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The Right to Request Flexible Work – what does it mean and what can Australia learn from the UK?

In just over 6 months Australia's new National Employment Standards will finally provide working parents, with children under school age, the right to request a flexible work arrangement. But what does this 'right to request' actually mean? What will parents be entitled to and on what grounds can an employer deem the request unreasonable?

Sydney University's Women and Work Research Group (WWRG) recently presented the highlights and lessons learnt since the UK's 'right to request' flexible work was introduced in April 2003; and it appears there is much Australia can learn.

What is the 'right to request' flexible work and who is entitled?

Similar to the UK, Australian employees caring for children under school age, and with more than 12 months service, will soon have a lawful right to a formal procedure that enables them to propose and request a flexible work arrangement. Employers will have an obligation to investigate the viability of the flexible work request and formally respond, in writing, to the employees' request.

This new 'entitlement' signifies the biggest change in Australian Government policy in relation to the employment rights of working parents in decades and in part delivers what human rights and anti discrimination advocates have long campaigned for concerning improved work life balance.

The 'reasonable' test

Although not yet clarified in Australia, it appears that there are no specific rules or guidelines around the type flexible work arrangement and conditions that an employer or employee can propose. As in the UK, the only key stipulation is that an employer may not refuse the employee's request unless it is deemed 'unreasonable'. Here is where the confusion sets in for both employee and employer alike – how is 'reasonableness' measured; what is the criterion? Over the last 7 years UK parents and employers have tested the meaning of 'reasonable' and its ambiguity, and have learned some lessons the hard way. Here's a brief snapshot based on the Sydney University WWRG's "Right to Request" research findings presented by Alexandra Heron at Sydney University last month.

UK lessons highlights

According to the WWRG's UK findings; even though the 'right to request' flexibility has been in place since 2003, it is estimated that only 60% of parents actually know that they have the right to request flexibility.

While a formal 'right to request' procedure has been chartered as part of the UK's legislation, there is no formal flexible work request 'form' that an employer must make available to employees in order for the individual to clearly plan and present a well considered flexible work proposal. This relies entirely on the individual's ability to construct a 'reasonable' and feasible flexible work proposal.



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'Reasonable' grounds to refuse a flexible work request include;

- Costs
- Inability to staff the change
- Detrimental impact on quality or performance
- Too little work when employee proposes to work/too much when they will be absent
- Planned structural changes

An employer must evidence that it has taken conclusive steps to investigate the flexible work request or other alternative options. Employers may not refuse a 'reasonable' request without rationale, evidence or based on one factor alone, such as 'costs'.

Australia and the 'right to request' flexibility

Leading up to the introduction of the National Employment Standards (January 2010) and its flexible work provisions; what can Australia do to embrace the 'right to request' flexibility for the benefit of all?

Introducing the right to request flexibility in your organisation:

- Ensure your organisation has an up-to-date flexible work policy that is clearly documented and communicated to all employees
- Make flexibility the 'norm' and an entitlement for all employees, not just working parents. This avoids conflict issues between other employee groups and means everyone has a equal opportunity to access flexibility
- Educate employees on the type and range of flexible work arrangements that are feasible for your organisation to accommodate and avoid confusion about what's possible and what's not
- Make available a flexible work proposal 'template' or 'form' which provides clear instructions to employees and managers on how to plan, negotiate and implement a flexible work arrangement
- Be willing to trial a flexible work arrangement before refusing an employee's request eg: for 3 months
- Train managers on the benefits of flexible work; what they can do to overcome barriers and successfully implement a flexible work arrangement
- Publicise good examples of flexible work arrangements that are working in your organisation

For more information about the right to request flexible work UK research findings, contact the Women and Work Research Group, Work and Organisation Studies, Faculty of Economics, University of Sydney
<http://wwrg.econ.usyd.edu.au/>.

For more information about the National Employment Standards and Flexibility, contact Emma Walsh, Director, Mums@Work on emma@mumsatwork.com.au or phone 02 9967 8377.