

Managing requests for flexible work

A quick guide for managers and employers

This quick guide will help you prepare for and manage flexible work requests.

Employers have important obligations in federal and state law when it comes to considering, managing and responding to flexible work requests. This guide will help you understand these obligations so you are ready to respond constructively and balance requests against the needs of the business.

There are also some helpful tips so you can manage employees' flexible work arrangements, once they are in place, to benefit them, their colleagues and the workplace. This guide recaps the information and ideas that you've gathered in the Flexible Work Request Planner chatbot.

What is flexible work?

Flexible work arrangements are defined by the *Fair Work Act 2009*. 'Flexible work' includes changes to:

- the hours of work, such as starting and finishing times
- the patterns of work, such as working part time, split shifts or job sharing
- the locations of work, such as working from home

Requests for flexible work can be for a temporary situation or for an ongoing arrangement.

The benefits of flexible work

Promoting a healthy work-life balance in the workplace helps employers retain skilled staff and boost productivity and wellbeing. According to the [Diversity Council of Australia](#), flexible work options can provide higher levels of employee engagement, drive performance and maximise wellbeing of individuals and teams.

There is a strong business case, with research demonstrating a cost benefit to allowing staff to work flexibly within the limitations of your industry. A [study by Nous Group](#) analysed the financial return in three Victorian workplaces by providing flexible work and found improved staff satisfaction without compromises to customer service or productivity. The study also found that organisations can experience a [net benefit](#) of as much as four per cent of their revenue, which in some cases may amount to tens of millions of dollars each year.

This research also shows that managers play a critical role in the successful implementation and management of flexible work arrangements. When managers have a positive and proactive mindset towards requests for flexible work, they are able to respond without stress and can construct viable options with their staff.

Remember

Your employee's request is giving you important information. It is letting you know what they need to do their job well and meet their other important responsibilities outside work. Ensuring good communication is key in making changed working arrangements work well for you both.

Managing your obligations

1. Know the law

Who can request flexible work?

In Victoria, all employees can request flexible work. However, some employees have special protections for their flexible work requests.

These protections mean that an employer cannot unreasonably refuse an employee's request for flexible work, if the employee has met criteria under the Fair Work Act and the *Equal Opportunity Act 2010*.

An employee's contract, your workplace enterprise agreement or industry award can also set out further details about rights or obligations when it comes to flexible work. It's a good idea to get across these details as part of your preparations to talk with your staff member about their flexible work request.

Tip

By understanding your legal obligations, you are also putting into place a preventative approach that can help ensure discrimination does not occur in how requests are managed.

How do these protections work?

Protections under federal law

The Fair Work Act provides groups of employees with a protected right to request flexible work options, if the person has worked in their workplace for at least 12 months AND is:

- ☐ a parent (or has responsibility) for a school-aged child or younger
- ☐ a carer (under the *Carer Recognition Act 2010*) – someone who cares for or supports an individual because of their specific needs, such as a disability, medical condition or age
- ☐ living with a disability
- ☐ 55 years of age or older
- ☐ experiencing violence from a member of their family, or
- ☐ providing care or support to a member of their household or immediate family who requires it because they are experiencing violence from a member of their family

These protections also extend to casual employees who have met one or more of these criteria, if they have been working regularly for their employer for at least 12 months and expect to continue.

When a staff member who meets one or more of these criteria requests flexible work, as their manager you must respond to their request in writing within 21 days. Their request also needs to be in writing, outlining the changes requested to working arrangements and the reasons why these changes are requested.

Protections under state law

In Victoria, the Equal Opportunity Act also places obligations on employers to *reasonably accommodate* requests from parents or carers for flexible work.

This means that an employer cannot unreasonably refuse an employee's request for flexible work, if the employee is requesting flexible work to fulfil their parenting or caring responsibilities.

If an employee has a disability you also have a responsibility to *reasonably adjust* their workplace to ensure that they can fairly participate in the workforce. These adjustments may include negotiating flexible work arrangements with the employee, to better enable and support their participation at work.

2. Managing requests

Your starting point

As a manager, you will need to weigh up all relevant facts and circumstances in considering a flexible work arrangement for each employee.

It is important to consider each request seriously and individually. Each request has different facts and circumstances, and an arrangement that may work effectively in one situation may not work in another. Discuss with your employee the types of flexible work they are seeking and take into account the needs of your business when assessing if the changed arrangements will work.

Keep in mind that when an employee has met criteria under state or federal law for their request to have special protections, such as parenting or carer responsibilities, then you have additional obligations when it comes to assessing their request.

Remember

When an employee has protections under federal or state law, as a manager you can only turn down their flexible work request based on reasonable grounds for doing so.

Receiving a request

An employee may first raise their need for flexible work arrangements in a number of ways, such as informally or formally, verbally or in writing.

Your discussion is just the beginning. You may need to consider the request and discuss alternative options, or your staff member may ask you to come up with solutions.

Your employee is making a request and trying to find the best way to meet their life needs and work needs; they are likely very open to hearing the impact on the business and discussing alternative ways that their request can be accommodated. In first discussing the request with the employee, be prepared to consider the employee's **need** for flexible work and the **consequences** for the employee if these changes to working arrangements do not go ahead.

You will also need to explain clear and reasonable business grounds for refusing parts or all of an employee's request. It's important to prepare for these conversations so you can suggest different flexible work options in your discussion. Make sure that you use a private space to have these conversations.

Considering a request

All requests should be considered and discussed in good faith. Middle ground can often be found when employers and employees discuss a request for flexible working arrangements.

Requests for flexible work might require you to consider changes to:

- Hours of work
- Break times
- Rosters
- Overtime
- Leave arrangements
- Scheduling of staff meetings
- Work travel
- Location of work
- New or existing job share arrangements
- Access to other workplace areas

Reviewing the request for flexible work under obligations in state law

Under the Equal Opportunity Act, you will need to review relevant facts and an **employee's circumstances** when responding to a request from a parent, carer or person with disability requesting reasonable adjustments. These include:

- the employee's circumstances and role
- the nature of the arrangements required to accommodate the employee's parental or carer responsibilities or adjustments required to accommodate the person's disability
- the consequences for the employee if their request for flexible work is not accommodated by the workplace.

An employer may also take into account **circumstances related to the business** when considering an employee's request for flexible work, including:

- your financial circumstances
- the size and nature of your workplace and business
- the effect on your workplace and business of accommodating the request or making the adjustment, including the financial impact, the number of people who would benefit or be disadvantaged, and the impact on efficiency and productivity
- the consequences for the business of having the flexible work arrangements.

Remember

Failure to accommodate the requests from parents or carers, or to provide adjustments in the case of disability, may be discrimination in some cases.

Reviewing the request under obligations in federal law

If an employee has met certain criteria under the Fair Work Act (listed in this guide), an employer cannot turn down their request for flexible work unless it is reasonable to do so in the circumstances.

The [Fair Work Ombudsman's website](#) has more details on reasonable business grounds for refusing a request, which includes:

- if the requested flexible work arrangements are too expensive

- if there's no capacity to change the working arrangements of other employees or recruit new employees to facilitate the request
- if the request for flexible work would result in a significant loss of productivity
- if the request would negatively impact customer service.

Remember

When you receive a formal request for flexible work from an employee who has protections under the Fair Work Act for making a request, then you must respond to their request in writing within 21 days. In your written response, you must outline if the request is approved or refused, and any reasonable business grounds you used if you've refused the request.

Turning down a request

While an employer does not have to agree to every request for flexible work, all requests must be seriously considered. You cannot refuse a request for flexible work arrangements simply because it has not been done before in your workplace or because it does not fit in with current workplace practice.

If you have decided to refuse a request, in general it is good practice to meet with the employee and explain the reasons. However, if you have decided to refuse a request for flexible work based on reasonable business grounds for an employee who has a protected right to request flexible work, then you have an obligation to outline your reasons in writing, and also to offer alternative arrangements if any are available.

Keep a record of the discussion, as well as any other information that was used to come to the decision.

Protections from discrimination and victimisation

If a request for flexible work is turned down, an employer must take care not to discriminate against the employee, being mindful of under state and federal laws that apply.

For example, refusing a request that would unfairly disadvantage a parent or carer, or any other person on the basis of age, disability, sex or other characteristic protected by law; might be direct or indirect discrimination.

Under the Equal Opportunity Act, an employer must not treat an employee unfavourably because of a personal characteristic protected at law. If a person faces retaliation because they made a request for flexible work this may be considered victimisation, which is against the law.

Discrimination may occur under the Fair Work Act if an employer takes adverse action against an employee, based on a protected characteristic such as their race, disability, pregnancy, carer or parental status.

Tip

You can access further resources about discrimination and protected characteristics on the websites listed in the resources section.

3. Making the changed arrangements work

Trial periods

Consider a trial period to help you review the effectiveness of the changed arrangements and the impact on the business.

In your discussion, you could suggest some practical ways for the employee to check in during the trial period. For example, you may choose to schedule regular meetings or calls during the trial period to assess how the new arrangement is working, or ask your employee to document their progress throughout the trial period for further discussion at the trial's end.

Ask your employee for their suggestions on how these changed arrangements might best function, how you can best keep them in the loop; and set a timeframe between one to three months for the trial period. Open lines of communication with your employees will be important in ensuring the success of flexible working arrangements in your work environment.

Tip

The Flexible Work Request Planner chatbot can help you prepare for a conversation with your employee about their flexible work request and provide some useful talking points to cover in this conversation.

Further resources

Victorian Equal Opportunity and Human Rights Commission

- [Flexible work](#)
- [Information for parents and carers](#)
- [Get help](#): information about discrimination and how to make a complaint

Fair Work Ombudsman

- [Best practice guideline](#): work and family