

**Right to request flexible
working to become a Day 1
employment right**

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Last month, we reported on proposals to make a number of reforms to the flexible working regime by way of a Private Members' Bill. Since then, the Government has announced it will make the right to request flexible working a Day 1 employment right.

The Employment Relations (Flexible Working) Bill 2022-23 would:

- remove the requirement for employees to explain in their request what effect they think it will have on their employer;
- allow employees to make two flexible working requests per year rather than one;
- require employers to consult with the employee before refusing a request; and
- reduce the deadline for an employer's decision on a flexible working request from three months to two months.

You can read more about the proposals in our briefing [here](#).

Earlier this month, the Government's long-awaited response to a consultation on flexible working reform was published. In the response, the Government confirmed that it would support the Bill as it progresses through Parliament and also that it will legislate to make the right to request flexible working a Day 1 employment right. Importantly, this is not a right to have a particular flexible working arrangement, only a right to ask for one.

The Government's response also confirms that the eight business grounds for refusing a flexible working request will not be changed. Nor will employers be obliged to demonstrate

in writing that they had considered alternative options before rejecting a request (however, they will be required to consult as above).

What does this mean for employers?

There are no immediate steps for employers to take. The new Day 1 right will be introduced by way of secondary legislation and will not be included in the Private Members' Bill. No indication has been given as to when this will be introduced.

If and when the right to request becomes a Day 1 right, it would be sensible for employers to assume that questions about flexible working patterns will be raised more frequently in job interviews. Therefore, it would be a good idea to give some preliminary thought to what, if any, flexible working arrangements would work for a particular role.

Thought should also be given to whether to ask candidates proactively about preferred working patterns (on the basis that it is better to understand whether a request is likely to be made in future than to be taken by surprise). Of course, care must be taken to ask this question, and respond to the answer given, in a non-discriminatory way.

Employers may want to take advice on any changes to their recruitment practices as a result of this change.

[Consultation on Making Flexible Working the Default – Government Response](#)

Brahams Dutt Badrick French LLP are a leading specialist employment law firm based at Bank in the City. If you would like to discuss any issues relating to the content of this article, please contact Amanda Steadman (AmandaSteadman@bdbf.co.uk) or your usual BDBF contact.

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