

A FAIR AND FLEXIBLE FUTURE OF WORK

RESPONSE TO THE GOVERNMENT'S CONSULTATION ON FLEXIBLE WORKING REFORMS

For flexible working to be mutually beneficial, it must lead to work arrangements sustainable for both employers and employees

CBI members support the government in reforming flexible working legislation to make the right to request framework more responsive and accessible to all employees. This must be accompanied by guidance from Acas that supports employers to have constructive conversations with employees about working arrangements that will be sustainable for both parties. This will further the government's policy objective of driving quality discussions that better enable flexible working, while maintaining a framework with obligations that are manageable for employers.

The COVID-19 pandemic has accelerated changes to when and where people work, resulting in opportunities and challenges for both employers and employees. Where employment practices have changed, it's important for legislation to keep up, making now an ideal time to reform the current Flexible Working regulations. The CBI therefore welcomes responding to the Department for Business, Energy, and Industrial Strategy's consultation.

The CBI is the UK's leading employers' organisation, representing some 190,000 businesses that together employ around a third of private sector employees. This submission of evidence reflects the views of corporate employers and advisors of all sizes and sectors from regions across the CBI's membership.

Businesses have learnt a lot about flexible working since the start of the pandemic. COVID-19 forced businesses to overhaul traditional working patterns and methods overnight at a time of intense political and economic uncertainty. After almost two years of working flexibly – particularly remote working – employers have not only adapted, but there has also been a sizeable culture shift in favour of flexible working. Firms in all sectors recognise flexible working is here to stay, with 93% of employers who responded to a CBI-Nexus survey expecting to adopt hybrid working models.¹

There is a clear demand for flexible working among employees too. In a post-pandemic world, employers are responding to people's changing expectations of work, with employees wanting to work flexibly now more than ever. 87% of full-time employees are working flexibly or say they want to,² and 77% cite that flexible working is a more motivating factor in applying or accepting a job than financial incentives.³

Enabling flexible working therefore makes business sense. Employers know they must put flexible working front and centre of their offer to employees to better attract and retain staff. This is crucial considering the tight labour market firms are operating in, with 76% of CBI members identifying access to labour as a threat to UK labour market competitiveness. It's also important for employee retention and progression. When employers focus on what people produce rather than where or when they work, studies show it leads to higher employee satisfaction and engagement, which in turn reduces staff turnover by 87%.⁴ Employees that work flexibly are also more productive as it has been shown to increase engagement levels, with better-engaged employees potentially generating 43% more revenue than their disengaged counterparts.⁵

To harness these benefits, businesses are changing their practices to respond to an increase in flexible working. CBI members say they expect to see an overall increase in both formal (48%) and informal (58%)

¹ [The revolution of work, CBI-Nexus, 2021](#)

² [Flexible Working: A Talent Imperative, Timewise, 2017](#)

³ [Flexible Working: The Business Case, CIPD](#)

⁴ [Ibid](#)

⁵ [Ibid](#)

flexible working requests.⁶ As a result, two-thirds of businesses are developing new communication strategies and three-in-five are investing in technology to facilitate new working practices.⁷ Firms are also prioritising leadership and management skills for remote and hybrid working, with just over half of CBI members stating effective line management is the number one driver of employee engagement – a top workforce priority for 2022.⁸ These investments mean that more employers have better infrastructure, and face lower cost barriers per employee, to accommodate requests for remote working.

Many businesses already do more to enable flexible working than the right to request framework, agreeing to most flexible working arrangements at an informal line-manager level. Beyond that, employers engage in good practices such as accepting more than one formal request per year and proactively discussing a range of flexible working options with employees. These practices help individuals balance work-home life, especially when their need for flexibility is sudden or ad hoc. The below recommendations reflect business' view that good flexible working practices can be driven by a combination of legislative changes, improving good practice guidance and support from government and stakeholders to raise awareness of these changes.

Summary of recommendations

- Remove the 26-week qualifying period so employees are eligible to request flexible working as a day one right
- Retain the eight grounds to refuse a request so employers can ensure that agreed working arrangements are sustainable for both parties
- Do not legally require businesses to suggest an alternative arrangement or provide a formal evaluation of considered alternatives if flexible working requests are refused
- Enable employees to make two formal flexible working requests within a 12-month period, with a six-month delay if requests are the same
- Reduce the time employers have to respond to formal requests from 12 weeks to eight working weeks, increasing responsiveness while ensuring obligations are manageable for businesses
- Expand good practice guidance through Acas' Code of Conduct on how employers can have constructive conversations with employees about flexible working arrangements

The right to request flexible working should be a day one right

CBI members support removing the existing 26-week qualifying period so all employees are eligible to request flexible working. Doing so will make flexible working more accessible and encourage employers and employees to have conversations about formally working flexibly from day one. This will support a shift in workplace culture, moving away from the notion that the ability to request flexible working is an earned benefit.

Enabling employees to make a formal flexible working request when they want or need to from the start of the employment relationship will make an additional 2.2 million employees eligible to use the framework.⁹ In practice, it will mean that all employees, regardless of length of service, will be able to formally request flexibility. Making the right to request framework accessible to more employees is likely to support labour market participation and employers' diversity and inclusion strategies as the current qualifying period can act as a disincentive for employees who want to move jobs but, because of personal circumstances, do not want

⁶ Employment Trends Survey, CBI, 2021

⁷ Ibid

⁸ Ibid

⁹ Making Flexible working the Default, BEIS, 2021

to wait six months before formally requesting a change in their working arrangement. This will support employers' access to a wider pool of talent which can improve workforce diversity, the benefits of which are well-documented, with increased gender and ethnic diversity making firms 25% and 36% more profitable respectively.¹⁰

Removing the current qualifying period will also enable employees to discuss flexible working options with their employer when it suits them and makes the framework more responsive to employees that need to work flexibly in their first six months. Recognising the benefits, many employers already enable their employees to informally request flexible working arrangements from day one – making it a legal right will bring the law in line with existing good practice.

Case Study

A small energy company based in the South West discusses the flexible working needs of employees at interview stage, encouraging them to apply formally once eligible under the current legislative framework and explaining to candidates that arrangements can also be considered informally from day one.

- **Recommendation:** Remove the 26-week qualifying period so employees are eligible to request flexible working as a day one right

Flexible working must remain a right to request which can be rejected when necessary so that it works for every business

Firms need to retain the eight business reasons for refusing a formal flexible working request...

Businesses are open to, and encouraging of, flexible working, and want solutions to drive its uptake to be sustainable for both parties. CBI members want to keep all eight business reasons to refuse a flexible working request to ensure the framework leads to working arrangements that are sustainable for all types of employers and job roles. The government's Policy Implementation Review shows that employers agree to 9 in 10 formal requests, suggesting that the current grounds for refusal are not a barrier to businesses and employees agreeing sustainable working arrangements.¹¹

Legislative changes to the right to request framework must be manageable for all business and job types, regardless of size or sector. There are legitimate scenarios when employers need to say no, such as in employment situations where formal requests are likely to lead to an undue negative impact on wider business operations. CBI members have below provided evidence of the circumstances in which the current grounds enabled them to ensure requests led to working arrangements that were sustainable for their business.

Reason 1: Extra costs that will be a burden on the business
A firm had a specialist energy engineer request a shorter working week from five days to three. Because the firm is based in a rural town and the role required the individual to be onsite most of the time, they recognised that it would be difficult to attract a local specialist with a similar skill set and experience to job share for two days per week. Based on the candidate market, the firm identified that it would have to employ an additional employee on a full-time salary, which would add an unreasonable cost to the business.

¹⁰ Diversity wins: How inclusion matters, McKinsey & Company, 2020

¹¹ Ibid

Reason 2: The work cannot be reorganised among staff
A multinational manufacturer in engineering solutions had an employee request a change in their shift pattern to stagger their hours. Their role included producing export documentation to customs in real-time so that shipments could leave and arrive from the distribution centre on schedule. Due to the time-sensitive nature of the role, it was not possible for other colleagues on the production line to take over the work, as they had other roles to perform to meet just-in-time delivery.
Reason 3: People cannot be recruited to do the work
A supermarket chain had a request from an employee who worked as a driver as part of their customer delivery team to reduce their working hours. Facing a national shortage of HGV drivers, this would have impacted the supermarket's ability to deliver groceries to customers, slowing the online section of their business.
Reason 4: Flexible working will negatively affect quality
A large law firm had a senior manager request to permanently work remotely. The firm evaluated that this would have an adverse impact on the progression of junior staff in their team, as it would diminish the senior managers' ability to develop and transfer knowledge 'on-the-job', support in-person client meetings, and manage collaboration time. The firm was concerned about both the quality of coaching and management support the senior manager could provide relative to peers, and its impact on the quality of junior staff's work.
Reason 5: Flexible working will negatively affect performance
A law firm's client had an employee request to work remotely full-time. However, the employer identified that accepting this request would mean the employee was unable to perform key parts of their role as an IT technician which required onsite working when the business required IT infrastructure servicing and digital security updates.
Reason 6: The business' ability to meet customer demand will be negatively affected
A delivery company received a request from an employee to stagger their hours so they started and finished work two hours later. The company had to refuse this request because the proposed start time would impact their ability to deliver parcels in the mornings and fulfil contracts to make express deliveries where customers pay more to receive their goods as soon as possible.
Reason 7: There is a lack of work to do during the proposed working times
A multinational home appliance manufacturer had a senior employee at their telephone contact centre request to stagger their working hours, requesting start and finish times that meant most of their working time would fall outside core operating hours. The business evaluated that the individual would not have enough work to do outside these hours, given their role was in customer support.
Reason 8: The business is planning structural changes
A manufacturer in engineering solutions had an employee request a flexible working arrangement when the company was in the process of merging with another. The new organisational structure was unclear and staffing changes were expected. The business had to refuse the request as it was not possible to evaluate how work could be rearranged among staff when wider resourcing decisions had not been made.

...and it should not be a legal requirement to suggest an alternative or provide an evaluation that alternatives have been considered

Businesses want the right to request framework to enable flexible working that is mutually beneficial and sustainable for both parties. Legally requiring businesses to suggest an alternative if they refuse a request would, in effect, make the right to request framework a de facto right to have. Businesses must retain their right to say no to ensure that requests can be sustainably implemented and will not have adverse effects on business operations. Requiring employers to suggest an alternative would force businesses to accept *some form* of flexible working even if the arrangement is not sustainable for the business.

Firms are also concerned about a requirement to set out a formal evaluation of alternatives where requests are refused. There is a risk of creating legal ambiguity about whether the range of alternatives and level of detail evaluated is sufficient. A request for one working arrangement could have so many potential alternatives that, should a business be required to explore and evaluate all, it would be too onerous and unmanageable. There is also no guarantee that the alternatives an employer is required to evaluate are desirable for the individual. For example, if someone requested to change their place of work and, in refusing the request, the employer was required to evaluate a change in their working hours as an alternative, it risks missing the policy objective of having constructive conversations to find a suitable arrangement that works for both parties.

Employers instead think a more responsive right to request framework should be a priority for legislative change and that legally requiring employers to set out an evaluation of alternatives runs counter to this aim. Businesses would need to expend a lot of resource to evaluate alternatives should it be made a legal requirement, directly affecting their ability to respond to requests in a shorter amount of time, as discussed below. While simply including a generic statement that alternatives have been considered as part of the rationale for refusing requests would be less onerous, it would be a compliance exercise that does not achieve the policy objective of fostering a culture where flexible working is enabled through constructive conversations between both parties.

Businesses already have an incentive to explore and discuss alternative flexible working arrangements with an employee if their initial request is unsustainable for the business. Retaining talent is employers' top 2022 workforce priority, cited by 48% of businesses. Employers know that seeking to agree flexible working arrangements is a key strategy to keep talent, especially in today's competitive labour market in which many firms face labour and skills shortages.¹²

Employers also recognise that considering alternatives is important to maintain employee engagement, especially if the employee remains in the business. Achieving high engagement is a top priority for 46% of employers next year.¹³ Effectively considering alternatives that are relevant to the individual's circumstance is best achieved through conversation between an employee and their manager or HR support staff. Strengthening guidance would help to improve the quality of these conversations (see below). Many CBI members already discuss alternatives to support their employees, recognising the retention, motivation, and productivity benefits of accommodating flexible working requests where possible.

Case Study

A large telecommunications firm considers alternatives in discussion with their employee if the initial request is not feasible to assess whether another arrangement is suitable. They think this better serves the employee as it may be that they can be flexible in a way that still meets the employee's needs. Both parties benefit from a discussion as they can better understand one another's priorities and come to a suitable resolution. Even where an agreement cannot be reached, the firm sees the benefit of discussions for the motivation and engagement of staff that stay.

¹² Employment Trends Survey, CBI, 2021

¹³ Ibid.

- **Recommendation:** Retain the eight grounds to refuse a request so employers can ensure that agreed working arrangements are sustainable for both parties
- **Recommendation:** Do not legally require businesses to suggest an alternative arrangement or provide a formal evaluation of considered alternatives if flexible working requests are refused

The legislative framework should be more responsive to employees' changing circumstances while remaining manageable for business

Eligibility for individuals should increase to allow for two formal flexible working requests per year...

Businesses support a more responsive framework that is simple to understand and implement, and makes flexible working more accessible to all employees and sustainable for both parties. They believe employees should be eligible to make twice the number of requests per year and to receive their employer's decision within two-thirds of the existing timeframe. This will improve employees' ability to plan and manage their working arrangements and could have benefits for employees seeking a better work-life balance, flexible retirement, fulfil caring responsibilities, and manage health conditions. It will also be quicker to support employees who experience life-changing situations, including but not limited to newly disabled people or new parents.

Alongside better meeting employees' needs, the right to request framework must be manageable for employers of all sizes and sectors. Employers think that striking this balance will be achieved by making employees eligible to two formal requests within a 12-month period. Employees should be able to decide when to make different requests during this period to best suit their circumstances.

However, where an employee wants to make the same formal request, employers think six months should elapse before they are eligible to do so. Firstly, this is because it's unlikely that the employer's reason for refusing the initial request would have changed. Requiring employers to evaluate and respond to the same request within a short time-period would add an administrative obligation even though the likelihood of a different outcome would remain low. Secondly, a six-month cooling-off period would give both parties sufficient time to evaluate new working arrangements, where agreed following a discussion of alternatives, before making further formal changes.

The six months buffer period should start from the date an individual first submits a flexible working request e.g., if a request is submitted on 1 January, the earliest an employee should be able to make the same request would be 1 July. CBI members want to prevent the risk that employers have a perverse incentive to delay their response if the six-month cooling off period kicks in only after the employer makes a formal decision.

This recommendation to make the legislative framework more responsive by increasing employee's eligibility to make formal requests twice per year would be a statutory minimum. Employers will still encourage individuals to request informally outside the legislative framework to agree sustainable working arrangements when employees need it most, as many CBI members do already.

Case Study

A manufacturer in engineering solutions have a company policy that allows for additional informal requests to be made within a 12-month period as they acknowledge individual's circumstances can change throughout the year.

... and it is reasonable for businesses to reduce their response time to eight working weeks

As part of improving the responsiveness of the legislative framework, businesses support a reduction in the amount of time they are required to respond to formal requests from 12 weeks to eight working weeks. Employers recognise the value of a speedier response for individuals as it makes life-planning easier and think that streamlining internal processes by four-weeks can be achieved by businesses of all sizes.

Businesses need eight working weeks as a maximum response time to ensure the framework remains manageable as evaluating flexible working requests requires decision-making based on various internal consultations. This often includes budgetary considerations and assessments of resource allocation, work-planning and recruitment alternatives between multiple managers, finance, and HR teams. Where the effect of an employee's request directly impacts other colleagues' workloads, employers typically undergo consultations with other managers and/or members of the team about resourcing and workplans. Where requests would result in an employee significantly reducing their working hours, employers typically evaluate whether internal or external recruitment would be required to maintain a function's total hours before responding.

Furthermore, specifying *working* weeks ensures the timeframe within which employers are required to respond is manageable for every business. This is particularly relevant for employers in manufacturing, oil and gas and education sectors who are concerned that they will be unable to meet their obligation to respond as required if employees submit requests shortly before mandatory shutdowns or scheduled closures. CBI members think that eight working weeks is sufficient to undergo such processes, but any further reduction would be unmanageable. This is especially significant for smaller HR teams with less capacity to administer requests – particularly when HR personnel or decision-makers are on a period of leave.

- **Recommendation:** Enable employees to make two formal flexible working requests within a 12-month period, with a six-month delay if requests are the same
- **Recommendation:** Reduce the time employers have to respond to formal requests from 12 weeks to eight working weeks, increasing responsiveness while ensuring obligations are manageable for businesses

Alongside legislative changes, good practice guidance should help employers have constructive conversations with employees

Guidance can be improved by demonstrating the agility of the flexible working framework and highlighting practical steps to discuss with employees

Driving conversations and improving the quality of discussion between employers and employees about flexible working needs should be one of the government's policy objectives, and can be facilitated by updating Acas' Code of Conduct. Currently, there is an information gap about the range of flexible working options that can be considered and agreed between employers and employees. The guidance should reflect the choices available so both parties can better discuss a sustainable arrangement. It's also important that employees are aware of and know how they can use the legislative framework to formally discuss flexible working with their employer.

Businesses value the practical guidance already set out in the Code, including recommendations to:

- Arrange a talk with their employee as soon as possible after receiving a formal request
- Ensure any meetings with an employee is in a private place where what is said cannot be overheard
- Allow for an employee to be accompanied by a work colleague to a meeting

- Inform the employee of their decision as soon as possible and in writing to avoid future confusion
- Discuss with the employee about how and when any changes should be implemented if a request is approved.¹⁴

CBI members think this advice is a good foundation and can be built upon to better enable constructive conversations with employees by making the following additions.

Firstly, employers want the Code to outline the range of flexible working options they should consider before responding to a request, including to inform discussions with employees about alternative arrangements where appropriate. This will help drive more employers to suggest alternative arrangements without the unmanageable administrative requirement of undertaking a formal written evaluation. Acas' Code does not currently advise employers to discuss appropriate alternatives if they cannot agree to an employee's initial request – CBI members see updated guidance as an opportunity to help facilitate informed conversations between both parties. Anecdotal feedback suggests that some employers are less familiar with flexible working options like compressed or annualised hours, term-time working or a phased reduction of hours, and are therefore less likely to consider whether these options could lead to sustainable working arrangements. Addressing this information gap will help employers and employees better understand the breadth of flexible working arrangements available, making it easier to evaluate needs and come to a mutually beneficial arrangement.

Secondly, businesses want guidance on the points during the employment relationship they should consider proactively discussing whether employees have flexible working needs. There are several stages in an employee's lifecycle where it may be appropriate for the business to do so, such as when an employee tells their manager about becoming a new parent, of new caring responsibilities or as part of a mid-life MOT. Having practical guidance that assists employers to have appropriate conversations with employees in such circumstances will help drive workplace cultures that encourages flexible working. Employers recognise that proactively discussing flexible working options may prompt employees to make formal requests who would not have otherwise done so.

Thirdly, anecdotal feedback from CBI members suggests that many employers are not aware that the legislative framework supports temporary flexible working arrangements, which has contributed to its low uptake among employees. Firms recommend the guidance explicitly says that flexible working does not have to be a permanent contractual change, and that a fixed, time-limited arrangement may be more suitable to meet employee and employers' needs. This will aid both parties to consider temporary flexible working arrangements as part of their discussions about requests or appropriate alternatives.

For legislative and guidance changes to the framework to be effective, employers and employees need to know about them, and the wider benefits of flexible working. Employers support the government using public awareness strategies to highlight employee's right to request and see Covid-19 accelerated changes in working practices as an opportunity to make communications relevant to employees. They also want the government to promote the existing *Happy to Talk Flexible Working* campaign to encourage employers to change job advert wording to demonstrate their openness to applicants who want to work flexibly. The CBI is ready to work with stakeholders to support the campaign, or other public awareness strategies, via its communication channels.

- **Recommendation:** Expand good practice guidance through Acas' Code of Conduct on how employers can have constructive conversations with employees about flexible working arrangements

¹⁴ Code of Practice on handling in a reasonable manner requests to work flexibly, Acas, 2014