



## XpertHR Podcast

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- Susan Dennehy: Hello and welcome to this week's podcast with me, Susan Dennehy. This week we're taking a look at flexible working. What is the difference between a formal and an informal request? Can you turn down a request and is there a time limit? And what might be the benefits of flexible working now that gender pay gap reporting is on the horizon?
- I'm joined this week by employment law editor, Bar Huberman. Hello Bar.
- Bar Huberman: Good morning, Sue.
- Susan Dennehy: Should we launch straight in? Can you tell us the difference between a formal request and an informal request? [0:00:36.0]
- Bar Huberman: Of course. Where an employee makes a formal request to work flexibly under the Employment Right Act 1996, the request will need to comply with certain formalities, such as stating that it's an application under the statutory procedure.
- An informal request to work flexibly, on the other hand, doesn't need to comply with the legislative requirements.
- Susan Dennehy: And from the employee's viewpoint, is there any advantage to making a formal request? [0:1:00.0]
- Bar Huberman: Well, the employer is bound to deal with a formal flexible working request in a reasonable manner and there's a set timescale. It has three months within which to inform the employee of the outcome of his or her application. Additionally, to refuse a formal request the employer has to base its refusal on one of the business reasons specified in the legislation, for example the burden of additional costs or an inability to meet customer demand.
- Also, in dealing with requests employers should have regard to the ACAS code of practice on handling requests to work flexibly in a reasonable manner.
- Susan Dennehy: And what about informal requests, then? In what situations might an employee make an informal request? [0:01:35.3]
- Bar Huberman: Well, employers don't have to consider flexible working requests from employees with less than 26 weeks' service. And they need to consider only one request per employee per year. So new employees and those who wish to adjust their working pattern within a year of

their previous request can make an informal request to work flexibly, and it does make good business sense for employers to consider these requests.

Just a note of warning, employers that don't give adequate consideration to applications to work flexibly, whether or not they're made by eligible employees, could be open to a discrimination claim.

Susan Dennehy: Could you give us an example? [0:02:08.7]

Bar Huberman: Well, on the basis that women are more likely than men to have primary responsibility for childcare and so are less likely to be able to comply with a requirement to work full time, if a manager doesn't give reasonable consideration to a request to work flexibly made by a woman, the organisation risks facing a claim of indirect sex discrimination.

Susan Dennehy: And are there any other situations in which employees might prefer to make an informal request? [0:02:31.7]

Bar Huberman: Informal requests could be used by employees who need to adjust their working pattern on a short-term basis. So for example, an employee who's returning to work following maternity leave and she wishes to test out the childcare arrangements that she's put in place. That's because where an employer has agreed to a formal request, the change to the employee's contract is permanent.

Also, an employee who has caring responsibilities for somebody whose illness fluctuates could benefit from an informal discussion with their line manager to put in place a temporary flexible working arrangement.

Susan Dennehy: So what if an employer receives a request to work flexibly but isn't sure whether or not the arrangement's going to work? [0:03:08.0]

Bar Huberman: Well, there are still many line managers who say that flexible working's a nice thought but it wouldn't work in their team or it wouldn't work for a role in management. But there are so many different types of flexible working arrangements that for many roles – in fact, probably most roles – it's possible to make a flexible working arrangement work. And there's a whole body of evidence to show that where employers embrace flexible working, they're likely to benefit in many different ways, for example improving their employee engagement scores, which can ultimately improve business performance.

One practical way for line managers to deal with a situation in which they're not sure whether a flexible working request is going to work, is to ask the employee to agree to a trial period of flexible working, and that can help the manager to decide if the arrangement works for the business.

It's important that where a trial period is agreed to, the employer makes clear that if at the end of the trial period it deems the arrangement not to be a success, the employee will return to his or her previous working pattern. And it's also good practice to agree review points during a trial period, say a few weeks down the line

after the arrangement has started. That will remind the manager and the employee to look at how the arrangements have been working and put into place any necessary adjustments.

Susan Dennehy: Well trial periods can find their way to being permanent, but in what sort of situations might there be difficulties? [0:04:23.5]

Bar Huberman: Well, the employee's colleagues might have been struggling to cope because of the new working pattern or there might be a complaint from a customer. So in this sort of situation, it's really good for the line manager and employee to get together and look at where they can make any adjustments to the working pattern.

Susan Dennehy: And what about timescales? [0:04:40.9]

Bar Huberman: Well yes, because the employer has three months to deal with an employee's request, if it puts into place a trial period, it might need to look at agreeing an extension of this period with the employee.

Susan Dennehy: What if an employee makes a flexible working request but it's clear there are other ways that the employee's needs could be met, for instance, other types of leave? [0:04:57.7]

Bar Huberman: Well, it's always good practice for a manager and employee to meet to discuss the employee's request. In this situation, the manager could explain what other options might be available for the employee, so for example, a temporary rather than a permanent period of flexible working, or maybe a period of time for dependants or annual leave.

Susan Dennehy: And some organisations are talking now about moving on from flexible working to agile working. What is agile working and how is it different from flexible working? [0:05:25.5]

Bar Huberman: Well, yes, agile working is a concept that's really been increasing in popularity over the last few years. So it's a way of working in which people work where, when and how they want to work, and it's based on a concept that work is something we do rather than somewhere we go. The aim of agile working is to create a more responsive and efficient workforce.

Flexible working, on the other hand, has traditionally be seen as adapting an individual's working pattern to help them balance the competing demands of work and their personal life.

Susan Dennehy: Shall we move on now and talk about some of the organisational benefits of flexible working? [0:05:57.6]

Bar Huberman: Absolutely. Flexible working can be a really huge benefit for employees, as it helps them to better balance the competing demands of work and home life. By giving people more control over how they work, this can improve psychological wellbeing and lessen the opportunity for employees to experience stress.

Employers do need to be careful though, that flexible working doesn't have a negative impact on wellbeing. For example, remote workers might feel that they need to be constantly connected to work via technology, but setting clear goals for employees and ensuring that

managers are trained in managing employees who work flexibly should help to address this risk.

Susan Dennehy: Gender pay gap reporting is on the horizon for larger organisations, those that employ 250 or more employees. What are the benefits of flexible working on gender inequality in organisations? [0:06:42.1]

Bar Huberman: Well, although the right to request flexible working is now available to all employees with a minimum length of service, many people still see it as something that mums do, and in fact most people who work flexibly are women. Encouraging both men and women to request a flexible pattern of work that suits them can help to open up more roles to flexible working, including jobs in well-paid sectors and grades that might previously have been reserved for full-time workers. And that can really help to close the gender pay gap.

Susan Dennehy: That's very interesting. Thanks very much for that, Bar.

If you want to know about gender pay gap reporting, look out for our webinar on 10 May, which will explore what you can do now to prepare for gender pay gap reporting.

That's it for this week's podcast, which you've been listening to with me, Susan Dennehy. We're back again next Friday but until then, it's goodbye from us.