Flexible working arrangements

Best Practice Guide

This best practice guide is for managers and employers. It explains the advantages of taking a best practice approach to flexible working arrangements.

It includes:

- Working at best practice
- Flexible working arrangements
- Legal requirements
- Using best practice to support flexible working arrangements
- A best practice checklist
- Links and resources.

It also has practical tips and case studies to help you move your business towards best practice.

Working at best practice

In 2020 many employees' work arrangements changed because of the impacts of coronavirus. These changes include more people working from home as well as changes to rosters, hours of work or duties. As employees transition back to the workplace, they may seek continued or additional flexibility in their working arrangements, to help them reduce commute time, manage health risks and meet family or other commitments. Best practice employers should give their employees flexibility where possible to help them balance their work and personal lives.

Best practice employers understand the legal requirements regarding flexible working arrangements, and have processes in place for requesting, considering and managing them.

Every workplace can enjoy the benefits of taking a best practice approach to flexible working arrangements. These benefits include:

- greater job satisfaction
- lower levels of workplace stress
- lower absenteeism
- increased productivity
- increased ability to attract and retain skilled staff.

Flexible working arrangements

Employers and employees can agree to change standard working arrangements to help employees balance work with other aspects of their lives.

Flexibility comes in many forms, and different arrangements will suit different workplaces, jobs and workers. Common examples of flexible working arrangements include:

- flexible start and finish times
- compressed hours (working more hours over fewer days)
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- part-time work
- casual work
- job sharing
- flexible rostering
- working from home or another location
- ‘purchasing’ extra paid leave
- unpaid leave
- taking rostered days off as 2 half days
- time off in lieu
- flexitime (allowing employees to ‘bank’ extra hours which are then exchanged for time off)
- gradual increase or decrease in work hours (for example, after parental leave, or as an employee transitions to retirement).

Legal requirements

Anyone can request flexibility – but certain employees have a legal entitlement to request flexible working arrangements under the Fair Work Act. Employees who have this legal entitlement include permanent employees who have worked with the employer for at least 12 months and regular casual employees who have worked with the employer for at least 12 months and have a reasonable expectation of continuing employment on a regular and systematic basis. Also, the request must be because the employee is:

- a parent of, or have responsibility for the care of, a child who is school age or younger
- a carer (within the meaning of the Carer Recognition Act 2010)
- a person with disability
- aged 55 or older
- experiencing family violence, or
- providing care or support to a family member, or someone they live with, who is experiencing family violence.

If a state or territory law gives an employee a better entitlement to flexible working arrangements, then that state or territory law still applies.

PRACTICAL TIP: Best practice employers go beyond their minimum legal obligations and let all employees request flexible work arrangements, regardless of how long they have been employed and their personal circumstances.

Recognise different needs: An employee may only need to modify their work arrangement for a short time, for example, while settling their kids into a new school. Others might need longer-term arrangements, such as an employee who wants to return to work after parental leave as a part-time employee on an ongoing basis. Not every situation is the same. It’s important to have an individual approach to the employee’s needs. What works for one person might not work for another.
Responding to a request

If an employee who is entitled to request flexible working arrangements (see legal requirements set out above) makes a written request for flexible working arrangements, you must:

- consider their request
- discuss the request with the employee to try to reach an agreement about changes to their working conditions (this is a legal requirement for Award covered employers, and good practice for other employers)
- respond in writing within 21 days
- state whether the request is granted or refused, and provide reasons if the request is refused
- only refuse a request on reasonable business grounds.

Best practice employers follow this process for all flexibility requests, regardless of whether the employee is entitled to make the request under the Fair Work Act.

Refusing a request

Employers can only refuse a request for a flexible working arrangement from an employee who is entitled to make the request under the Fair Work Act on reasonable business grounds. Reasonable business grounds for refusing a request could include:

**PRACTICAL TIP:** If you receive a request for a flexible working arrangement you should consider the following:

- What are the employee’s key duties?
- Do any of these duties need to be done at set times or locations?
- Who does the employee interact with in the normal course of their work? Will the proposed arrangement affect these interactions?
- Are there any technology solutions, which could help? (for example, video calling, instant messaging, email)
- Why is the employee requesting this new arrangement?
- What are the consequences for the employee if the request is refused?

Remember, employees who feel supported in meeting their outside work commitments are generally more productive, less stressed and more committed to their workplace.
- **cost** – the requested arrangements would be too costly for the employer
- **capacity** – there’s no capacity to change the working arrangements of other employees to accommodate the request
- **practicality** – it would be impractical to change the working arrangements of other employees, or take on new employees, to accommodate the request
- **inefficiency or impact** – the requested arrangement is likely to result in significant loss of efficiency or productivity. The request may also have a significant negative impact on customer service.

### PRACTICAL TIP:
Use our free template ‘Response to a request for flexible working arrangements’ to help you include all of the required information in your written response. Visit www.fairwork.gov.au/templates

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**Using best practice to support flexible working arrangements**

Best practice doesn’t look the same for all employers. It will vary depending on number of employees, industry and the business environment.

Below are initiatives and suggestions that can help you move your business towards best practice.

**Develop a policy**

A policy is a good way to show that your business supports flexibility. A policy can help your managers and employees understand how flexibility works and can give your business an advantage to attract and keep staff.

When developing your flexibility policy, consider your legal obligations, business needs, and the views of employees. Developing your policy in consultation with employees will help create a consistent and fair approach that works for everyone.

Your policy should complement other policies and help employees achieve genuine work-life balance.

Your flexibility policy should:

- **Explain who can request a flexible working arrangement.** Certain categories of employees have a legal right to request a flexible working arrangement. Best practice employers make flexibility available to all employees, regardless of their personal circumstances
- **Outline the types of arrangements that could be available in your workplace.** There are many types of flexible work. Best practice employers provide guidance about the types of flexibility available and remain open to considering other options if requested by employees
- **Tell employees how to make a request.** All requests for flexible working arrangements should be in writing. However, requests made by employees with an entitlement to make a request for flexibility **must** be in writing for that employee to be entitled to the protections offered by the Fair Work Act. The request should detail what changes the employee wants, why they’re asking for a change, and how long the proposed arrangement will last. Best practice employers often ask employees to speak with their manager before making their request so they can explore options and give some guidance on the process. Consider providing employees with a request form or our Request for flexible working arrangements template and example letters available at www.fairwork.gov.au/templates
• **Describe how you will consider the request.** Be clear about who makes the decision and what they’ll consider (for example, the needs of the business as well as the needs of the employee). Best practice employers generally take the view that if the flexibility request will work alongside business interests, the request will be granted.

• **Tell employees how you will respond to the request.** You need to respond in writing within 21 days to a request for flexible working arrangements from employees who are entitled to make a request under the Fair Work Act. You also need to give them reasons if the request is refused. Before refusing a request, employers covered by an Award must meet with the employee to discuss options and look for an arrangement that will work for everyone. Best practice employers do this for all requests for flexible work, regardless of whether the employee is entitled under the Fair Work Act to make the request.

• **Detail how you will record the arrangement.** Once an agreement is reached, it should be recorded. This can be in a formal document or a simple email. Key things to record include:
  - how the new arrangement is different from the employee’s previous arrangements
  - how long it’s intended to go for (ongoing, or a fixed period)
  - when it will be reviewed
  - the process for dealing with any future changes

• **Explain how you will monitor and review the arrangement.** Changes to working arrangements can sometimes have unanticipated effects. It’s useful to monitor the arrangement and plan a review to make sure the new arrangement is working for everyone. This lets both parties raise any concerns and make any necessary adjustments.

PRACTICAL TIP: Avoid assuming what your employee wants or needs. Seek to better understand what flexibility means to individual employees, as this means different things to different employees.

If an employee asks for flexible work, talk to them to explore their needs and suitable options. This will help you make sure that both their interests and the needs of your business are being considered.

**Train managers and employees**

Best practice employers give their managers and employees training and information about flexible work. This helps everyone understand how flexible work operates and encourages employees to discuss their needs with their manager.

Information and resources you can provide to your managers and employees include:

- copies of your policies
- checklists of what to discuss with an employee requesting flexibility
- [templates and examples](www.fairwork.gov.au/templates) available at www.fairwork.gov.au/templates to help them make or respond to a request
• guidance on managing a flexible work arrangement – for example expectations around communication, recording work hours, performance indicators, how and when arrangements are reviewed and how to deal with any issues that arise
• contact details for staff who can give guidance or assistance
• training on workplace flexibility - see our free Workplace flexibility online course available at www.fairwork.gov.au/learning
• training on how to avoid and deal with discrimination - see our free Diversity and discrimination online course at www.fairwork.gov.au/learning

Create a supportive culture

Best practice employers create a culture where employees feel supported in their family roles and comfortable discussing their needs.

Tips for creating a family-friendly culture include:

• allow all employees to request flexible arrangements. Make family-friendly initiatives available to all employees and let them know your organisation supports this
• speak positively about flexibility. Be mindful of language that can unintentionally send the wrong message. For example, making comments like ‘leaving early again?’ to an employee who does school pick-up sends the message that such arrangements are not normal or accepted
• showcase examples of employees who are combining work and family. Leaders in the business are very effective role models for showing what can work and what’s encouraged
• implement family-friendly initiatives. There are many kinds of family-friendly strategies and practices. The key is to select arrangements that best suit both the employee and the employer. This is generally guided by the resources and size of the business, the type of work your employees do and their needs
• communicate expectations and show trust in your employees to do their job and deliver what is required, no matter where or when they might be working.

CASE STUDY – Family-friendly policies

A medium-sized distribution company wanted to promote their family-friendly policies. They made copies available to employees, explained what they meant, and how they worked. Managers were briefed about the importance of flexibility and coached on how they could support staff.

This resulted in higher engagement, more part-time roles being created, more staff working from home and lower staff turnover.
Invest in technology

Technology can enable and support flexibility in your workplace. It can also help you manage employees and teams with flexible working arrangements. For example, consider:

- providing laptops, tablets and other portable devices to employees
- setting up secure access to work systems (including emails and calendars) on smart phones and other personal devices
- using an internal messaging service
- providing remote access so employees can log in from outside the office
- moving to a paperless office with all materials and documents stored electronically and accessible from anywhere
- using video calls and virtual meeting software to share content and ideas.

Businesses are increasingly using technology (such as apps, monitoring software or tracking devices) to supervise their employees. Things employers monitor can include:

- an employee’s work output
- how employees are using business property (for example when employees use their employer’s property to work from home)
- employee attendance at work for the purpose of coronavirus contact tracing.

There may be privacy implications when employers use technology to monitor the behaviour of their employees, including during the coronavirus outbreak. For more, see the Office of the Australian Information Commissioner’s guidance on privacy obligations to staff during Coronavirus, at www.oaic.gov.au/covid-19
Best practice checklist

A best practice workplace involves more than just understanding and complying with the law. This checklist will help you work towards best practice when managing flexible work in your business:

- **policy** – develop a flexibility policy to ensure a consistent and fair approach to flexible work

- **promote the policy** – good communication is key to making any best practice initiative work. Make sure employees are aware of your policy. Make sure your managers understand the policy and feel confident discussing it with employees

- **training** – provide managers with training and resources to help them understand and implement flexible working arrangements

- **technology** – consider how technology can be used to help employees work remotely or at different times (but be mindful of privacy implications)

- **communication**
  - speak positively about flexibility and role-model flexible working arrangements
  - set clear expectations so your employees understand what types of flexible work may be available and what it requires
  - discuss and agree on how team members will communicate with employees working flexible hours or in other locations

- **support** – help other employees adjust to the changes in the workplace and be aware of any extra demands that their colleagues’ flexible working arrangement create

- **review** – recognise that flexibility requirements may change over time. Schedule regular reviews with employees so any difficulties can be dealt with early.
Links and resources

Resources

- Learn more about flexibility at [Flexibility in the workplace page](https://www.fairwork.gov.au/flexibility)
- Our [Balancing work and family templates](https://www.fairwork.gov.au/templates) can assist you and your managers and employees in making and responding to requests for flexible working arrangements.
- Find all our [Best practice guides](https://www.fairwork.gov.au/bestpracticeguides) - these easy-to-follow and practical guides will help you transform your business from compliant to best practice, so you can get the most out of your employees.

Links

**Australian Human Rights Commission**

**Fair Work Commission**

**Workplace Gender Equality Agency**

**State & territory anti-discrimination bodies**
- Australian Capital Territory Human Rights Commission
- Anti-Discrimination Board of New South Wales
- Northern Territory Anti-Discrimination Commission
  [www.adc.nt.gov.au](https://www.adc.nt.gov.au)
- Anti-Discrimination Commission Queensland
- Government of South Australia Equal Opportunity Commission
- Equal Opportunity Tasmania
www.equalopportunity.tas.gov.au

- The Government of Western Australia Equal Opportunity Commission
  www.eoc.wa.gov.au

- Victorian Equal Opportunity & Human Rights Commission
  www.humanrightscommission.vic.gov.au