

Prepare for rise in flexibility requests as legislation "normalises" change

05 May 2009 7:40am



Employers can expect a sharp increase in requests for alternative working arrangements as new legislation aimed at employees with young kids "formalises" and "normalises" flexibility across the board, according to employment lawyer and consultant, Juliet Bourke.

"This legislation will open up the conversation for other employees as well," says Bourke, of Aequus Partners.

"A broader group of employees will be putting in a request even if employers aren't legally obliged to comply."

Under the new National Employment Standards - expected to commence in January next year - employees (with more than 12 months' service) who are parents or carers of children under school age or children with a disability can request more flexible working arrangements to assist them in caring for their wards (see section 65(1) of the *Fair Work Act 2009*).

Flexible options include condensed hours or part-time work, job-sharing, special-leave provisions and working from home. Parents will be required to make a written request for such arrangements outlining both the nature of the proposed change and how it will help them care for their child.

Employers will be required to respond to the request in writing within 21 days, indicating whether the request has been granted or refused. Requests can only be denied on "reasonable business grounds".

According to Bourke, "reasonable grounds" include concerns over:

- **excessive cost** - in setting up a working-from-home arrangement, for instance;
- **excessive disruptions** - if everyone in the office has to adapt to suit an individual's needs; and
- **impracticality** - if the organisation is technically incapable of adjusting to the worker's requirements.

However, Bourke predicts that refusals will be rare.

She says that since similar legislation was introduced in the UK in 2003, the majority of flexibility requests have either been fully or partially accepted, and that very few claims relating to "right to request" legislation have come before employment tribunals.

The legislation "has played a role in challenging employer prejudices", she says, compelling bosses to be more open about the viability of part-time roles and other flexibility options.

Expansion and benefits

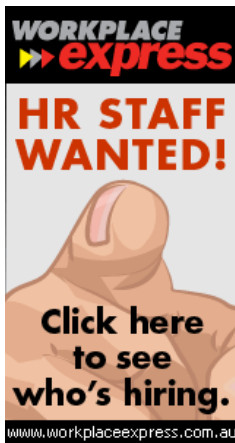
The UK legislation is widely credited with making a significant contribution to the increased availability of flexibility for English employees, Bourke says.

Referring to research, she says that that in 2007 some 20 per cent of employees with children older than the maximum age (stipulated in the legislation) and a sixth of employees without children successfully approached their bosses with flexibility requests.

More than 90 per cent of UK employers now offer flexibility, she says, compared to less than 25 per cent in 1998 - and they are reaping a host of benefits.

According to a Workplace Flexibility [report](#), organisations that offer flexibility can expect to:

- **attract skilled and motivated talent** - particularly mature-age workers or those with carer responsibilities who would otherwise not be seeking work;



- **retain talent** - reducing unwanted staff losses by up to 25 per cent, and maintaining valuable customer relationships and employee knowledge;
- **motivate and energise staff** - increasing productivity and profits;
- **increase employee satisfaction** - creating a happier workplace and improving teamwork and knowledge sharing;
- **reduce absenteeism** - due to a drop in stress and unplanned absences with employees able to meet their outside commitments;
- **increase management skills** - with leaders managing a more diverse workforce and compelled to "look outside the square"; and
- **become an employer of choice.**

Ensuring compliance

Bourke notes that flexibility has also "become more normalised" in the Australian workplace in recent years, and that the new Standard "will provide a platform for a conversation between an employee and employer, and a mechanism for transparent and consistent decision-making".

Under the Fair Work legislation, employers can face fines of up to \$6,600 for failing to comply with the new rules, but as there will be no capacity for a review of an employer's decision to deny a request, Bourke says, prosecutions will be uncommon.

However, Bourke notes that employers may still be held to account for their decisions, and should check:

- whether a work/family policy exists within the organisation;
- whether a similar request has been granted elsewhere in the business;
- the nature of the role and key performance indicators;
- options for change and possible modifications to requests;
- the impact of the change on the business unit; and
- the cost of allowing a change versus the cost of not allowing it.

"A prudent employer would engage in a consultation process with the employee which demonstrates an open mind towards the employee's needs and encourages mutuality," Bourke says.

"Clearly just saying no to a request because it has never been done before will not be sufficient to meet the spirit of the legislation."

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