

Consultation Response

Draft Code of Practice on the extended right to request flexible working

Ref: 1713

Date: 20 May 2013

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In early 2013 the Government legislated to extend the right to request flexible working to all employees. This gave individuals a legal right to have a request seriously considered, and put an obligation on the employer to accept the request unless there was a good business reason for not doing so. Previously, the right to request had existed for parents and some carers only, and was governed by a strict procedure that employers had to follow when considering a request. The Government decided to replace this with a more flexible Code of Practice and non-statutory guidance. This consultation looks at the draft Code of Practice, as proposed by ACAS.

Key points and recommendations

- Age UK supports the extension of the right to request flexible working and the removal of the previous procedure for making and arbitrating on requests.
- As people are expected to work for longer than ever before, it is vital that a positive cultural change in favour of more flexible working is brought about, and extending the right to request is an important part of achieving this.
- ACAS should consider including a reference to all jobs being 'flexible by default' in the good practice guidance.
- The good practice guidance needs to include more detail on age discrimination.
- The Code of Practice should include signposting to other relevant sources of information about flexible working and age management, including those by statutory bodies such as ACAS, the Equality and Human Rights Commission, and non-governmental organisations like the CIPD.
- Providing the Code and guidance for employers is only one part of the story. Many employees would also benefit from guidance on how to approach their employer, how to handle sensitive discussions relating to personal issues, and what forms flexible working can take. ACAS should work on producing this.
- Part-time working does not constitute flexible working per se. While it *can* be flexible, it is important the Code does not give the impression that employing someone on this basis equates to being a flexible employer. The definition should be amended.

1. Introduction

For many older workers, having access to flexible working opportunities is important for remaining active in the labour market. In particular, for people with additional needs or responsibilities, such as caring for a relative or managing a health condition, flexible working is imperative.

Often because of a lack of access to flexible options, 300,000 carers are forced to drop out of work each year. This costs the UK economy £5.3 billion in lost GDP, with

a further £1 billion in lost revenue for the Exchequer, not to mention the additional benefit payments made.ⁱ

We want to see more employers embrace flexible working and prevent this waste of talent and cost to the UK economy.

Age UK therefore strongly supports the extension of the right to request flexible working to all employees. We are hopeful it will help engender a positive cultural change in favour of flexible working, while providing employees with greater confidence to raise work-life balance issues with their employer.

We believe the right to request will provide a legal basis to underpin a system where both formally and informally arranged flexible working patterns become more common.

The Code of Practice reflects a less process-driven approach to making a formal request, which we believe is to be welcomed.

Issuing the Code and good practice guidance is an opportunity to promote the benefits of altering working patterns to employers and employees, and to directly link to improved age management policies and practices, especially around combating age discrimination.

2. Consultation questions

Question 1: Do you think the Code gives you enough information on the principles involved in managing the extended right to request flexible working?

The Code should state clearly that flexible working is often beneficial to both employer and employee, and should signpost to the evidence that underpins the business case. It is an excellent opportunity to introduce employers to the wider context of improving employment practices as well as the benefits of encouraging flexible working, for example increased productivity and staff retentionⁱⁱ.

'Flexible by default'

In our policy report "*A means to many ends: older workers' experiences of flexible working*" we recommended that all jobs should be 'flexible by default' by 2020 – i.e. employers should design jobs to be undertaken flexibly and only refuse variations on expected working patterns when there is a strong business reason.

We believe this would turn the debate on its head, and introduce an expectation of flexible working among all parties. It would help normalise differentiated working patterns.

We recommend ACAS should consider whether such a suggestion could be included in the good practice guide.

Discrimination

Publishing the Code and good practice guidance also creates a good opportunity to signpost employers to age management tools, including those published by ACAS. This could increase recognition of the importance of this agenda among employers, and encourage the adoption of good practice.

Such resources could also include guidance on avoiding age discrimination and the benefits of being an inclusive employer.

Part-time working

The examples given at the end of the Code state that part-time working, where 'employees are contracted to work less than full-time hours' is a form of flexible working.

We disagree and urge that part-time working is redefined.

Part-time working per se does not necessarily constitute flexibility – in our view this would only be the case if it is the result of a reduction in hours agreed between employer and employee. Part-time working *can* be flexible, but it is not necessarily so.

Among older workers, the evidence shows that many who work part-time wish to increase the number of hours they work. This is often referred to as 'underemployment', and contrary to typical perceptions becomes increasingly common with age.ⁱⁱⁱ It shows clearly that for many older employees who work part-time, it is not because of a positive choice to do so.

Question 3: Are there any aspects of the Code which you would like to see discussed in more detail in the good practice guide?

As noted above, the good practice guide should pay particular attention to discrimination and engaging employers in broader age-friendly management practices.

The guide should highlight reasons why employees may want to work flexibly, for example having caring responsibilities or winding down to retirement.^{iv} We believe that allowing employers to understand why people may want to work flexibly is an important part of achieving a positive cultural change.

In addition, guidance on how to handle a discussion should be included. Many older workers do not like to raise their work-life balance needs with their employer, and the guidance needs to address this. For example, it could suggest common barriers to flexible working faced by employees, for example inconsistencies among line managers, and explain how to treat employees in a non-judgemental and fair way.

If a system of 'flexible by default' was implemented, as suggested earlier in this response, then the discussion would be made much easier for both parties as none of the difficult issues would need to be raised in order to justify applying flexible options.

Flexible job design

The guidance should include information or appropriate signposts to information on designing jobs with flexibility in mind. This will help attract a wider pool of potential candidates. Jobcentre Plus currently offers specialist support for small businesses to help with the process of job design, including some help with exploring flexible working options, and this service should be signposted.

Employees

We also recommend that ACAS should prepare guidance for employees. This should cover advice on the whole process of making a statutory request, approaching an employer informally, and how to handle sensitive conversations.

Many older workers do not wish to discuss the reasons behind their request^v, and we believe that enabling more people to discuss their options without breaching their privacy would encourage greater take-up, help normalise flexible practices, and enable more older workers to remain active in the labour market.

Such guidance could also explain in detail different working practices and arrangements, and how these might be applicable in different workplaces and situations.

ⁱ Age UK (2012) Estimation of the Financial Impact of Leaving Work due to Caring Responsibilities, building on work by Pickard L (2012), LSE.

ⁱⁱ See for example Hayward et al (2007), Third work-life balance employer survey, BERR

ⁱⁱⁱ Iparraguirre I & Tseng H-Y (2012), An econometric analysis of underemployment and overemployment in the UK, Significant Journal, Royal Statistical Society, available online at: <http://www.significancemagazine.org/details/webexclusive/3720361/An-econometric-analysis-of-underemployment-and-overemployment-in-the-UK.html>

^{iv} For more examples and further detail, please see Age UK's policy report '*A means to many ends: older workers' experiences of flexible working*' (2012)

^v Age UK (2012), *A means to many ends: older workers' experiences of flexible working*