

Code of Practice on Right to Request Flexible Working and Remote Working Published by WRC

March 2024

The Workplace Relations Commission ('WRC') has published its Code of Practice ('Code') for employers and employees on how to deal with requests for flexible working and remote working arrangements. Following the publication of the Code, the Minister also commenced those relevant sections of the Work Life Balance and Miscellaneous Provisions Act 2023 ('2023 Act') and the Parental Leave Acts 1998-2023. Here are some of the main points.

Eligibility to Make a Request

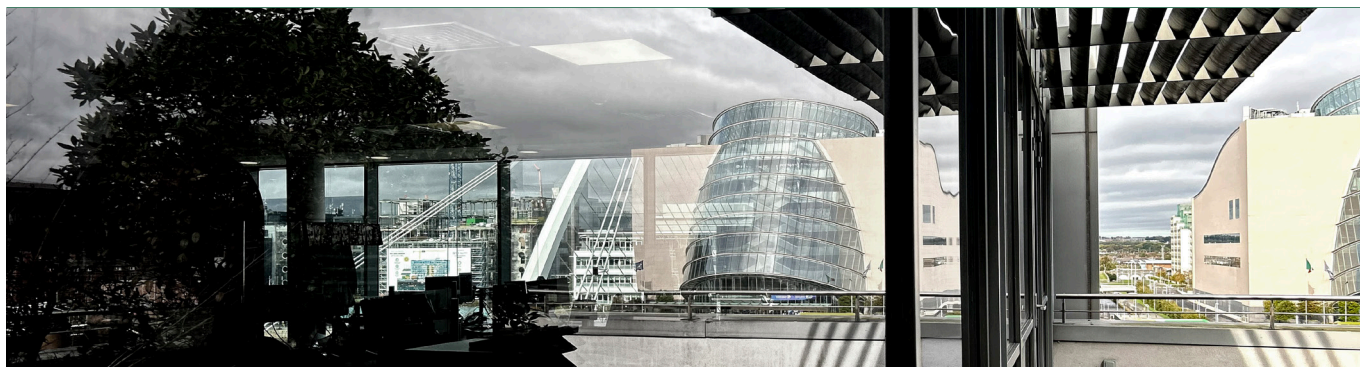
(a) Flexible Working Arrangements

A flexible working arrangement is where an employee's working hours or patterns are adjusted, including through the use of remote working arrangements, flexible working schedules or reduced working hours. They can include such types of flexible working as working part time or working compressed hours, for example a five-day week compressed into 4 days.

To make a request for flexible working pursuant to the 2023 Act, an employee must be:-

- A parent or in loco parentis to a child under 12 (or under 16 if the child has a disability or illness); or
- Providing personal care or support to either a child, spouse, civil partner, cohabitant, parent, grandparent, sibling or another person living in the same household who needs significant care or support for a serious





medical reason.

(b) Remote Working Arrangements

All employees have the right to make a request for remote working, that is an arrangement whereby some or all of the work ordinarily carried out by an employee is provided at a location other than at the employer's place of business without a change to the employee's ordinary working hours or duties.

Making a Request

An employee must have completed 6 months continuous employment before a flexible or remote working arrangement can start, although a request can be made at the commencement of the employment.

The Code sets out certain requirements in terms of making a request for flexible or remote working, including:

- A request should be made as soon as practicable but not later than 8 weeks before the proposed starting date.
- A request must be in writing and signed by the employee. A request made online is permissible.
- A request for flexible working must include the form of flexible working being requested and the proposed start date and duration of the arrangement. In order to expedite the process, it should also include details of the person to be cared for, the employee's relationship to the person, the nature of the care and support required and any supporting documentation, including a birth certificate where the person to be cared for is a child of the employee and a medical certificate, where relevant.
- A request for remote working must include how many days/which days the remote working will apply to, the proposed start date and end date of the arrangement, the

location and its suitability and the reasons for requesting remote working. The Code sets out possible reasons, including reducing daily commute and carbon footprint, optimising quality of life outside normal working hours and personal circumstances.

The Code sets out that both employers and employees need to be mindful of their obligations under the GDPR in relation to sensitive personal data.

Responding to a Request

The employer must respond within 4 weeks of receiving the employee's request. However, the employer can inform the employee that more time is needed to assess the request. Such an extension cannot exceed 8 weeks.

An employer should consider a request in an objective, fair and reasonable manner.

An employer and an employee can agree, in writing, a change to a flexible or remote working arrangement which has already been signed, before or after it has started. On the expiration of an arrangement, the employee is entitled to return to the original working arrangement that they held immediately before the approval of the arrangement.

Termination of Flexible or Remote Working Arrangement

An employer can terminate a flexible or remote working arrangement if satisfied that it would have or is having a substantial adverse effect on the operation of the business, profession or occupation on account of certain specified reasons, including seasonal variations in the volume of work concerned and other relevant matters. When considering termination, an employer should consider if their reasons for terminating the arrangement are objective, fair and reasonable.

A written notice of termination must be given at least 4 weeks before the original working arrangement recommences.

In advance of giving such a notice, the employee must be informed in writing of the proposal to terminate, including the grounds for the termination. The employee will have 7 days to make representations on the proposal to terminate.

If an employer decides to proceed with terminating the arrangement, the employee must return to their original working arrangement on the date stated in the notice.

An employer may also terminate a flexible working arrangement if there are reasonable grounds for believing that the arrangement is not being used for the purpose for which it was approved. An employer may terminate a remote working arrangement if there are reasonable grounds for believing that the employee is not fulfilling all of the requirements of their role. An employee is required to return to their original working arrangement 7 days after receiving notice of termination for abuse of an arrangement.

Points to Note for Employers

Remote working arrangements may lead to changes to the employee's terms and conditions in line with the Terms of Employment (Information) Act 1994, as amended.

An employer must keep a record of approved flexible working and remote working arrangements taken by their employees. An employer who fails to retain records is liable on summary conviction to a fine of up to €2,500.

A specific breach of the 2023 Act may be referred to the WRC, within 6 months of the date of the breach, with a possible extension to a maximum of 12 months if reasonable cause exists. Under the 2023 Act, neither the WRC nor the Labour Court have the legal power to assess the merits of any decision made by an employer. However, they can look at the process which led to the employer's decision. The WRC, or the Labour Court on appeal, may direct the employer to comply with specific sections of the 2023 Act and/or award compensation to the employee, not exceeding 4 weeks remuneration in the case of remote working and not exceeding 20 weeks' remuneration in the case of flexible working.

The Code contains useful templates for developing a work life balance policy for an employers' organisation and applications

for flexible and remote working for employees.

Conclusion

The Code provides helpful guidance for employers and employees navigating the complexities of requests for flexible and remote working arrangements. In particular, it offers practical assistance to employers seeking to ensure that they comply with their statutory obligations, as contained in the 2023 Act. It will be a welcome tool for employers in terms of handling requests received from employees and validly terminating arrangements, if necessary.

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