

A-Z Guide

FLEXIBLE WORKING ARRANGEMENTS



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Introduction

The Employment Relations Act

The Employment Relations Act provides employees with the right to request a variation of their working arrangements and employer must respond to a request as soon as possible but no later than 1 month after receiving the request.

History

This law commenced on 1 July 2008 with some amendments coming into effect in 2015 and 2019.

Legislative Requirements

What can an employee request?

An employee can request a 'variation of the working arrangements'.

'Working arrangements' means one or more of:

- Hours of work
- Days of work
- Place of work (for example, at home or at the employee's place of work)

The types of request this could include are:

- Change the start and/or finish times
- Change the total number of hours worked, for example: requesting to move from full-time to part-time work
- Requesting to work from home
- Requesting to work at another company office

Who can make a request?

All employees can make a request at any time and there is no restriction on the number of requests allowed.

How is a request made?

An employee must put their request in writing and state:

Their name

- The date the request is made
- That the request is made under Part 6AA of the Employment Relations Act

The request must also:

- Specify the variation of the working arrangements being requested



- Specify if whether the variation is permanent or for a period of time
- Specify the date on which they wish the variation to take effect, and if it is for a period of time the date on which the variation is to end
- Explain: the employee's view, what changes, if any, the employer may need to make to the employer's arrangements if the request is approved

What does the employer have to do?

The employer must deal with the request as soon as possible, but no later than 1 month after receiving it.

The employer must notify the employee whether or not the request has been approved or refused. If the request is refused, certain information must be provided to the employee.

Approving or refusing requests

Approving a request

If the employer approves a request, the employee must be advised in writing. The agreement will amount to a legally binding variation to the terms and conditions of employment and should be clearly documented.

Refusing a request

An employer can refuse a request if the employer determines that the request cannot be accommodated on 1 or more of the grounds specified in the legislation. The legislation is clear that it is for the employer to determine if these grounds for refusal exist.

Specific grounds for refusing a request

An employer may refuse a request if it determines that the request cannot be accommodated on 1 or more of the following grounds:

- Inability to reorganise 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
- Burden of additional costs
- Detrimental effect on ability to meet customer demand

A request **must** be refused if:

- The employee who made the request is bound by a collective agreement; and
- The request relates to work to which the collective agreement applies; and
- Approving the request would mean the working arrangements would be inconsistent with that collective agreement.

Advising an employee their request has been refused

If a request is refused the employee must be advised in writing and the employer must state that the request is refused because of a ground specified in the legislation.

The employer must state:



- State the ground for refusal; and
- Explain the reasons for that ground.

What are the rights of review?

An employee can only seek a review on the following grounds:

1. The employer did not deal with the request within 1 month; or
2. The employer did not notify the employee of their decision in the required form.

The process for a review is as follows:

Step 1:

The employee seeks the assistance of a Labour Inspector to assist resolve the matter.

Step 2:

If the employee remains dissatisfied, the employee may refer the matter to mediation. The matter becomes an employment relationship problem.

Step 3:

If the employee remains dissatisfied, the employee may refer the matter to the Employment Relations Authority. An application to the Authority must be made within 12 months of:

- The date notice of refusal was given to the employee (if the employer notifies within 1 month of receiving the request); or
- 1 month after the request for flexible working arrangements was made, in any other case.

There is no right of appeal to the Employment Court.

Orders and Penalties

An employer found not to have provided the information necessary when approving or refusing a request can be ordered to pay up to \$2000. The money is paid to the employee concerned. The Employment Relations Authority can only order an employer to go back and comply with the correct format for 'Advising an employee their request has been refused'.

Working the Middle Ground

The legislation essentially provides a process by which an employee makes a request and the employer either approves or refuses that request. The reality is that many employers will want to support some sort of flexibility, but the details of the particular request made under the legislation may need modification to be approved.

What may occur is the initial request will be left aside and the parties will agree a modified flexible working arrangement. While that modified arrangement is lawful, it does leave the employer open to having not complied with the statutory process and format of approving or refusing the original request.

Suggestions for Enabling Flexible Workplace Arrangements

A flexible workplace is something that employers have been seeking. The ability to open at different times to meet customer demand, change and adapt with markets are common reasons.

If we can put aside first impressions based on who has come up with the idea and their own motivation, both business and employees may find the changes are something that will be positive for them both.

Employees do not have to use the law. You can encourage flexible working arrangements to be requested informally without the constraints of a 'yes' or 'no' reply under the law.

Business NZ has published a book that looks at Balancing Work and Life from a business perspective. You can access the guide on the Business New Zealand website.

The **Employment site of the Ministry of Business, Innovation and Employment** also contains information on Work Life Balance.

Develop a policy

A workplace flexible working arrangements policy is a good starting point. A policy enables a number of issues to be covered off:

- It makes it clear the workplace is open to work life balance which encourages recruitment and retention.
- The policy can indicate the range of options that are anticipated. This helps with a perception that some flexibility could get out of control with requests that are far broader than ever anticipated.
- Develop the policy as a value proposition rather than a rights-based policy.
- Measures to ensure work productivity is being maintained.
- What happens if it is not working.

Working from home

A common concern from employers is how to manage a request to work from home. In some circumstances, that is not practicable and/or the interaction with colleagues is a vital part of the role. But in other circumstances, it may be possible but employers are concerned about productivity.

An employer should feel free that in agreeing to a working from home request, special measures and performance reviews be put in place to ensure it works for everyone. Those measures may not be in place for those who work at the usual place of business.

'First in, first served'

In some cases it may be that employees applying first have their applications approved leaving little room for others to have flexible working arrangements approved at a later date. This is an important issue to bear in mind when managing workplace



flexibility to ensure it benefits your business for the longer term.

Family Violence

New legislation came into force on 1 April 2019. The legislation amended the Employment Relations Act 2000 to allow employees affected by family violence to request a short-term variation to their working arrangements in addition to the flexible working arrangements (for periods longer than 2 months) already allowed under Part 6AA of the Act. The Holidays Act also now provides for Family Violence leave.

Note: The Family Violence Act 2018 repealed the Domestic Violence Act 1995 from 1 July 2019. All references to 'domestic violence' in the Act are now replaced by 'family violence'.

For more information, please refer to our **A-Z guide** on **Family Violence**.

Remember

- Always call AdviceLine on 0800 300 362 to check you have the latest guide.
- Never hesitate to ask AdviceLine for help in interpreting and applying this guide to your situation.
- Use our AdviceLine employer advisors as a sounding board to test your views.
- Get one of our lawyers or consultants to draft terms tailor-made for your business.
- Attend our regular Member Briefings to keep up to date with all changes.

This guide is not comprehensive and should not be used as a substitute for professional advice.

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