



How flexible do employers need to be?

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Worried about just how flexible you will have to be under the new Employment Relations (Flexible Working Arrangements) Amendment Act 2007? Don't be ... Alison Maelzer, Senior Solicitor at Hesketh Henry, highlights key aspects of the new legislation and finds that it's not as onerous as it first appears.

The Employment Relations (Flexible Working Arrangements) Amendment Act 2007 came into force on 1 July this year. This amends the Employment Relations Act, adding in obligations for employers and employees with regard to flexible working arrangements.

Under the new Act, eligible employees now have the statutory right to request that their employer vary the hours, days, or place of work, either permanently or for a fixed period of time.

To be eligible, they must have worked for the employer for at least 6 months before the request, not have made a request in the last 12 months (whether that request was accepted or declined).

A key point is that they must have the care of any other person (this can be a child, or another dependent such as an elderly parent or disabled family member). The employee must make a request in writing, stating amongst other things:

- The flexible work arrangements the employee wants
- Whether the variation sought is permanent or temporary (and the start and end dates, if applicable)
- How the change in hours, days or place will help the employee to better care for the person
- In the employee's view, what changes the employer might have to make to accommodate the change.

Having received such a request, the employer must respond as soon as possible (but within 3 months). The response must say whether the request is accepted or declined, and if declined, needs to say whether it is because the employee is not eligible or because of one of the grounds set out in the Act, which include:

- Inability to reorganise work among existing staff
- Inability to recruit additional staff
- A detrimental impact on quality or performance
- Insufficiency of work during the period the employee proposes to work
- Planned structural changes
- Burden of additional costs
- A detrimental effect on ability to meet customer demand.

In addition, an employer must decline a request if the employee is covered by a collective employment agreement (CEA), and the requested variation would be inconsistent with that.

If the employee is unhappy with the employer's response, he or she can contact a labour inspector who will help resolve the situation. If the employee is still unhappy, they may request mediation,



and if that fails, they can ask the Employment Relations Authority to mediate. The Authority can order the employer to comply with the Act, and/or award a \$2,000 penalty payable to the employee. There is no right of appeal from the Employment Relations Authority.

The employee cannot challenge the grounds the employer has used to decline the request. For example, if an employer has declined on the grounds that customer service will be affected, the employee cannot dispute the substance.

In our view ...

The legislation is largely process based. It does not grant employees the right to have flexible working arrangements; only to request them. The employer has a great many grounds on which it can refuse, and the substance or truth of those grounds cannot be challenged. The Act is therefore not the scary prospect that some employers have feared. As with most new legislation, there are a number of points that will need to be clarified as we put the Act into practice.

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