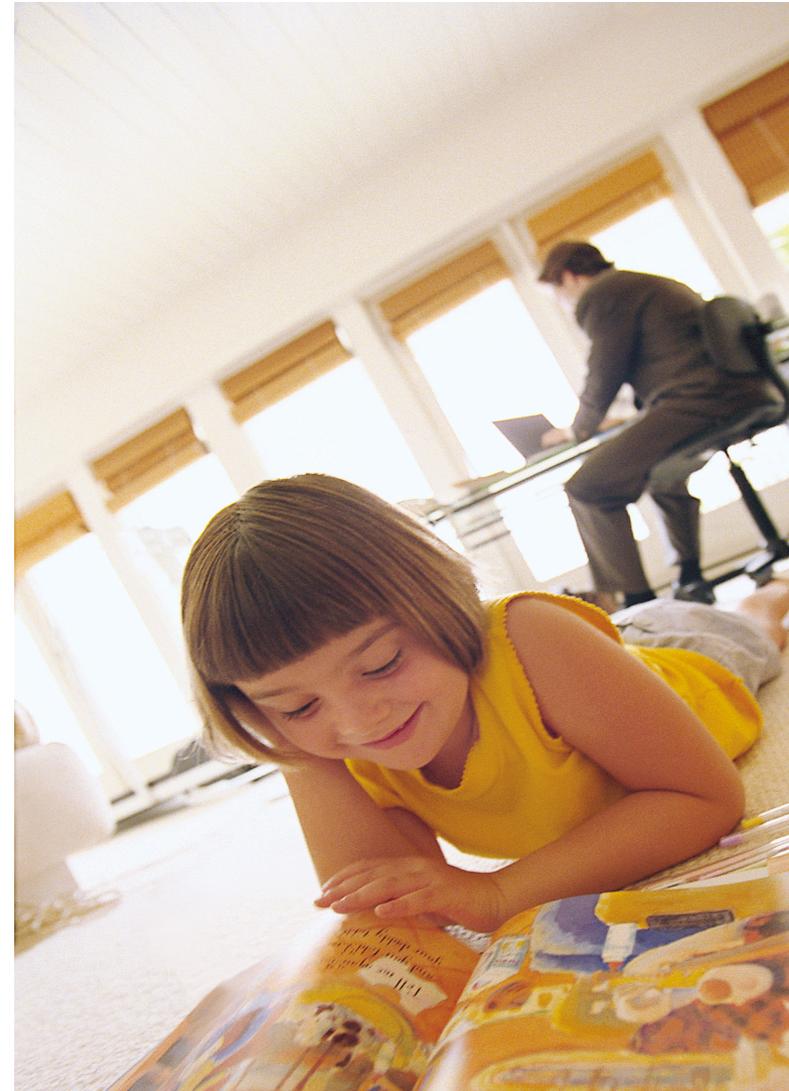
What happens if you cannot agree over flexible working options with an employee returning from maternity or shared parental leave?

Alison Treliving, Partner
Squire Patton Boggs

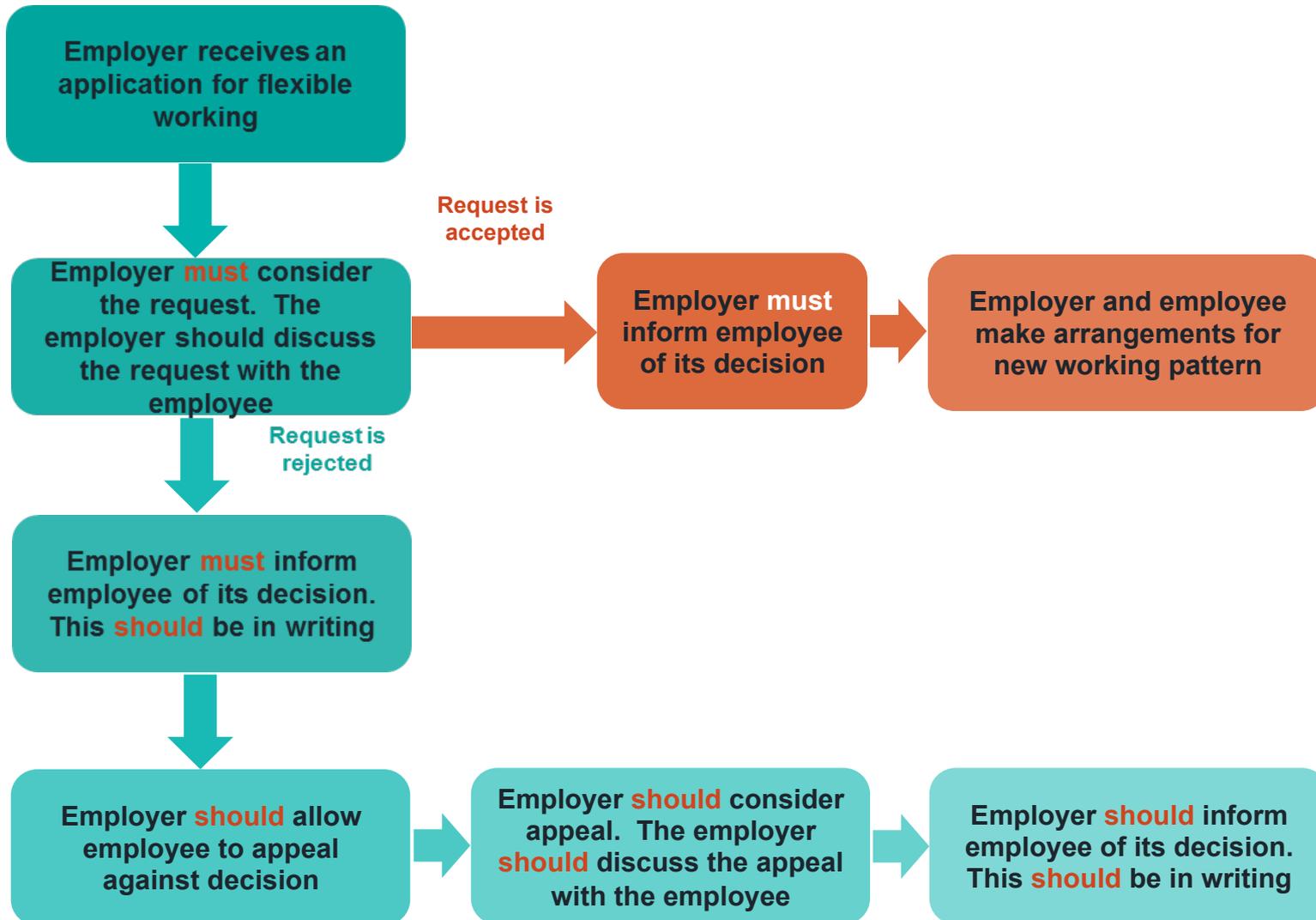


Flexible working: A reminder of the basics

- **Who can make a request?**
 - Any employee with at least 26 weeks' continuous service
 - Requests frequently made on return from maternity/adoption/shared parental leave
- **What changes can be requested?**
 - Change to working hours
 - Change to times of working
 - Working from home



The procedure for handling requests



What are the reasons for saying 'no' to a request?

| Reason for refusal: | Example |
|--|---|
| Detrimental effect on ability to meet customer demand | If you won't have enough members of staff to respond to customer requests/issues at certain times |
| Inability to reorganise work among existing colleagues | Current vacancies within the team may mean that resources are already 'spread thin' and existing colleagues would not be able to pick up the work without a detrimental impact on quality and performance. Or, there are already flexible working arrangements within the team, and another flexible worker cannot be accommodated without a damaging impact on quality and performance |
| Detrimental impact on quality | If the individual were to work flexibly this means that certain accountabilities would not be picked up by anyone else and therefore quality would suffer |
| Inability to recruit additional colleagues | You can't recruit the right person to fill the gaps or to complete a job-share |

What are the reasons for saying 'no' to a request?

| Reason for refusal: | Example |
|--|--|
| Detrimental impact on performance | If other employees are not given adequate support to do their jobs and their performance will drop |
| Insufficient work during the periods the employee proposes to work | The employee may be requesting a change to come into work early and finish earlier. If the job involves contact with key people (e.g. suppliers/customers) who are not accessible during these hours (and the individual doesn't have other work to do in this time) then this flexible working solution would not be suitable |
| The burden of additional costs | The change will mean that you will need to spend more money to support it, such as improving access to networks when working remotely, etc. Or a job share may require additional costs in relation to benefits such as two company cars, two laptops, etc. |
| Planned structural changes | There may be changes being made to roles and accountabilities which make this an inappropriate time to agree to a flexible working request. This will need to be reviewed once the structural changes have taken place |

- Can you use a trial period?
 - Yes – no legal requirement, but often a sensible idea
- How do you deal with competing requests?
 - Not required by law to make value judgements about the most deserving request
 - Consider each request on its merits
 - Bear in mind risk of discrimination claim if request is rejected
- Can we reject a request because there are already other employees in the team who are working flexibly?
 - Potentially, yes
 - Must still be one of the 8 permitted business reasons, e.g. inability to reorganise work among existing colleagues

What happens next if you cannot agree?

- If you cannot accommodate the specific request – can you agree an alternative?
- If unable to agree on an alternative working arrangement, options for employee include:
 - Resign
 - Return to old job
 - If performance levels drop, manage in accordance with capability procedure – capability dismissal may be relevant at this stage
 - Refuse to return to work – potential disciplinary matter
 - Remain on unpaid leave (with agreement of employer) until alternative position is found

Risk of claims

- Constructive unfair dismissal
- Breach of Flexible Working Regulations
- Sex discrimination (usually indirect)

Future developments

- On 1 October 2018, the government said it would consider creating a duty for employers to consider, prior to advertising it, whether a job could be worked flexibly

Top tips for handling flexible working requests

- Deal with the request (including any appeal) within the three-month time limit
- Handle requests in a reasonable manner (in accordance with Acas Code)
- Ensure that any reasons for rejecting the request fall within the 8 permitted business reasons – and would stand up to scrutiny under the Equality Act 2010
- Ensure you have documentary evidence to support your reasons
- Consider a trial period
- Be prepared to consider alternatives
- Keep an open mind!



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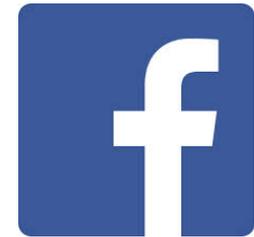
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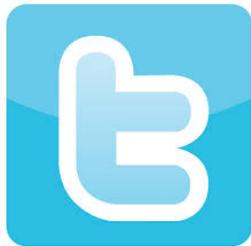
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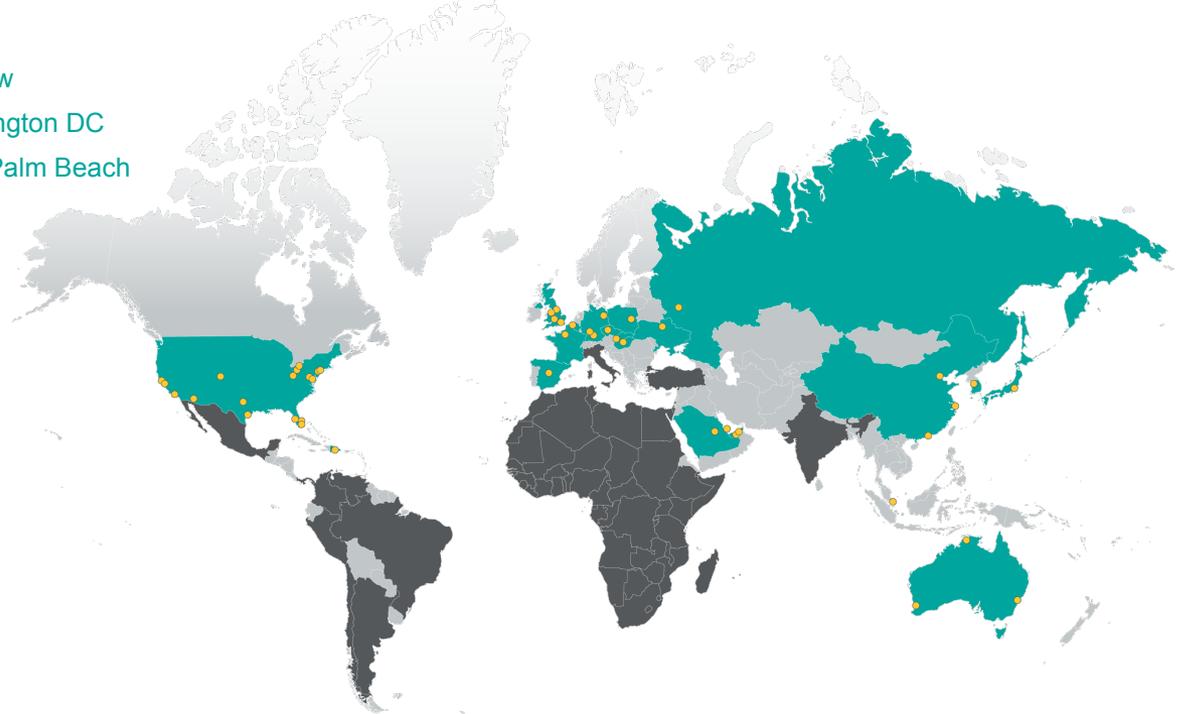


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