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Australian Government

Fair Work
OMBUDSMAN

Best Practice Guide – Work & family

The right to request flexible working arrangements



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Information for employees

The *Fair Work Act 2009* provides employees in the national workplace relations system with a legal right to request flexible working arrangements. To be eligible you must have worked for your employer for at least 12 months on a full-time or part-time basis. Long term casual employees¹ who have a reasonable expectation of ongoing employment are also eligible. Employees are eligible to request flexible working arrangements in the following circumstances:

- The employee is a parent, or has responsibility for the care of a child who is of school age or younger;
- The employee is a carer (within the meaning of the *Carer Recognition Act 2010*);
- The employee has a disability;
- The employee is 55 or older;
- The employee is experiencing violence from a member of the employee's family; or

- The employee provides care or support to a member of their immediate family or household who requires care or support because they are experiencing violence from the member's family.

Employers must seriously consider a request for flexible working arrangements but may refuse on reasonable business grounds. See below for more information on reasonable business grounds.

Why make flexible working arrangements?

Flexible working arrangements assist employees to achieve balance between work and their personal lives. For example, they can help parents manage the demands that come with being a parent of a young child, school age child or a child with a disability, such as picking-up and dropping-off at childcare, caring for sick children, and attending medical and other appointments.

Flexible working arrangements can also benefit businesses by increasing staff retention, decreasing absenteeism and achieving greater productivity through increased employee job satisfaction. More information about flexible working arrangements can be found in the Fair Work Ombudsman's Work & Family Best Practice Guide.

1. A long-term casual employee would usually have been employed on a regular and systematic basis for at least 12 months.

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Common flexible working arrangements include:

- changed starting and finishing times
- part-time work or job sharing
- working more hours over fewer days
- working additional hours to make up for time taken off
- taking rostered days off in half days or more flexibly
- time off work instead of overtime payments
- changing the location of work or the need to travel to work (for example, working from home).

There are other kinds of flexible arrangements. The key is to find the arrangement that best suits you and your employer.

Making your request

Setting out a formal written request for flexible work is a good way of starting a discussion with your employer. A discussion allows you and your employer to better understand each other's needs and consider how they can be accommodated in the workplace.

You and your employer may have ideas about how the business's activities can be organised around your changed work arrangements while minimising disruption. You might even come up with a new idea that still meets your needs but is different to your original request.

Here are some tips for writing your letter:

- ask if your employer has any policies on flexible work. If your workplace has a human resources area they might be able to offer you advice and assistance
- explain your situation and your needs clearly
- think about how the needs of the business may also be met and suggest options to make it easier for your employer to accommodate your request
- identify how your proposal might help the business. For example the change to working hours would allow clients to contact the business at later or earlier hours or allow more staff to be on at peak periods

- talk to colleagues who might be affected. They may be able to suggest ideas on how to manage the work. For instance, someone else might be prepared to start early and finish early if you want to start late and finish late
- remember that your proposed change needs to be realistic and workable for everyone
- ask someone to read over your letter and give you feedback
- make it clear that you are committed to ensuring that the arrangements work effectively for everyone.

Discussing your request with your employer

Here are some tips for talking through your proposal with your employer:

- ask for a meeting at a time that is convenient
- be clear and realistic about what you are asking the employer to do
- if you are not confident talking about these issues, you might want to ask a friend, colleague or your union representative (if you are a member) to come with you
- be calm and professional at all times
- come prepared. Write down a list of the points you want to make and note down any agreements reached in the meeting.

Formal requirements

A formal request under the *Fair Work Act 2009* must be in writing and be given to your employer.

Your written request needs to clearly outline:

- the change sought and
- the reasons for the change.

To access a template letter and example letter you may use to request flexible working arrangements, go to www.fairwork.gov.au.

What happens after you make your request?

In most cases, employers and employees will talk through the issues and reach agreement on flexible work arrangements that meet both their needs.

Your employer must respond to your request in writing within 21 days of the request being made. The response must state whether your request will be granted or refused. A simple refusal will not be a sufficient response. If the request is refused, the written response must include details of the reason for refusal.

An employer can only refuse a request on reasonable business grounds. Reasonable business grounds include, but are not limited to:

- the new working arrangements requested by the employee would be too costly for the employer

- there is no capacity to change the working arrangements of other employees to accommodate the new working arrangements requested by the employee

- it would be impractical to change the working arrangements of other employees, or recruit new employees, to accommodate the new working arrangements requested by the employee

- the new working arrangements requested by the employee would be likely to result in significant loss of efficiency or productivity

- the new working arrangements requested by the employee would be likely to have a significant negative impact on customer service.

If your request is refused and you are not satisfied with the reasons provided, you may go to the Fair Work Commission for assistance if your employer has agreed to do so (for example, such written agreement may be provided for in your contract of employment, enterprise agreement or other written agreement).

The Fair Work Commission can hold a conference with you and your employer to talk through the issues and try to find a solution. They may also make a recommendation on how to resolve the issues. It is expected that these steps will resolve most disagreements. Ultimately, however, the Fair Work Commission and the Fair Work Ombudsman cannot direct an employer to agree to your request unless the employer has agreed to this.

It is illegal for your employer to take any adverse action against you because you make a request or ask the Fair Work Commission for assistance. If this occurs, seek advice straight away from your union (if you are a member) or from the Fair Work infoline on 13 13 94.

Related entitlements

The *Fair Work Act 2009* also provides other entitlements that assist employees with caring for children and improving work and family balance. You may wish to contact the Fair Work Ombudsman on the details below to find out about entitlements such as parental leave for the birth or adoption of a child.

Entitlements under state/territory laws

Some states and territories have laws that contain similar entitlements to the right to request flexible working arrangements. If a state or territory law is more beneficial to you then it will apply.

For example, in Victoria there is equal opportunity legislation to ensure employers reasonably accommodate an employee's responsibility as a parent or carer and prescribes remedies if an employer breaches those obligations.

If you would like more information about this you may wish to contact the anti-discrimination body in your state/territory. Contact details for these organisations are listed under the 'For more information' section at the end of this guide.

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Right to request checklist

- ✓ Identify flexible working arrangements that would assist you

- ✓ Think about the needs of the business

- ✓ Put your ideas down in writing

- ✓ Consider talking to your employer and colleagues to refine your ideas

- ✓ Make your formal request in writing



Example:

Charlotte has been working for Rococo Interior Designs for three years as a book-keeper and front desk clerk. She is part-time and is rostered to work four days a week, from Tuesday to Friday.

Charlotte has a four year old daughter, enrolled in a nearby child care centre. Due to an expansion of the business, the child care centre relocated to a site further away from Charlotte's office.

After several weeks, Charlotte realised that her 5.30pm finishing time made it difficult for her to pick-up her daughter from child care before the standard closing time. By the time she caught the bus to the child care centre, taking into account traffic and other delays, she would routinely be late.

Charlotte contemplated the prospect of commencing work an hour earlier and leaving at 4.30pm instead. This change would enable her to pick-up her daughter without delay. Due to the independent nature of her work, she felt that this would be a reasonable request.

Charlotte then approached Felix, her manager, to discuss her predicament, highlighting the various benefits of her proposal to the business. This included the fact that she could complete more of the book-keeping work early in the morning before clients began to call and come in.

After their discussion, Charlotte provided her request in writing for Felix to consider.

Felix and the store managers considered Charlotte's request, taking into account the productivity gains for the business. They also discussed ways to accommodate Charlotte's request and organised coverage for the front desk after 4.30pm.

14 days after Charlotte's request, Felix provided her with a written statement granting her request to change her rostered hours.

For more information

Fair Work Ombudsman

13 13 94
www.fairwork.gov.au

Fair Work Commission

www.fwc.gov.au

Australian Human Rights Commission

(02) 9284 9600
www.humanrights.gov.au

State & territory anti-discrimination bodies

Australian Capital Territory
Human Rights Commission
(02) 6205 2222
www.hrc.act.gov.au

New South Wales
Anti-Discrimination Board
(02) 9268 5544
www.lawlink.nsw.gov.au/adb

Northern Territory
Anti-Discrimination
Commission
1800 813 846
(08) 8999 1444
www.adc.nt.gov.au

Anti-Discrimination
Commission Queensland
1300 130 670
www.adcq.qld.gov.au

South Australian Equal
Opportunity Commission
(08) 8207 1977
www.eoc.sa.gov.au

Tasmanian Office of the Anti-
Discrimination Commissioner
(03) 6233 4841
www.antidiscrimination.tas.gov.au

Victorian Equal Opportunity &
Human Rights Commission
(03) 9281 7111
www.humanrightscommission.vic.gov.au

Western Australian Equal
Opportunity Commission
(08) 9216 3900
www.eoc.wa.gov.au

Disclaimer

The Fair Work Ombudsman is committed to providing you with advice that you can rely on.

The information contained in this Best Practice Guide is general in nature. If you are unsure about how it applies to your situation you can call our Infoline on 13 13 94 or speak with a union, industry association or a workplace relations professional.

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