



### **Changes to flexible working regime now in force**

Members should already be aware that the statutory provisions on flexible working changed on 30 June 2014. Previously, in order to make a statutory flexible working request, an employee had to be the parent of a child aged under 17 (under 18 where the child is disabled), or be the carer of a specified adult aged 18 or over, and be making the application in order to enable them to care for the child or adult. These care requirements were repealed with effect from 30 June 2014.

In practice, this means the right to request flexible working has been extended to all employees, provided they have worked for their employer for a continuous period of at least 26 weeks at the date their application is made and they have not made another application to work flexibly under the statutory right during the previous 12 months. So, any employee with the requisite period of continuous employment will now be able to request flexible working, regardless of their reasons for wanting it – they do not even have to specify their reasons.

Under the statutory right, employees can apply to vary the hours they work, the times they work or their place of work (between their home and their employer's place of business). However as before, this does not provide an automatic right for an employee to work flexibly – it is only a right to request. Employers have the right to turn down an employee's application provided they do so for one or more of eight permitted business reasons i.e.

1. The burden of additional costs.
2. The detrimental effect it would have on ability to meet customer demand.
3. Inability to reorganise work amongst existing staff.
4. Inability to recruit additional staff.
5. The detrimental impact it would have on quality.
6. The detrimental impact it would have on performance.
7. Insufficiency of work available during the period when the employee proposes to work.
8. Planned structural changes.

However, members should watch out for flexible working requests that could give rise to other types of claim e.g. a claim for indirect sex discrimination where the request is made by a mother returning from maternity leave or a disability discrimination claim where the request is made by an employee as a reasonable adjustment for their disability.

In addition to the extension of the right to request flexible working, the onerous statutory procedure for dealing with flexible working requests was also repealed with effect from 30 June 2014. Instead, the legislation simply places a requirement on employers to “deal with the application in a reasonable manner” and to “notify the employee of the decision on the application within the decision period”. The decision period is three months beginning with

the date on which the employee's application is made, or such longer period as may be agreed by the parties. This decision period also includes any appeal provided by the employer against a decision to reject an employee's application.

So, dealing with a flexible working request in a reasonable manner will still involve employers going through some form of fair consideration procedure, involving a discussion meeting, notifying the employee of the outcome and preferably giving a right of appeal if the employee's application is rejected.

Members should consider updating their flexible working policies and procedures as a result of these changes, however if members had policies drafted to comply with the law prior to 30<sup>th</sup> June 2014, then those are likely to still be fit for purpose, as the changes have made the procedure less onerous rather than more onerous.

**Robert Titcombe**

Solicitor

Motor Industry Legal Services

*Motor Industry Legal Services (MILS Solicitors) provides fully comprehensive legal advice and representation to UK motor retailers for one annual fee. It is the only law firm in the UK which specialises in motor law and motor trade law. MILS currently advises over 1,000 individual businesses within the sector as well as the Retail Motor Industry Federation (RMI) and its members.*