



# FLEXIBLE WORK: MANAGEMENT GUIDE

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## 1. INTRODUCTION

The aim of this Guide is to provide guidance for HR and managers in providing flexibility in the workplace.

The Guide provides an outline of an employer's legal obligations including:

- The right to request flexible work under the Fair Work Act 2009;
- The process for requesting flexible work; and
- Examples of flexibility in the workplace.

This document is written for **Human Resource employees and managers only** and is not intended for distribution amongst broader staff.

## 2. FLEXIBLE WORKING ARRANGEMENTS

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 ways that employees requiring Flexible Working Arrangements may be accommodated but the following examples are some of the more common arrangements.

- 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
- Changing the location of work or the need to travel to work (for example, working from home)

Flexible Working Arrangements allow employees achieve balance between work and their personal lives. For example, they assist parents who are looking after young children, carers of those with a disability or those looking after elderly parents.



There are many benefits to accommodating Flexible Work Arrangements for both an organisation and the employee. Flexibility can benefit businesses by increasing staff retention, decreasing absenteeism, and achieving greater productivity through increased employee job satisfaction.

### 3. LEGISLATION

The *Fair Work Act 2009* (**Fair Work Act**) provides employees with a legal right to request Flexible Working Arrangements.

Australia's anti-discrimination laws provide that it is unlawful to discriminate on the basis of a number of protected attributes including age, disability, race, sex, intersex status, gender identity and sexual orientation in employment. Federal laws are contained in the *Age Discrimination Act 2004*, *Disability Discrimination Act 1992*, *Racial Discrimination Act 1975*, and the *Sex Discrimination Act 1984*.

Workplace Health and Safety laws apply in all States and Territories. An employer together with its employees have certain duties regarding safety under this legislation and other relevant legislation in the State or Territory where they work.

### 4. AN EMPLOYER'S LEGAL OBLIGATIONS

Employees who are parents or who have the responsibility for the care of a child who is school age or younger can request flexible working arrangements. To be eligible to request flexible work under the Fair Work Act, an employee must have worked for their employer for at least 12 months on a full-time or part-time basis. Long term casual employees who have a reasonable expectation of ongoing employment are also eligible.

Employees are eligible to request Flexible Working Arrangements where:

- The employee is a parent or has responsibility for the care of a child who is of school age or younger;
- The employee is a carer (within the meaning of the Carer Recognition Act 2010);
- The employee has a disability;
- The employee is 55 or older;
- The employee is experiencing violence from a member of the employee's family; or
- The employee provides care or support to a member of their immediate family or household who requires care or support because they are experiencing violence from the member's family.



A request for Flexible Work Arrangements made under the Fair Work Act can be refused by the employer based on reasonable business grounds (see below).

The risks in not complying with legislation regarding Flexible Work Arrangements can result in unlawful discrimination and other claims.

Please note that requests for Flexible Work Arrangements can be made outside the requirements of the Fair Work Act. Although there may be no legal obligation to accommodate the request, as a matter of good practice the Company should still seriously consider whether the arrangement can be made for the benefit of the employee.

## 5. PROCEDURE FOR REQUESTING FLEXIBLE WORK ARRANGEMENTS

### FOR THE EMPLOYEE

Where a request for Flexible Work Arrangements is made under the Fair Work Act, it must be made in writing by the employee to the employer.

The written request needs to clearly outline:

- The change sought; and
- The reasons for the change.

### FOR THE EMPLOYER

Under the Fair Work Act, the employer must provide a written response within 21 days which outlines whether the request is approved or refused. The employer can only refuse a request on reasonable business grounds.

Examples of reasonable business grounds include:

- The request would be too costly for the employer;
- 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.

If the employee's request is refused, it is a legal requirement that the written response by the employer state whether or not there are any changes in working arrangements that the employer can offer the employee. If so, those changes must set out in the written response.

Best practice allows the parties to discuss requests for Flexible Working Arrangements and come up with an approach that accommodates both the needs of the employer and the employee.



Consideration should also be given to any applicable enterprise agreement or modern award which may exceed the minimum requirements of the Fair Work Act in respect to flexible working arrangements.

***NOTE TO EMPLOYER:*** where making modifications to the policy or management guide, please seek legal advice to ensure it meets minimum legal requirements.



## CHECKLIST FOR FLEXIBLE WORK REQUESTS

The following checklist can be used to guide managers through an appropriate process when an employee makes a Flexible Work application under the *Fair Work Act 2009*.

<p>Eligibility requirements under the Fair Work Act</p> <ul style="list-style-type: none"><li>• Has the employee making the request been employed for at least 12 months?</li><li>• Is the employee entitled to make a request for flexible work arrangements? (Are they a parent of a school age child, are 55 years or older, etc. – see page 2).</li></ul>	<input type="checkbox"/>  <input type="checkbox"/>
<p>Formal application made by the employee</p> <ul style="list-style-type: none"><li>• Has the employee put the request for flexible work in writing and set out reasons?</li></ul>	<input type="checkbox"/>
<p>Formal response by employer</p> <ul style="list-style-type: none"><li>• Has the employer provided a written response to the employee within 21 days stating if the request is granted or refused?</li><li>• If refused, has the employer provided reasonable business grounds for the refusal?</li></ul>	<input type="checkbox"/>  <input type="checkbox"/>
<p>Alternative</p> <ul style="list-style-type: none"><li>• Where the employee is not eligible to make a request for flexible work under legislation, or has had their request declined, can the employer come up with an alternative to accommodate both employer and employee?</li></ul> <p>(This is a legal requirement for employees to whom a modern award applies and is otherwise considered to be best practice for other employees).</p>	<input type="checkbox"/>