

The Flexible Workforce

Task 1 – flexible working - Scenario

Our delegates were asked to assume that they and their table colleagues ran a business and that a number of requests had been received from employees and subcontractors. Reactions to the requests were discussed and each table worked on questions they would like to raise with an employment lawyer or HR consultant.

The requests are reproduced below together with initial comments from our HR consultant, Jane Eden (Edenj@shipleys.com).

Marilyn

Marilyn has worked for the company for 27 weeks. She works full time and has three children aged one, three and seven. She has asked whether she can move to four days per week.

Application for part-time working: as she has a minimum of 26 weeks' continuous services, she can submit a flexible working application to move to 4 days per week. The application should be considered and either agreed, or refused if there is a good business reason (e.g. the workload is that for a full-time person and there is no-one to delegate the additional work to).

A. David

David has worked for the company for two years and is full time. He lives with his elderly mother who is partially blind. He has recently asked whether he can alter his normal working hours so that he can get his mother ready in the morning.

David is eligible to apply for flexible working as a live-in carer of an adult. His request would be for flexi-time, so he would remain on the same hours, but slightly out of the 'core times'. Again it can be agreed or refused if there is a good business reason.

B. Alex

Alex has worked for the company for a year and works full time. He has no children, lives on his own and has asked if he can work from home one day a week.

Alex cannot currently apply for flexible working to work from home one day a week. However, the Government are bringing in legislation, which will allow **all** employees to apply for flexible working. This was originally from April this year which was postponed and the last we heard, it has now been moved to 30 June this year. Again, it can be agreed or refused if there is a good business reason.

This is going to be a fundamental change, remember to look at your HR policies/Staff Handbook and also assess how you are going to manage a potential increase in flexible working applications and how you are going to ensure you have a consistent approach. For people in exactly the same job role, it would be difficult to agree to it for one person and not the other if they both apply. The most popular application will probably be for working from home, so how will you manage this?

28 March 2014

C. Emily

Emily will be a casual worker on the payroll. Philip will call her as and when he needs her and she will work for him if she is available.

Emily should be sent a 'zero hour contract'. This means that there is no obligation on the employer to provide work and no obligation for her to accept it. This contract is not suitable for someone on regular hours. Emily will be entitled to pay, annual leave and possibly statutory sick pay.

D. Arthur

Arthur will be on the payroll working full time until the project has ended.

Arthur should be sent a fixed-term contract. This means that he would be considered an employee until the agreed finish date. The finish date can be extended as required, but remember that after two years service, Philip would need to show there is a 'fair' reason for not renewing his contract, plus Arthur would be entitled to things such as redundancy pay. After four years' service, he would automatically become a permanent employee. Arthur will be entitled to exactly the same benefits as a permanent employee from the start date.

E. Edward

Edward will undertake specialist work as required and will invoice the company for his time.

Edward will be a freelancer/subcontractor and there should be a 'contract for services' in place. He will have no employment rights apart from being able to claim discrimination.

The employer should ensure that Edward really should be treated as a self employed contractor as opposed to an employee, otherwise the employer could potentially be liable for the PAYE and National Insurance contributions which should have been deducted. He should be paid via an invoice and not through the payroll.

Summary and recommended approach

In general, the flexible workforce should be looked at in three ways:

- How you can use different working patterns to fulfil the work requirements, e.g. part-time workers, flexi-time, job-sharing, working from home, term-time working.
- Who has the right to request flexible working and what are the employee/employer obligations.
- Different contracts and entitlements.

The rules and potentially employees expectations are changing and employers need to be aware of the changes and to make sure their procedures comply with the new rules. Recommendations include:

- Ensure you understand employer/employee obligations in terms of eligibility and notifications to apply for flexible working. www.acas.org.uk.
- All flexible working arrangements will result in a change to the terms of the individual's contract, so a confirmation letter for signing should be sent.

- It is a good idea to set a trial period with a review date.
- There are further entitlements in relation to parents with disabled children.
- Ensure you also know about unpaid parental leave rights and notification periods (info as above).
- Don't make the mistake of thinking that because no contract is in place, the person doesn't have any rights. It is how that person is 'treated' (e.g. hours worked/pattern/whether or not they are on the payroll), that an employment tribunal would look at.
- Make sure your policies / Staff Handbooks are up to date and remember to change these to reflect the new flexible working legislation.
- Look at how you are going to manage the change internally, e.g. potential increase in admin / deadlines for notifications for the flexible working change.
- Remember that you need a good business reason to refuse a flexible working request. Not trusting the person to work from home is not necessarily a good reason!
- Remember that all your decisions need to be fair, so be careful not to set a precedent with the first few who apply.

Please contact our HR consultant, Jane Eden (Edenj@shipleys.com) if you would like further guidance on any of these issues.

Task 2 -Quiz (The correct answers are those highlighted)

Question 1: In a 2012 ILM survey, how many men are working flexible hours?			
A	1%	B	30%
C	60%	D	75%
Question 2: What percentage of managers think that flexible working is beneficial to their business?			
A	2%	B	32%
C	57%	D	82%
Question 3: What was viewed as the most positive impact of flexible working?			
A	Motivation	B	Team working
C	Retention	D	Recruitment
Question 4: What was the most popular type of flexible working arrangement?			
A	Part-time	B	Working from home
C	Flexitime	D	Yoga

Shipleys Business Breakfast people

Please ask for a Shipleys team sheet or visit www.shipleys.com for more about our people and how they may be able to help you. Our website includes past meeting summaries.



Steve Foster



Mike Lockett



Simon Robinson



Stuart Dey



Jane Eden



Martin Frost



Carol Stevens



Cat Seddon



Wei-Yin Taylor

Please join our LinkedIn Group: Shipleys Godalming Business Club.