



# Managing the rules on Flexible Working and Predictable Terms and Conditions

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Presented by...



# MEET THE PRESENTERS AND TECHNICAL SUPPORT



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# USING GOTO WEBINAR



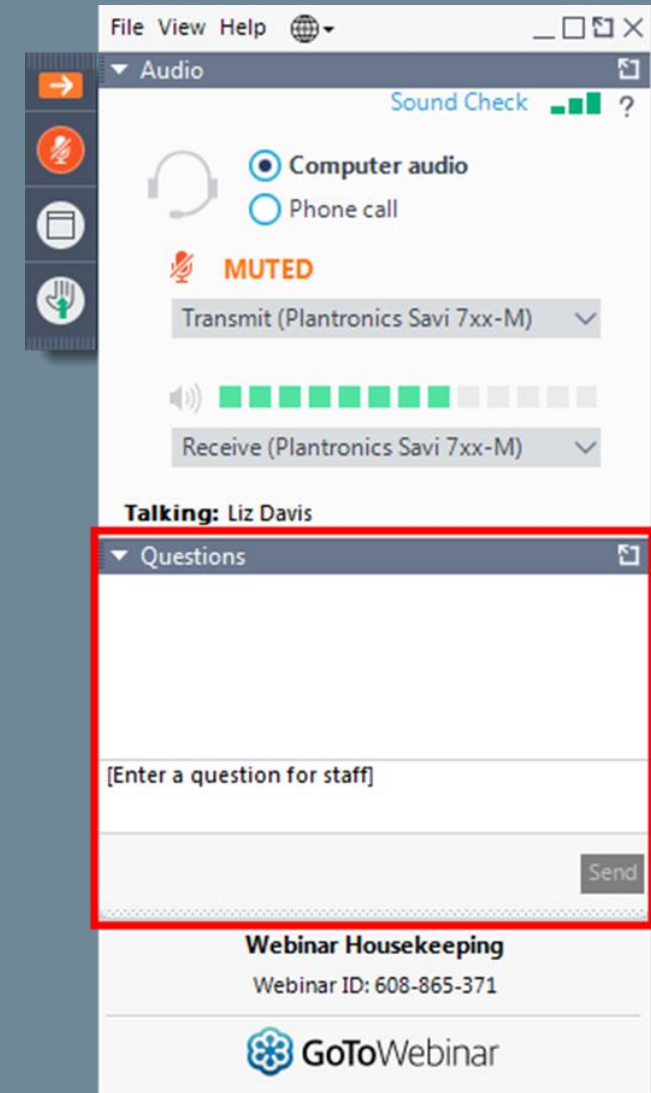
QUESTIONS...



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Please submit your text questions and comments using the Questions panel



# OUR AGENDA

1

What are the new rules on flexible working?

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The Workers (Predictable terms and conditions) Act 2023

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How employment arrangements can help to attract and retain staff

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Q & A

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# What are the new flexible working rules?

# Flexible working rules

- Employees from day 1 of employment can make a request for flexible working.
- The entire process, including an appeal must be completed within 2 months.
- An employee can submit 2 requests in any 12-month rolling period, but only 1 can be live at any one time. A request is live up until either:
  - A decision on the request or appeal is made, or
  - The request or appeal is withdrawn, or
  - An outcome is mutually agreed, or
  - The two-month time frame has expired





# Flexible working rules

- Employers are obliged to consult with an employee before declining a request
- Employers can only decline a request based on the 8 statutory reasons:
  1. The burden of additional costs
  2. A detrimental effect on ability to meet customer demand
  3. An inability to re-organise work amongst existing staff
  4. An inability to recruit additional staff
  5. A detrimental impact on quality
  6. A detrimental impact on performance
  7. Insufficient work available for the periods the employee proposes to work
  8. Planned structural changes to the employer's business



# What has changed?

Employees no longer need to have 26 weeks service to make a request

The number of requests in a 12-month period have increased

Employees no longer need to explain the impact the request may have on the business

Employers must consult with the employee before declining the request

Updated Acas Code of Practice

Updated Policy, forms and letters on our Knowledge Base

New DocShop templates

# The new statutory duty to not refuse the application unless the employee has been consulted about the application

It can help to make sure that all relevant information is understood before a decision is made

The content of the meeting and how it is conducted should allow for a reasonable discussion and consideration of the request

It will usually be helpful to discuss areas such as the potential benefits, any impact of accepting/rejecting it & practical considerations for implementing it

If the request cannot be accepted in full, discuss any potential modifications can be made or if there are suitable alternative options both parties

Whether a trial period may be appropriate to assess the feasibility of the request



# Workers (Predictable Terms and Conditions) 2023: Workers and employees



# Workers and employees

# PREDICTABLE TERMS AND CONDITIONS

- The 2017 Taylor Review of Modern Working Practices found that many workers on zero-hour / casual contracts struggled with one sided flexibility
- One sided flexibility meaning:
  - Workers have to be available to their employer but with no guaranteed work
  - Employers are able to schedule or cancel shifts with little notice
  - Results in insecure hours and income
- The Taylor Review recommended:
  - Introducing a right to request a direct contract of employment for agency workers who have been placed with the same hirer for 12 months
  - Introduce a right for zero hours contract workers to request a more predictable contract after working for their employer for 12 months.
- A public consultation has recently concluded on a draft 'Acas Code of Practice on handling requests for a predictable working pattern'.



# PREDICTABLE TERMS AND CONDITIONS

- It is expected to come into force in September 2024
- Workers will have a statutory right to request a more predictable work pattern if their working pattern lacks predictability
- The draft Regulations define a work pattern as:
  - Number of hours
  - Days of the week worked & the times on those days worked
  - The length of their contract
- To be eligible, the worker must have worked for the employer at least once in the month in the period before the 26 weeks leading up to the day of the request.
- Fixed term contracts less than 12 months are regarded as having a lack of predictability and therefore fall in scope of the draft Regulations. It would mean requesting a change to lengthen the duration or to make it a permanent contract.



# PREDICTABLE TERMS AND CONDITIONS

- All requests for a predictable working pattern must be handled in a reasonable manner and should be given careful consideration
- The draft Acas Code of Practice advises an approach that is based on statutory right to request flexible working:
  - A worker will be entitled to make 2 requests in any 12-month rolling period
  - The request must be in writing and include information as prescribed in the Code
  - If considering rejecting a request, it must be discussed with the worker
- If an employee makes a statutory request for FWR for the purpose of having a more predictable work pattern, it will count as both:
  - One of their two statutory requests for flexible working
  - One of their two statutory requests for a predictable working pattern
- Only one live request is allowed at any one time with the same employer, and this can be for **either** flexible working or for a predictable working pattern.





# PREDICTABLE TERMS AND CONDITIONS

- All requests must be decided and communicated to the worker within one month of the date of request (including any appeal)
- If during the one-month decision period the worker's contract ends, the employer must continue to handle the request.
- May only reject based on a set of 8 statutory reasons (same as those in handling FWR)





# Agency Workers

# REQUESTS TO AGENCIES

- Section B of the draft Code apply to agency workers as defined under the Agency Workers Regulations 2010
- The agency worker must have had a contract with the agency at some point in the month before the 26 weeks leading up to the day of the request
- An assignment with a hirer for 12 months or less is one type of working pattern that lacks predictability. This means, a worker can make a statutory request to their agency to have an assignment with the same hirer for more than 12 months (where eligible).



# REQUESTS TO HIRERS

- Under section B of the draft Code that applies to agency workers (as defined under the Agency Workers Regulations 2010)
- The agency worker must have worked in the same role with the same hirer for 12 continuous weeks within the 26 weeks leading up to the day of the request



# REQUESTS TO HIRERS

- An agency worker can make a request to a hirer, for a predictable working patten for either:
  - A contract of employment with the hirer (i.e. will become a direct employee of the hiring business)
  - A worker's agreement with the hirer to do work or provide a service personally (i.e. will become a worker of the business)
- A request to a hirer must be treated as a request for a contract/agreement in which they do the same or broadly similar work to which they currently do
- The request must also be for a contract/agreement with T&C's which are overall not less favourable than the usual T&C's at the time of the request/that would be expected when the hirer does not have any such employees/workers



# REQUESTS TO HIRERS

- The hirer may need to correspond with the agency to clarify information
- It is vital that correspondence occurs timely given the statutory one-month decision period
- No more than 2 statutory applications during any 12 month period, however, current draft wording in the Code states:
  - “A worker can make 2 statutory requests to their agency and 2 statutory requests to their hirer in any 12 month period
  - Only one request can be live at any one time with the agency and at any one time with the hirer.”





# How employment arrangements can help attract and retain staff

# How can employment arrangements help attract and retain staff?

## Wider talent pool

Embracing flexible options widens your talent pool, including those with caring responsibilities, those with disabilities, or those who live far away from the workplace or those seeking a better work life balance.

## Happy and loyal employees

Research consistently shows a link between flexible working and staff retention.

Employees feel empowered to manage their work around their lives, are happier and more engaged.

Resulting in lower turnover rates, and saving company time and money on recruitment and training.

## Stability breeds trust

Employees also crave stability and predictability, which can be created through clear guidelines for flexible working arrangements, or consistent core hours .

## Better ability to plan

Enable employees to have more control over their schedules. Knowing what hours, they'll be working in advance allows for better planning and reduces uncertainty.



# What is the evidence – the employer's perspective?

**71%**

of businesses believe flexible working has become more important since the pandemic

**60%**

of businesses are increasing their uptake of flexible working to improve their ability to attract and retain

**83%**

of businesses have hybrid working in place

**42%**

believe that the key benefits of shifting to increased hybrid working was to attract new employees

# What is the evidence – the employee's perspective?

60%

of employees have flexible working in their current role

71%

of employees believe that being able to have a flexible working pattern is important to them

53%

of employees report that flexible (including remote) working are key when considering a new job

46%

believe that working a 4-day week would be their preferred arrangement

# QUESTIONS...



# OUR HR KNOWLEDGE BASE

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- Template HR documents and policies
- HR articles and guides to keep you fully informed
- HR guidance on a wide range of topics



[HR Knowledgebase - HR Solutions \(hrsolutions-uk.com\)](https://hrsolutions-uk.com)

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**Prioritising employee wellbeing**

13 June 10am – 11am

**Protecting employees from harassment**

11 July 10am – 11am



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PEOPLE AND BUSINESS STRATEGY



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WHAT DO YOU  
**THINK?**





# Thank you

Any question? Please get in touch:

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