

# Aligning post maternity leave flexible working with your business needs

Nowadays women employees often request flexible and reduced working hours upon returning from maternity leave. A proper appraisal of **business needs** is critical to managing the risks of breach of flexible working rights and sex discrimination laws.

A female employee is entitled to apply for flexible working to enable her to care for her child if she has been continuously employed for a period of no less than 26 weeks, is the mother or foster parent of the child or the person in whose favour a Residence Order is in force or is married to or the civil partner of such a person and expects to have the responsibility for the upbringing of the child.

Failure to comply with the appropriate process can lead to a complaint to the Tribunal within 3 months of the date of the failure and an award of up to 8 weeks weekly pay (upper limit currently £350.00).

There is an obvious overlap between a flexible working request and indirect sex discrimination. Showing that an employers' work practice puts women at a particular disadvantage is likely to be relatively straightforward, since Tribunals are entitled to take account of the well known fact that many more women than men have sole care of a child.

The employer needs to carry out a balancing exercise of maintaining **business needs** against the discriminatory effect of the provision etc. Cogent evidence is necessary, generalisations are not sufficient. There needs to be an evaluation of the business decision. Particularly, would insistence on the particular provision etc overcome its discriminatory impact. Further are there alterations that could be made to achieve the business needs without there being any discriminatory effect.

## Business Needs

When considering a request for flexible working, the business should carry out very

much the same sort of exercise. It should carefully consider the **business needs** and be ready to provide evidence and justification of those needs which it believes cannot otherwise be provided for through the new flexible arrangement.

Provided employers genuinely think "out of the box" and see to what extent the request can be accommodated and can back that up, then they should feel secure in relation to any potential claim.

Employers should therefore think about :-

- The burden of any additional costs to accommodate the request.
- The effect on satisfying "customer needs".
- The inability to re-organise work amongst existing staff.
- The inability to recruit additional staff that may be needed to accommodate the request.
- The impact on quality or performance that may materialise.
- The insufficiency of work in the event that a flexible request is granted for that particular employee.
- Whether or not there would be any structural changes needed to make the accommodation.

In doing this the employer will think about job sharing opportunities, may be it is cost prohibited, impact on organisational/administrative efficiency and probably most importantly of all, can the client needs be satisfied in the event the request is granted.

Whilst the compensation consequences of not following the 2002 Flexible Working Regulations applications are relatively limited, for indirect sex discrimination the awards are unlimited and have recently been updated by the case of *Da'bell vs. National Society for the Prevention of Cruelty to Children in 2009*.