

Consultation Response

Making flexible working the default

Department for Business, Energy and Industrial Strategy

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About this consultation

This consultation by the Department for Business, Energy and Industrial Strategy is looking at improving access to flexible working for employees. It includes a set of proposals which aim to develop the framework around the Right to Request flexible working, including re-assessing whether the processes are the best fit for the current labour market and the UK's workforce. It emphasises the benefits of flexible working to both employees and employers.

Key points and recommendations

- Age UK strongly agrees that the Right to Request flexible working should be a 'day 1' employment right, and the 26 week qualifying period should be removed.
- We believe that a system where jobs are 'flexible by default' should be the ultimate aim, and that although making it a day 1 right will not achieve this aim alone, it is a significant step in the right direction.
- Older workers value flexible working highly, and use it to balance their work and personal commitments. It is especially important where people have caring responsibilities, are managing their own health condition, or are managing the transition to retirement.
- We strongly agree that employers should also consider alternative arrangements when a formal request is submitted. The onus should not be on the employee to make a series of highly specific requests.
- We agree with BEIS that positive, open dialogue is key to establishing a good workplace culture, which will be facilitated by the above proposal.
- Given some employees make a request in an emergency or may have evolving needs, Age UK would like to see a more flexible framework in place for determining the time period by which employers have to respond. BEIS should consider whether 'nudges' can be placed in the response framework to encourage employers to speed up, or different requirements could be placed on larger employers with greater capacity to respond quickly.

About Age UK

Age UK is a national charity that works with a network of partners, including Age Scotland, Age Cymru, Age NI and local Age UKs across England, to help everyone make the most of later life, whatever their circumstances. In the UK, the Charity helps more than seven million older people each year by providing advice and support. It also researches and campaigns on the issues that matter most to older people. Its work focuses on ensuring that older people: have enough money; enjoy life and feel well; receive high quality health and care; are comfortable, safe and secure at home; and feel valued and able to participate.

Introduction

The UK has an ageing workforce, with 10.6 million people aged 50+ currently in paid employment, a figure which is likely to increase in future. Helping older workers remain in work, progress in the workplace and transition to retirement is essential for the UK's economic wellbeing, and it is welcome that BEIS is consulting on improving employees' rights to request flexible working, which is an important facet in achieving these aims.

Flexible working is valued by workers of all ages, including the over 50s, for a variety of reasons. Many older workers are carers or are managing their own health condition, and so having access to flexibility from their employer is an important tool in managing their work and personal responsibilities.

The Right to Request plays an important role in this, as it empowers people to ask their employer for flexibility and clearly sets out people's rights and expectations. Nevertheless, it is important to note that workers in professional and managerial jobs have much greater access to flexibility than do people working in lower skilled roles,ⁱ and reforms should be focused on redressing this balance.

We are pleased to support the overall aim of the proposals and believe that the reforms will help on the path towards creating workplaces that are 'flexible by default', whereby people can assume they are able to work flexibly unless the employer can justify otherwise.

Consultation questions

Q8 Do you agree that the Right to Request Flexible Working should be available to all employees from their first day of employment?

Q9 Please give reasons for your answer, including any considerations about costs and benefits that may affect employers and/or employees.

Age UK strongly agrees that the Right to Request Flexible Working should be available from the first day of employment. While not exactly the same as 'flexible by default', it is a significant step towards creating a culture where it can be assumed that jobs can be done flexibly, with the employer having to justify in all cases why they cannot, and in time may achieve the same effect.

Empowering new recruits to make the request will have benefits for employers and employees alike. The evidence is clear that employers benefit from enabling flexible working among their staffⁱⁱ, and allowing people in the recruitment phase to make requests will widen the talent pool from which employers can recruit and facilitate a move towards a more positive working culture.

In our report 'A means to many ends'ⁱⁱⁱ, which was an extensive study of how older workers and their employers use and experience flexible working, we found a mis-match in how flexible working is perceived. Some employers considered it to mean that jobs are flexible for them, for example coercing employees to work an extra shift at short notice – clearly this is not beneficial for the employee. It is therefore important to promote an understanding of what constitutes genuinely flexible working from the employees point of view, and ensure this becomes the go-to definition.

This research was conducted prior to the 2014 change in the law to extend the Right to Request to all employees – up to date research specifically on older workers' experiences of flexible working would be useful to frame the Government's and businesses' understanding of how to best manage their older workers, and we recommend that BEIS carries this out.

Carers

A common reason for 50+ workers to require flexibility is to meet their caring responsibilities. Almost one in four women and one in six men aged 50-64 has a caring

responsibility, while as little as five hours caring per week has an impact on a carer's ability to stay in work. Ten hours and over creates a significant impediment to working.^{iv}

Flexible working is an important enabler for carers to stay in work, and since its introduction in 2003 the Right to Request has allowed many carers to ask for greater flexibility, and has helped many people stay in work. When conducting the research for our report, 'Walking the tightrope: the challenges of combining work and care in later life' we conducted focus groups of carers. The report summed up the findings on flexible working:

"In our focus groups some carers reported fears that their employer would disadvantage them if they were to request flexible working, and fear that their reputation would be damaged by doing so. This was particularly true of people working in sectors such as manufacturing, where there was a perception that they would be perceived as 'difficult' and could end up being forced out."^v

Following the pandemic and the increasing pressures on the social care system, using flexible working as a tool to help carers manage their responsibilities while continuing in work has never been so important.

Q14 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?

Q15 Please give reasons for your answer.

We strongly agree that employers should be required to consider alternative arrangements. It is important that the onus does not fall on the employee to make specific requests, as they may not know about other types of flexibility and are less likely to be in a strong bargaining position.

Ultimately, having a positive and constructive dialogue between employer and employee is the best way to achieve a harmonious working relationship, including integrating genuine flexibility into the job. We believe that considering alternative flexible arrangements would encourage such a constructive dialogue.

There is likely to be a need for guidance to help employers meet this requirement. Guidance should inform about the different types of flexible working, including how they can work in different circumstances so they are relatable to employers working across all sectors of the economy and covering as many occupations as possible.

Guidance should also cover informal flexible working arrangements, where flexibility is mutually agreed and a contractual change is not required. While there are many situations when formal arrangements made through the Right to Request are beneficial for both parties, there are also times when an informal arrangement may be preferable. For example, if a retail assistant has caring responsibilities for their parents and needs to do a grocery shop once a week, rather than agreeing to a formal arrangement it may be possible for the employer to allow the retail assistant to leave the shop for an hour to do the shopping and drop it off, at a time convenient for the business. We believe this approach is often helpful for both parties, but in some workplaces can be difficult to implement due to misunderstandings and poor line management. However, it is desirable – and in many cases preferable – to a formal change in terms and conditions. Flexible working should be considered ‘the art of the possible’.

Q18 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?

Q19 Please give reasons for your answer.

We do not see the benefits of restricting the number of requests in the current manner, so believe that all limits should be removed. Our focus groups on flexible working, conducted as part of the ‘Means to many ends’ report, demonstrated clearly that the vast majority of older employees are responsible and would not misuse the system. It is likely that if an employee was, for example, submitting daily requests that were causing a serious burden for the employer, that HR processes and existing legal provisions could resolve the situation.

Q20 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?

Q21 Please give reasons for your answer.

Q22 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?

Q23 Please give reasons for your answer, including any consideration about costs, benefits and practicalities.

Q24 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?

Q25 Please give reasons for your answer, including any consideration about costs, benefits and practicalities.

We believe the system should be flexible to allow employers the chance to give due consideration to requests (and to consider alternative arrangements as per the BEIS proposals), while allowing individuals to get their answer in a reasonable timeframe. This is likely to be different in different situations, meaning that a one-size-fits all approach is not necessarily the best solution.

Given many employees might make a request in an emergency situation, or have changing needs over time, we consider three months to be a lengthy waiting period. BEIS should carefully examine alternative solutions, such as a one month waiting period or building 'nudge' techniques into the response process to speed it up.

There could also be differences between the capability of larger and smaller employers to respond to requests, so procedural differences could also be considered here.

ⁱ Available at [https://www.ageuk.org.uk/globalassets/age-uk/documents/reports-and-publications/reports-and-briefings/active-](https://www.ageuk.org.uk/globalassets/age-uk/documents/reports-and-publications/reports-and-briefings/active-communities/rb_sept12_a_means_to_many_ends_older_workers_experiences_of_flexible_working.pdf)

[communities/rb_sept12_a_means_to_many_ends_older_workers_experiences_of_flexible_working.pdf](https://www.ageuk.org.uk/globalassets/age-uk/documents/reports-and-publications/reports-and-briefings/active-communities/rb_sept12_a_means_to_many_ends_older_workers_experiences_of_flexible_working.pdf)

ⁱⁱ McKinsey (2015) <https://www.mckinsey.com/business-functions/organization/our-insights/why-diversity-matters>

ⁱⁱⁱ [https://www.ageuk.org.uk/globalassets/age-uk/documents/reports-and-publications/reports-and-briefings/active-](https://www.ageuk.org.uk/globalassets/age-uk/documents/reports-and-publications/reports-and-briefings/active-communities/rb_sept12_a_means_to_many_ends_older_workers_experiences_of_flexible_working.pdf)

[communities/rb_sept12_a_means_to_many_ends_older_workers_experiences_of_flexible_working.pdf](https://www.ageuk.org.uk/globalassets/age-uk/documents/reports-and-publications/reports-and-briefings/active-communities/rb_sept12_a_means_to_many_ends_older_workers_experiences_of_flexible_working.pdf)

^{iv} Age UK (2016), 'Walking the tightrope: the challenges of combining work and care in later life'. Available at https://www.ageuk.org.uk/globalassets/age-uk/documents/reports-and-publications/reports-and-briefings/active-communities/rb_july16_walking_the_tightrope.pdf

^v https://www.ageuk.org.uk/globalassets/age-uk/documents/reports-and-publications/reports-and-briefings/active-communities/rb_july16_walking_the_tightrope.pdf