



Flexible working rights

Extension to parents of children aged 16 years and under

This briefing provides details on the proposed extension of the statutory right to request flexible working for parents of children from the current position of children under 6 years to that of parents with children under 16 years.

Key issues

- The Prime Minister committed in November 2007 to extending the rights to request flexible working to parents beyond the current limits of parents of children aged under 6
- The Prime Minister appointed Imelda Walsh, Director of HR with J Sainsbury PLC to conduct the review
- Government is now seeking views on the proposals and this APSE briefing outlines the proposed changes and assesses the impact on public sector employers.

1. Introduction

The right to request flexible working was introduced in April 2003, following a report of the Work and Parents Taskforce, as part of the governments drive to enable more people with child care responsibilities to remain in active paid employment.

The legislation did not prescribe an automatic right for parents to work flexibly but provided for a right for parents with children aged under 6 years to request flexible working and to have that request seriously considered by the employer.

It also set out procedural arrangements for dealing with requests for flexible working.

2. Current position with regard to flexible working

Despite initial reservations from businesses about the impact of the right to request flexible working the policy appears to have been a big success and over 87% of all requests to work flexibly have been agreed to by employers.

This is despite the fact that the Section 80 (G) (1) (b) of the Employment Rights Act 1996 provides eight grounds for refusal of a request for flexible working including:-

- Burden of additional costs
- Detrimental effect on ability to meet customer demand
- Inability to reorganize work among existing staff
- Inability to recruit additional staff
- Detrimental impact on quality
- Detrimental impact on performance
- Insufficiency of work during the periods the employee proposes to work
- Planned structural changes

BERR's (Department for business enterprise and regulatory reform) third work life balance survey found that women made up 57% of all those requesting flexible working and that 17% of all working parents had made a change in how they work their regular hours, for a sustained period, to support children and their childcare needs.

3. Considerations within the scope of the Imelda Walshe review

Imelda Walsh, Director of HR with J Sainsbury's PLC, was appointed by the Prime Minister to conduct a review of the right to request flexible working in particular looking at what age was appropriate as a 'cut off' for that right to request flexible working.

A child under the age of 18 was one option that was rejected, as generally at this age it is considered that children are reasonably able to take responsibilities for them. Many may in fact be already working in their first job or remaining in full time education but within a college environment.

The Walsh review also considered the age of 12 as a suitable cut off which would allow for the transition between primary and secondary education. However this was rejected following advice of the NSPCC based on the ability of younger children to react to an emergency - for example a young secondary school child first being left without supervision until a parent returns home from work. The NSPCC felt that as children mature differently on balance age 12 was considered to be a little too young.

Therefore the age of 16 was considered to be the most acceptable cut off point as generally this allows parents a degree of flexibility with children throughout their formative years and to support children through secondary education and allowing support through GCSE level.

4. Impact assessment

An early impact assessment has been carried out on the proposals which in terms of the detailed cost benefit analysis has tended to concentrate on the likely costs and likely burdens to small to medium businesses. However this new legislation will affect the public sector as employers. To balance this however it must be noted that public sector employers already tend to offer flexible patterns of work such as flexi-time schemes, telescopic working arrangements, term time only working and a range of other work life balance policies that staff are able to access.

The initial impact assessment suggests that the benefits of increased flexibility would be in attracting new recruits into the workforce, and retaining staff that might otherwise leave employment or seek alternative jobs. Within the public sector this is an issue for consideration in areas where there are recognised problems with the recruitment and retention of staff.

The Walsh review also highlight the likely effectiveness of increased flexibility in reducing absenteeism, increased productivity and skill retention.

Wider benefits to the workforce include:

- Better work life balance for employees
- Increased labour supply due to availability of more flexible working opportunities
- Improved health and well being
- Positive environmental impact (for instance a reduction in commuting)

5. Procedural issues in dealing with request for flexible working

In line with commitments to reduce bureaucracy one of the main questions of the consultation is whether there is a need to amend the procedures.

Under the current requirements the employer is obliged to write to the employee advising them of their agreement to new working arrangements. It is proposed to amend the regulations to say that the employer would only be obliged to send a written confirmation of their agreement to new working arrangement **if the employee requests this**. This change is supported by evidence from BERRS third work life balance survey which has found that 80% of requests are dealt with informally and only 20% formally – particularly in small businesses.

However from a public sector perspective whilst there are merits in this approach for small businesses, in reducing unnecessary paperwork, in larger employers, like local authorities, the importance of accurate record keeping tends to support rather than hinder the need for openness, transparency and equity in dealing with large groups of employees and avoiding discrimination. This tends to outweigh any perceived benefits of deregulating the need to write to employees. Indeed it would arguably create an added burden if accurate records of the employer's agreement to flexible working, within a public sector environment, were not maintained.

6. APSE comment

The extension of the right to request flexible working will no doubt be welcomed by many parents who struggle to achieve suitable and / or affordable childcare, often creating difficult choices between remaining in work or one parent needing to cease working until children are older. Equally for single parents greater flexibility will undoubtedly help with the pressures of caring for children in a one parent household.

Within local government, police, fire and rescue services flexible working arrangements are already in place in many areas. This new right to request flexible working for parents with children under the age of 16 will nevertheless mean that public sector employers will need to re-examine their current HR procedures to ensure that they do not inadvertently find that they fall short of responding effectively to the new changes. For example a parent could request a change

to working hours that is outside of the current flexible working procedures and these requests would nevertheless need to be considered.

Moreover whilst there is much flexibility already in the public sector the increasing demands to create more opportunities for citizens to contact public bodies, and for services to be available to citizens over a longer period, means that the amount of flexibility available to public sector managers in a service delivery context could arguably be reducing. In many cases service delivery over extended hours and days now involves accurate shift working or in some areas the introduction of roster systems or new work patterns over a longer working day or week.

It is therefore important that as well as training HR professionals in the new regulations, when they come into effect, front line service managers are made aware of the new regulations and that requests are dealt with consistency and fairly but within the framework of delivering services. Trade unions need to also be involved in the development of any localised policies dealing with requests under the new arrangements.

Following the current consultation it is anticipated that the new regulations will come into force in April 2009. APSE will continue to advise member authorities about the outcomes of the consultation and any new developments. If you have any comments on this briefing please feel free to email Mo Baines on mbaines@apse.org.uk

Mo Baines

Principal Advisor