



New Flexible Working Rules Came into Force on 30 June 2014. Will they Affect Your Business?

- The right to request flexible working was extended on 30 June 2014.
- All employees now have the rights previously enjoyed by parents and carers.
- Some stipulations have been relaxed.
- Employers are still not obliged to grant requests if there are sound business reasons for rejecting them.

The right to request flexible working has been a part of UK law for over a decade. In April 2003, an amendment to the Employment Rights Act 1996 came into force that introduced the right for employees who are looking after children to request flexible working.

In April 2007, the right was extended to those with caring duties as defined by the Department for Business, Innovation & Skills. Caring for adults became a legitimate reason for employees to request flexible working arrangements.

But on Monday 30 June 2014, the right to request flexible working was extended to all employees with 26 weeks' service for a single employer. There are some other important changes to the rules, however. Read on for details on how the law has changed.

Finally, find out how [Peninsula](#)'s experience of the law as it has stood has been used to gauge how the more general roll-out could affect businesses. Peninsula has conducted a survey of its key advisors to find out how the changes might affect you, the employer.

The Rules and How they have Changed

The rules surrounding flexible working can be misunderstood by employees and employers alike, with both sides assuming that the rules give them more – or fewer – rights than is actually the

case. With an understanding of how the law works, businesses are not forced to disadvantage themselves. And in fact, some businesses can actually *benefit* from flexible staff.

What is Flexible Working?

While the term “flexible working” is often understood as meaning “flexible hours”, there is actually quite a wide range of working practices that can form part of a request for flexible working. For example, any of the following can be requested:

- job sharing
- working from home
- part-time work
- compressed hours
- flexitime
- annualised hours
- staggered hours
- phased retirement.

Compressed hours means working the normal number of hours per week but putting more hours in per day; so, for example, Friday afternoon could be taken off and the four hours could be distributed over the rest of the week. **Annualised hours** is a similar concept, but the hours of a whole year are taken into account rather than those of a week. This could result in longer holidays, for example. **Staggered hours** is simply starting and finishing at different times to what is standard in the company.

Flexible Working Entitlement and Stipulations

In the pre-30 June 2014 regime, there were some key stipulations and rules for the employer and employee to follow:

- the employee must have worked continuously for the employer for 26 weeks or more;
- the employee must have been looking after a child under 17 years old or a qualifying adult;
- the request had to be formal and in writing;
- there could be one request every 12 months;
- the request could only be refused on valid business grounds;
- refusals to grant the application could have been appealed;
- there was a statutory procedure for considering requests;

- applicants had a statutory right to be accompanied at the request meeting;
- the employer could request a meeting with the requesting employee within 28 days of the application;
- the employer had to make a decision within 14 days of the meeting; and
- if successful, the employee would receive a new contract or a letter setting out the official change.

Many of these stipulations still hold, but some have been relaxed. See the following table for details on which have survived and which have changed.

Post-30 June 2014 Changes

As of 30 June 2014, the entitlement to request flexible working has been extended to all qualifying employees, not just those with caring or parenting duties. But that is not the limit of the changes.

There has been some tweaking of the stipulations to ease the balancing point towards businesses. The changes – and what has stayed the same – can be seen in the table below:

Pre-30 June 2014 Flexibility Rules	Current Flexible Working Rules
Applied only to employees who were recognised carers or parents of children	Applies to all employees
A statutory procedure existed for considering requests	Requests must be considered in ‘reasonable manner’ (underpinned by Code of Practice)
Employers had 28 days to respond to a request; a meeting date must then have been agreed and a decision given within 14 days of that meeting	The entire request and acceptance/rejection process should take no more than 3 months, although parties can agree on a longer deadline
Applicants had the right to be accompanied to the meeting	Applicants no longer have the right to be accompanied at the meeting
Rejected applicants had the right to appeal	There is no longer a right to appeal a refusal
Requests could only be refused on valid business grounds	Remains in force
Requests possible only after 26 weeks’ service	Remains in force
Formal written application required	Remains in force
One statutory request per 12 months allowed	Remains in force

Grounds for Refusal

Although employees who satisfy the relevant stipulations listed above have the right to *request* flexible working, employers are not obliged to grant them. According to the Act, permissible grounds for refusal include where there is:

- a burden of additional costs;
- a detrimental effect on ability to meet customer demand;
- an inability to reorganise work among existing staff;
- an inability to recruit extra staff;
- a detrimental impact on quality;
- a detrimental impact on performance;
- insufficient work during the periods the employee proposes to work; and
- a planned structural change.

Requests Made Before 30 June 2014

Note that despite the change of rules, requests that were made *before* 30 June 2014 will still be under the old rules. Employees without children or caring duties could not put in a formal request in anticipation of 30 June. Similarly, the

rights afforded to those applying legitimately before 30 June will still hold from 30 June onwards, so there will be a statutory procedure for considering requests and applicants will retain the right to an appeal if unsuccessful etc.

Under the Radar – but Not Invisible

Hardly surprisingly in the midst of a World Cup and major events in the Middle East, the changes in the law surrounding flexible working didn't make much of a splash in the mainstream media in the run-up to their implementation, but on the day of the change they did feature prominently in much broadcast and print media. BBC 5 Live, for example, had their popular 9 a.m. phone-in *Your Call* on the subject. Awareness among employees will have been raised significantly on 30 June; however there still seems to be confusion about what the changes entail.

There *has* been an advertising campaign informing businesses owners about flexible working. Many will have seen the advert shown on the right, which has been appearing on websites and in specialist magazines over the past few weeks. It links to greatbusiness.gov.uk, a government site featuring business success stories. Although the advert specifically mentions flexible working, not all of the stories are about benefits brought by flexibility. It seems to be trumpeting the success brought about by the government's various support and advice services.



The business featured on the above advert is Healix, a medical evacuation and repatriation service that works with insurers to get emergency assistance to customers around the world. As it's a 24/7 operation, flexible working has benefited the company greatly. In the accompanying [video](#), owner and founder Paul Beven explains how staff working compressed hours helped Healix become the service he wants it to be.

Peninsula's Flexible Working Questionnaire

In June 2014, on the eve of the extension of the rules on flexible working, Peninsula Business Services conducted a limited survey of their advisors on their experiences of flexible working as it had been experienced. Eight key advisors were asked to respond frankly to a series of questions (*see below*) on their experiences of

flexible working up to now – that is, limited to parents and carers. The aim of the exercise is to arrive at a general impression of how it has gone so far for businesses and to thereby extrapolate an insight into what businesses can expect when full roll-out takes hold. (The names have been changed.)

About Peninsula Business Services

[Peninsula Business Services](#) ensures SMEs get the same legal and HR assistance as do larger companies who have in-house departments. Businesses use Peninsula's advisors as if they were their own – but without the expense of employing them. The company was founded in 1983 and is headquartered in Manchester. It employs over a thousand staff in the UK,

Ireland and Australia, and looks after more than 28,000 businesses. Since advisors address dozens of queries from businesses every day, they are well placed to spot trends and issues that crop up regularly. And as they advise businesses on the best routes to take with disputes, they also have an insight into how businesses respond to problems.

The Questions

1. How many of your enquiries are about flexible working?
2. How many rejected requests are appealed?
3. Roughly what proportion of appeals result in a changed decision?
4. What is the most commonly requested change?
5. Do employers struggle to meet the 28-day deadline to have the meeting or the 14-day deadline to deliver a decision?
6. Would you say employers in general understand the law?
7. Have any employers experienced serious problems after granting flexible working to an employee? Please give examples if so.
8. Have employers noticed benefits to their companies since granting flexible working? (For example enhanced morale, office being open longer etc.)
9. Has there been resentment among non-carers to their carer colleagues being granted flexibility that has not been available to them?
10. Do you find that there's a difference in attitude between larger employers (50+ employees) and smaller ones with regard to flexible working?
11. Do you have any comments on your experience of flexible working from an advisor's perspective?

1. How many of your enquiries are about flexible working?

Bob	1%
Carol	1%
Ted	2%
Alice	1%
Agnetha	2%
Björn	2%
Benny	15%
Anni-Frid	4%

Seven of the advisors estimated that between 1% and 4% of enquiries were regarding flexible working. One answer of 15% would seem to indicate an outlying result, but even so, the results suggest that only a handful of requests about flexible working are received each week from Peninsula's clients. That could indicate that there are few problems processing the requests. However, it could possibly mean that after ten years in operation, everyone who did qualify has applied and has had their request accepted or rejected, and that when the new qualifying groups emerge there could be lots of new requests.

2. How many rejected requests are appealed?

Bob	10%
Carol	50%
Ted	55%
Alice	10%
Agnetha	75%
Björn	60%
Benny	95%
Anni-Frid	80%

There was quite a range in the responses to this question, from 10% right up to 95%, with a mean of 54%. This is probably because of the relatively small number of enquiries each advisor has handled on flexible working, and we do not feel that any real conclusions can be drawn from this sample other than that it would be difficult to predict whether a rejected request will go to appeal on statistical likelihood alone; only the strength of feeling held by the applicant and their will to follow it through will matter.

3. Roughly what proportion of appeals result in a changed decision?

Bob	—
Carol	50%
Ted	10%
Alice	20%
Agnetha	25%
Björn	10%
Benny	0%
Anni-Frid	2%

Again, there seems to be rather a large range here, and the same small sample size can probably be held responsible. However, no respondent thought that more than half of appeals led to the request being accepted after an initial rejection, and most put the figure below 20%. This would indicate that employers are not generally feeling pressured into changing their decision. Perhaps during the time that passes between original request and appeal, there are structural changes or multiple requests for flexibility that make some requests viable.

4. What is the most common requested change from the list below?

Options: Hours / Location / Days / Contract / Other

Bob	days/hours
Carol	days/hours
Ted	days/hours
Alice	days
Agnetha	hours
Björn	hours
Benny	hours
Anni-Frid	hours

All but one respondent said that changed hours were the main change requested, which is not unexpected as this is what most employers would associate with “flexibility”. Three considered days and hours to be about equal, and one thought she had dealt with more requests for changed days. However none of the advisors can recall dealing with a request to change location, contract or other form of flexibility, which might be reassuring to businesses.

5. Do employers struggle to meet the 28-day deadline to have the meeting or the 14-day deadline to deliver a decision?

Bob	no
Carol	no
Ted	occasionally
Alice	no
Agnetha	no
Björn	no
Benny	no
Anni-Frid	no

There does not seem to be any evidence to suggest that there are significant problems with employers dealing with requests within the 28+14-day deadlines. This could be because of a low number of requests or because of their having good procedures in place. Under the post-30 June 2014 regime, the time limit will be extended to 3 months for the whole response and decision process, so it should be even less burdensome for employers.

6. Would you say employers in general understand the law?

Bob	yes and no →
Carol	no
Ted	no
Alice	yes
Agnetha	no
Björn	no
Benny	yes
Anni-Frid	yes

There appears to be a 50/50 split in responses to the question as to whether employers understand the law. This is significant and suggests that there needs to be more education on flexible working, if not just to put concerned business owners' minds at rest. "Bob" qualified his yes/no response thus: "Business owners tend to fear these types of requests initially. They have a basic understanding of the right, but not the process."

7. Have any employers experienced serious problems after granting flexible working to an employee? Please give examples if so.

Bob	—
Carol	no
Ted	no
Alice	very few
Agnetha	yes →
Björn	yes →
Benny	no
Anni-Frid	no

Three quarters of respondents said they have experienced no significant issues related to the granting of flexible working. Presumably most businesses take the time to assess the likely impact of a decision to grant flexibility before giving it the go-ahead. For some, flexibility in their staff might actually be beneficial on balance. However, one said that employers had expressed a concern that granting flexible working would "set a precedent" that would make it more difficult to justify a rejection in the future. Another respondent had dealt with cases where changes in working hours had resulted in serious operational issues, specifically staff falling asleep on the job.

8. Have employers noticed benefits to their companies since granting flexible working? (For example enhanced morale, office being open longer)

Bob	none reported
Carol	none reported
Ted	none reported
Alice	none reported
Agnetha	none reported
Björn	none reported
Benny	none reported
Anni-Frid	reduced absenteeism

As far as benefits are concerned, all but one respondent had not been informed of any post-flexible working benefits. Some pointed out that this does not necessarily mean there *were* no benefits, as clients tend to approach Peninsula when they have a problem.

The sole exception in the group was "Anni-Frid", who had been told by a client that absenteeism had been reduced after flexible working was granted.

9. Has there been resentment among non-carers to their carer colleagues being granted flexibility that has not been available to them?

Bob	none reported
Carol	none reported
Ted	yes
Alice	yes
Agnetha	concern expressed
Björn	yes
Benny	yes
Anni-Frid	yes

There were several reports of ill-feeling among employees who did not qualify for flexible working. However, most respondents did not seem to consider it a major problem. Employers have, after all, never been forbidden from offering flexible working to anyone who requests it. Any potential resentment should no longer be attributable to caring duties after the right to request is rolled out completely, so this should become a moot point.

10. Do you find that there’s a difference in attitude between larger employers (50+ employees) and smaller ones with regard to flexible working?

Bob	yes
Carol	no
Ted	yes
Alice	yes
Agnetha	yes
Björn	yes
Benny	yes
Anni-Frid	yes

Most respondents did feel that in their experience, there were differences between large and small companies when it comes to flexible working. However the yeses were not uniform. Most thought that larger companies were better placed to cope with flexibility because each instance would have a small effect whereas a single flexible worker in a small company could cause a greater upheaval. However “Bob” thought the opposite – in his experience, larger companies were *less* likely to grant flexible working, perhaps because they are less likely to have a “family-friendly” environment.

11. Do you have any comments on your experience of flexible working from an advisor's perspective?

Bob	"I suspect there may be claims of discrimination :: difficulty in prioritising requests :: these will probably be rare, however – it will probably make little difference"
Carol	"I think employees think they are <i>entitled</i> to flexible working, not simply to request it. I don't see there being more accepted – employers will push back more"
Ted	"I can't see much effect happening. There will probably be initial interest but employers will review them as they always have for the allowed groups – in line with operational requirements. I don't think people without a specific need will bother to request a change."
Alice	—
Agnetha	"There doesn't seem to be a lot of concern over it, so I don't see a huge change. It's important to remember that regardless of the reason for the request, employers have the final say. Requests based on childcare could cause problems on discriminatory grounds."
Björn	"Employers don't like employees making requests, and often argue that they need a regular, full-time workforce."
Benny	"I think more employers will refuse all flexible work requests."
Anni-Frid	"I think once the initial flurry of applications are refused, new applications will drop off. If an employer grants requests, the opposite will probably happen."

Likely Impacts of the Changes

In many ways the extension of flexible working is a positive move in that it ends differential treatment against those without children or caring responsibilities. It's entirely possible that employees could have used the *fact* that they had children to request flexible hours and then not actually use the new-found flexibility to benefit their children; the same applies to those caring for adults. There is simply no way of policing what is essentially employees' personal free time – and once the contract has been changed (as is a requirement of the law) that change is permanent.

However, some business owners are concerned. They worry, for example, that they might not be able to cite their preference for nine to five hours as reason enough to refuse flexible working. It's important to remember that as has always been the case, a decent and justifiable business reason will be enough to refuse a request for flexible working.

Based on our survey, we have summarised the potential benefits and drawbacks of the wider roll-out on the following page.

Detrimental Impacts of Changes for Business

- While there have been concessions to satisfy business, the main detriment is that staff will be able to request changes in their work contracts. While businesses with justifiable commercial reasons will be able to turn down requests, it's not impossible to imagine that rejection could lead to some ill-feeling.
- Setting a precedent – and sticking to precedents already made – will become essential in the new regime. Because only *business reasons* will be allowable justifications, the reasons behind *existing* flexible working (i.e. caring duties) will no longer be relevant. Some employers might feel forced to grant flexible hours to employees simply because they have been agreed for carers, even if there's a detriment to the business. It will be important to seek professional advice in such cases.
- Businesses will have to keep a close eye on staff's general wellbeing after granting changes to working hours, especially if they are notable changes. The body clock is powerful in humans, and swift changes can have a similar effect to jet-lag – not something that can be defeated by anything other than sleep and gradual acclimatisation. It might be worth phasing in any significant changes.
- A potential problem could prove to be the volume of requests. Since only a limited group of employees could make a request in the pre-30 June regime, the change to universality could result in a large burden on busy HR departments and management.
- There could be a particularly large spike in requests for flexible working in the immediate aftermath of the change on 30 June 2014.

Beneficial Effects

- It needs to be stated that the open availability of a request for flexibility does not necessarily affect business adversely. First, there's no obligation to grant requests; and second, many companies have truly benefited from flexibility – staff might simply have been uncomfortable asking for it in the past.
- There seems to be some anecdotal evidence that introducing flexibility has a positive impact on staff morale.
- We can also be quite confident that the majority of requests for flexibility will be related to hours, closely followed by days worked. This need not be a great burden on employers. It seems that requests for the other forms of flexibility are small in number.
- The fact that there is no longer an obligation to grant an appeal is helpful for businesses. It would appear that only a small percentage of appeals ever resulted in changed decisions, but they would still have eaten up the valuable time of HR staff.
- There should no longer be ill-feeling and resentment among those without responsibility for children or adults because the right to be considered for flexible working will now be universal.
- Businesses will have longer to deal with requests for flexibility.