

NEW FLEXIBLE WORKING ARRANGEMENT RULES

The modern awards now include new rules about requests for flexible work arrangements. Employers should familiarise themselves with these changes prior to discussing an employee's request to change their working arrangements.

What is a Flexible Working Arrangement?

A flexible work arrangement is a change to an employee's usual work arrangement that is agreed between the employer and the employee. Examples of changes in working arrangements include changes in hours of work, changes in patterns of work and changes in location of work.

Who can request Flexible Working Arrangements?

Under the Fair Work Act 2009 (Cth) (**FW Act**), certain employees are entitled to request flexible work arrangements. To be eligible, an employee must have worked for the employer for at least 12-months on a permanent basis. Long term casuals may also be eligible.

Employees can request flexible working arrangements in the following circumstances:

- the employee is a parent, or has responsibility for the care of a child who is of school age or younger
- the employee is a carer (within the meaning of the *Carer Recognition Act 2010*)
- the employee has a disability
- the employee is 55 or older
- the employee is experiencing violence from a member of the employee's family or
- the employee provides care or support to a member of their immediate family or household who requires care or support because they are experiencing violence from the member's family.

How can an employee request Flexible Working Arrangements?

A formal request for flexible working arrangements under the FW Act must:

- be in writing;
- explain what changes are being asked for; and
- explain the reasons for the requested change.

What are the employer's obligations when they receive a request?

Employers who receive a request must provide a **written response** within **21 days**, stating whether the employer grants or refuses the request. Employers can only refuse a request on reasonable business grounds. If a request is refused the written response must include the reasons for the refusal.

New model term in modern Awards

In addition to the above requirements, the modern awards now include a new flexible work arrangements model term that applies from 1 December 2018.

The model term goes further than the FW Act and requires the following:

1. before responding to a request, the employer must:
 - (a) discuss the request with the employee;
 - (b) genuinely try to reach agreement on a change in working arrangements that will reasonably accommodate the employee's circumstances having regard to:
 - i. the needs of the employee arising from their circumstances;
 - ii. the consequences for the employee if changes in working arrangements are not made; and
 - iii. any reasonable business grounds for refusing the request.
2. if the employer refuses the request and has not reached an agreement with the employee, the written response must include details of the reasons for the refusal, including the business ground or grounds for the refusal and how the ground or grounds apply.
3. if the employer and employee cannot agree on a change in working arrangements the written response must:
 - (a) state whether or not there are any changes in working arrangements that the employer can offer the employee so as to better accommodate the employee's circumstances; and
 - (b) if the employer can offer the employee such changes in working arrangements, set out those changes in working arrangements.
4. if the employer and the employee can reach an agreement on a change in working arrangements that differs from that initially requested by the employee, the employer must provide the employee with a written response to their request setting out the agreed change(s) in working arrangements.

It is important to remember that significant penalties apply for breaching the FW Act and modern awards. It is recommended that employers develop a procedure to ensure compliance with the above new requirements.

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