



# Flexible working and remote working: the legal context

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# The right to request flexible working



- Who can exercise the right
- What kind of change can be applied for
- How requests are made
- How an employer should handle requests
- Proposals for reform
- Related additional statutory protections

# Who can exercise the statutory right to request flexible working?



In order to make a statutory request for flexible working, the following eligibility criteria apply:

- A statutory request can only be made by an employee
- The employee must have 26 weeks' continuous employment at the date the request is made
- Only one request may be made under the statutory scheme in any 12-month period
- Requests cannot be made by agency workers

# What kind of change can be applied for?



An employee may request a change to their employment terms if the change relates to:

- A change to the hours they work
- A change to the times when they are required to work
- A change to the place of work (as between their home and any of the employer's workplaces)

# How does an employee make a request?



An employee's application must:

- Be in writing
- Be dated
- State that it is an application made under the statutory procedure
- Specify the change that the employee is seeking and when they wish the change to take effect
- Explain what effect, if any, the employee thinks the change would have on the employer and how any such effect could be dealt with
- State whether the employee has previously made an application to the employer and, if so, when

# How should an employer deal with a request?(1)



An employer who receives a flexible working request under the statutory scheme must:

- Deal with it in a reasonable manner
- Notify the employee of its decision within the decision period
- Only refuse a request on one or more of the prescribed business grounds

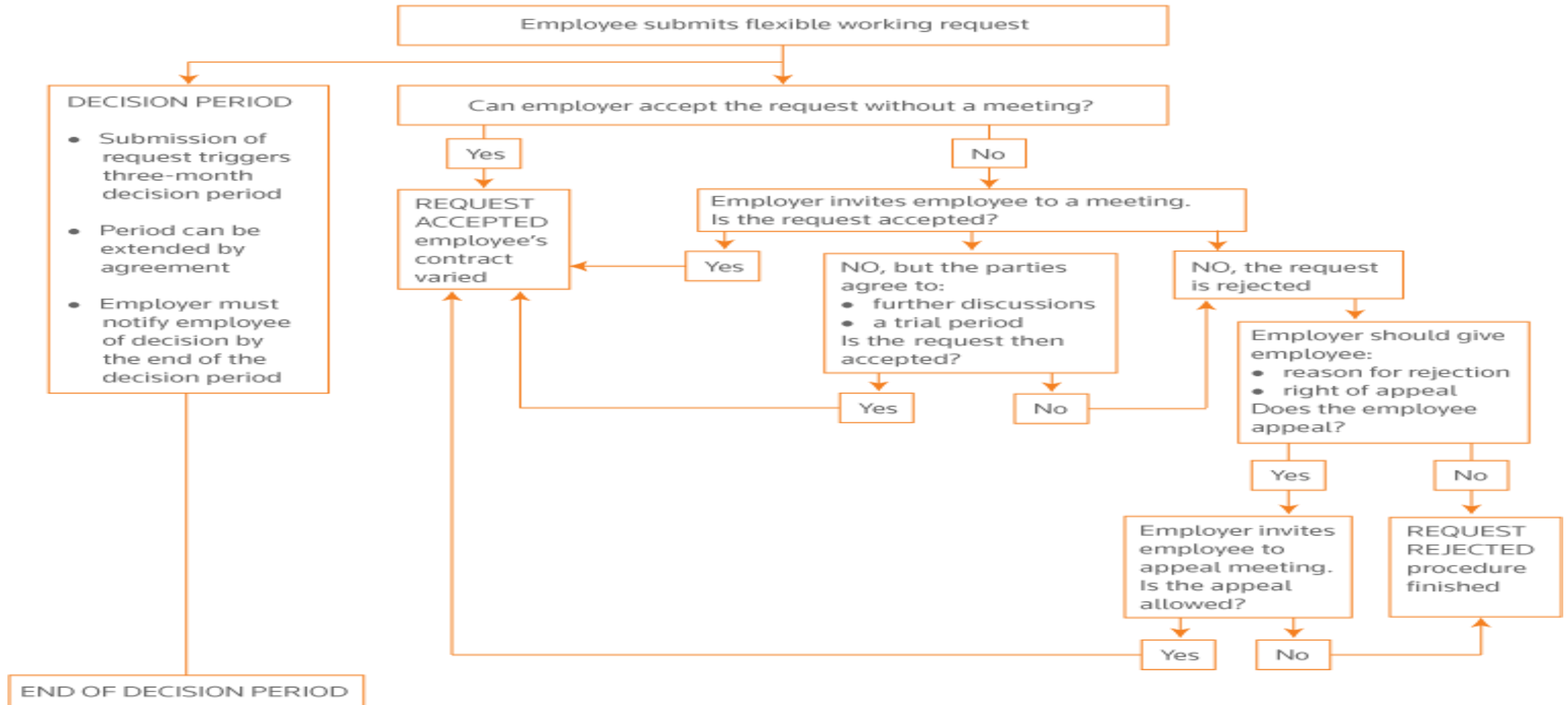
# How should an employer deal with a request?(2)



The 8 prescribed business grounds for rejecting a request:

- the burden of additional costs
- detrimental effect on ability to meet customer demand
- inability to reorganise work among existing staff
- inability to recruit additional staff
- detrimental impact on quality
- detrimental impact on performance
- insufficiency of work during the periods the employee proposes to work
- planned structural changes

# Flowchart: request procedure





# Proposals for reform of flexible working framework



Five key proposals for reshaping the existing framework:

- Making the right to request flexible working a "day one" right
- Making changes to the eight business reasons for refusing a request to work flexibly
- Requiring the employer to suggest alternatives to the arrangement suggested by the employee
- Changing the administrative process underpinning the right to request flexible working
- Raising awareness of the existing right of employees to request a temporary flexible working arrangement

# Other statutory protection for employees requesting flexible working



- Sex discrimination
- Direct discrimination
- Indirect discrimination
- Disability discrimination
- Religion or belief discrimination
- Constructive dismissal

# Remote/home working: key considerations (1)



- Consider the need to tailor standard employment contract clauses to encompass homeworking or hybrid working
- Introducing new policies and reviewing existing policies to set out the arrangements and conditions for homeworking or hybrid working
- Taking appropriate measures to protect confidential information and personal data
- Reviewing the health and safety implications of the arrangements, including carrying out a risk assessment

# Remote/home working: key considerations (2)



- Deciding whether any special equipment should be provided
- Considering whether any special planning or insurance arrangements are required
- Deciding what arrangements should be made for the management and supervision of certain types of homeworkers and hybrid workers
- Considering the tax consequences of homeworking and hybrid working

# Home/remote working: some tricky issues



- Asking employees questions about suitable working arrangements in domestic setting
- Can an employee be required to work from home, not just permitted to?
- Must an employer permit homeworking or hybrid working?
- Handling multiple requests for homeworking/prioritising
- Trial periods

# Question & Answer Session



# Contact Details



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