



# INFORMATION SHEET

## Workplace Services

Date: 18 December 2018  
Reference: ZFSIRR0854C

### NAT- Responding to Flexible Work Requests

Employees have a lawful right to request flexible working arrangements under the *Fair Work Act 2009* (the Act). The obligations in responding to flexible working arrangements for award based employees are slightly different as compared to obligations for award-free employees covered by the Act. This is due to modern awards having recently been updated to provide further obligations when responding to an employee's request for flexible working arrangements.

The following information sheet will provide guidance in terms of responding to flexible work requests for award based employees.

#### What are flexible work arrangements?

Flexible arrangements include but are not limited to part time work, job share arrangements, working additional hours on some days to provide for shorter hours on other days, or home based work.

#### Who can request flexible work arrangements?

Employees who:

- are the parent, or have responsibility for the care of a child who is of school age or younger;
  - On return to work after the birth or adoption of a child an employee is entitled to request to work on a part-time basis, to assist the employee to care for the child.
- are a carer<sup>1</sup>
- have a disability;
- are 55 or older;
- are experiencing violence from a member of the employee's family;
- provide care or support to a member of his or her immediate family or a member of his or her household who requires care or support because the member is experiencing violence from the member's family.

There are some restrictions on when an employee may request flexible working arrangements including:

- Full and part time employees must have completed at least 12 months continuous service; and
- Casual employees must be "long term" casuals with a reasonable expectation of continuing employment.

#### What do you need to do if you receive a flexible work request?

If you receive a flexible work request you need to give the employee a written response to the request within 21 days.

Before responding to a request you must discuss the request with the employee and genuinely try to reach agreement on a change in working arrangements that will reasonably accommodate the employee's circumstances having regard to:

- the needs of the employee arising from their circumstances;
- the consequences for the employee if changes in working arrangements are not made; and

<sup>1</sup> This includes all people who provide personal care, support and assistance to individuals who need support due to disability, a medical condition, including a terminal or chronic illness, mental illness or fragility due to age. However will not include support or assistance provided under a contract of service or a contract for the provision of services, in the course of doing voluntary work for a charitable, welfare or community organisation, or as part of the requirements of a course of education or training.

- any reasonable business grounds for refusing the request.

### **What if we cannot accommodate the employee's request?**

You can only refuse the request on 'reasonable business grounds'. The Act sets out a non-exhaustive list of what are considered 'reasonable business grounds'. These include:

- the cost to accommodate the request is excessive;
- there is no capacity to reorganise work arrangements;
- the impracticality of any arrangements that would need to be put in place, including the need to recruit replacement staff;
- there would be a significant loss of efficiency or productivity;
- there would be a significant negative impact on customer service.

If you cannot accommodate the employee's request, 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; and
- state whether or not there are any changes in working arrangements that you can offer the employee so as to better accommodate the employee's circumstances, and if you can offer the employee such changes in working arrangements, set out those changes.

### **What should we do if we can reach an alternative arrangement with the employee?**

If you and the employee reached an agreement on a change in working arrangements that differs from that initially requested by the employee, you must provide the employee with a written response to their request setting out the agreed change in working arrangements.

### **Can an employee challenge our refusal of a request?**

An employee can utilise dispute resolution procedures under modern awards should they believe you have not discussed the request, and responded to the request in the way required under the award.

Dispute resolution procedures encourage further workplace discussion, and eventual referral to the Fair Work Commission for intervention (mediation, conciliation, etc.) if required. Of note, there is no recourse under the Act where the employer's refusal is not based on reasonable business grounds.

However, when refusing a request you should be aware that an employee may have remedial options under anti-discrimination laws. For example in NSW a person is discriminated against on the grounds of carer responsibilities, disability or age if the employee is:

- treated less favourable than another person in the same/similar circumstances; or
- required to comply with a requirement that is unreasonable having regard to the circumstances.

Similar laws exist in other States/territories, and Commonwealth laws specifically provide protection from discrimination on the basis of age and disability.

### **Be proactive!**

The best approach is to be proactive, and consider the potential impact flexible working arrangement requests will have on your workplace, and the likelihood of such requests occurring.

Accordingly, you should consider:

- implementing a flexible work policy;
- training managers/supervisors so you can be sure that the business satisfies the law's requirements;
- identifying the factors that managers/supervisors should consider when responding to requests;
- identifying options which can be used when responding to requests. This might include trialling a flexible work arrangement for a set period as opposed to refusing a request outright; and
- additional factors that might be relevant if an employee's request is granted. This might include the impact on other staff or WHS considerations if employees will be working from home.

***For more information contact your Workplace Adviser on 1300 650 620***