



FLEXIBLE WORK FACT SHEET

EXAMPLES OF FLEXIBLE WORKING REQUESTS

A flexible working arrangement allows an employee to work non-standard hours, work partially, or wholly, away from their normal workplace, whether as part of their ongoing employment arrangements or for a fixed term period.

There are many examples of flexible work arrangements which may include:

- Changed starting and finishing times;
- Part-time work or job sharing;
- Working more hours over fewer days;
- Working additional hours to make up for time taken off;
- Taking rostered days off in half days or more flexibly;
- Time off work instead of overtime payments; or
- Changing the location of work or the need to travel to work (for example, working from home).

RIGHT TO REQUEST FLEXIBLE WORK UNDER THE FAIR WORK ACT

Under the *Fair Work Act 2009 (FW Act)*, employees who have completed 12 months' continuous service and who are 55 or over (and/or who have a disability/carer's responsibilities) may request flexible working arrangements. Long term casual employees who have a reasonable expectation of ongoing employment are also eligible.

Key requirements under the FW Act are:

- Employees need to make the request in writing.
- Employers are required to respond to the request within 21 days.
- Employers may refuse a request on reasonable business grounds.
- Consider also any applicable enterprise agreement/policies.

Modern awards and enterprise agreements may also contain additional provisions regarding the process for responding to flexible work requests; these should be considered and adhered to.



Requests for flexible work arrangements can be made outside the requirements of the FW Act. Although there may be no legal obligation to accommodate the request, it is best practice to consider whether the arrangement can be accommodated as this promotes staff retention, decreasing absenteeism and achieving greater productivity through increased employee job satisfaction.

REFUSING A REQUEST

An employer can only refuse a request for flexible work based on reasonable business grounds. Examples of reasonable business grounds include:

- the request would be too costly for the employer;
- no capacity to accommodate the request re hours and operational requirements;
- detract from the employee's ability to fulfil the requirements of their position (or their team's effectiveness);
- result in a significant loss in efficiency or productivity;
- give rise to an unsafe work environment; or
- be likely to have a significant negative impact on customer service.

Where a request is refused the written response must include the reasons for the refusal.

ADVERSE ACTION AND DISCRIMINATION RISKS

There are protections under the FW Act and anti-discrimination legislation for employees who have exercised a workplace right or who are in protected categories (such as age, or have a disability).

Employees that are subjected to adverse treatment because of their exercise of a workplace right (such as taking parental leave, or requesting a flexible working arrangement) or for a discriminatory reason (such as because of their age, disability or parental responsibilities) may be able to bring legal claims such as general protections and/or discrimination claims against their employer.

Where successful in these claims, an employee can claim civil penalties and compensation orders –including against the decision makers in an organisation.