

# **A GUIDE TO UNDERSTANDING FLEXIBLE WORK**



## ***FAIR WORK ACT***

### **Information Sheet**

This information is intended for employees working under the *National Employment Standards* (FWA). For Queensland Public Service, Local Government or other employees working under the *Industrial Relations Act 2016* (QLD), please refer to *A guide to understanding Flexible Work – Queensland*.

#### **What is a flexible work arrangement?**

Flexible work is one of the 11 minimum entitlements provided under the *National Employment Standards* (NES). Workplace agreements and Awards can provide more generous provisions but cannot provide for less than the NES. Where state and territory laws provide an employee with a more favourable entitlement to flexible work arrangements, this will continue to apply. This is determined under the *Fair Work Act* (FWA).

Examples of flexible work arrangements may include changes to:

- hours of work (start and finish times);
- patterns of work (split shifts or job-sharing);
- locations of work (work from home or other locations); or
- other provisions (this list is not exhaustive).

#### **Who is eligible to apply for flexible work?**

Under the FWA any employee, other than casuals, can apply for flexible work arrangements if they have been with the same employer for more than twelve months. Employees in the below circumstances should be prioritised for flexible work considerations, however, each case must be considered on its own merits.

- Parents of children or those who have responsibility for the care of children school age or younger.
- Carers (as recognised under the *Carer Recognition Act 2010*).
- People with a disability.
- People who are 55 or older.
- People who are experiencing domestic and family violence or provide care and/or support to a member of their household or immediate family who requires care because of family or domestic violence.

Employees should provide their employer with as much information as possible to enable them to make a considered decision based on the circumstances at the time.

#### **How do you apply for flexible work?**

Employers may have their own internal policies and process to support the process, however, it is important that requests be:

- made in writing;
- outline clearly what changes are being requested and
- explain the reasons for the change/request and the impact on the employee if it is not supported.

#### **What must employers/managers consider with a request for flexible work?**

Employers and managers must consider each request on its own merits and not make blanket decisions or implement quotas or limits. As part of this process, they should take into consideration:

- the needs of the employee;
- consequences of not approving the request; and

- responding with either an approval or refusal to the request within 21 days of receipt. (If the request is not approved, a response with reasons for refusal must be provided in writing to the employee.)

### **What are reasonable grounds for an employer to not approve a request for flexible work?**

While not a definitive list, reasonable grounds need to be demonstrable and could include:

- prohibitive and additional cost to the employer;
- impact on other employees' working arrangements and because other employees' arrangements cannot be changed;
- impracticable impact on other employees' working arrangements and/or requires hiring of new employees to accommodate the request; or
- significant loss of productivity and/or the request will have a significant impact on customer service and/or delivery.

### **What are my rights if the employer does not support my request?**

From 6 June 2023, employees can access the Fair Work Commission and its dispute resolution provisions to assist with flexible work requests that are not able to be resolved at the workplace level.

Dispute resolution provisions are also available when requests are not responded to within 21 days.

### **Other considerations**

It is advisable to confirm the flexible work arrangement in a written agreement that outlines:

- what flexibility is being provided and what has been agreed to;
- any limitations or conditions on the agreement; and
- check in and review dates to ensure the agreement is still working for both parties and accommodating any personal and professional changes.