CANTERBURY EMPLOYERS' CHAMBER OF COMMERCE

WE KNOW HUMAN RESOURCES

FLEXIBLE WORKING ARRANGEMENTS

A guide to the Employment Relations Act's flexible working amendment

QUICK GUIDE

This Quick Guide sets out the requirements for making and responding to employee requests for changes to working hours, days and the place of work.

Since 1 July 2008 the Employment Relations Act has provided a process which allowed employees with caring responsibilities to apply to change their work arrangements if they considered that the change they proposed would help them carry out their responsibilities more effectively. With the implementation of the **Employment Relations Amendment Act 2014, from 7 March 2015** the ability to make an application to change current work arrangements has been opened up to *all* employees together with some amendments to the accompanying process (see below)

WHO MAY USE THE PROCESS?

All employees regardless of length of service or whether or not they have responsibilities for caring for another person.

WHAT MAY THE EMPLOYEE ASK FOR?

Any or all of the following:

- A change in hours of work. For example, to start work half an hour later or leave work half an hour earlier.
- A change in days of work. For example, to work part-time or if working part-time already, to work on different days of the week
- A change in place of work. For example, to work from home

HOW DOES THE EMPLOYEE GO ABOUT ASKING?

A request must be made in writing and state:

- The employee's name
- The date on which the request is made
- The fact that the request is made under Part 6AA of the Employment Relations Act
- What kind of variation in working arrangements the employee is seeking
- Whether the variation is to be permanent or temporary
- The date when the employee would like the variation to take effect
- The date when the employee wants the variation to end (if it is to be temporary)
- What changes, if any, the employee thinks the employer might have to make if the employer grants the request

WHEN CAN AN EMPLOYEE MAKE A FURTHER REQUEST?

There is no limit to the number of times in which requests to change working arrangements can be made, nor any minimum period between requests.

HOW LONG DOES THE EMPLOYER HAVE TO RESPOND?

The employer should deal with a request as soon as possible but must respond, in writing, within 1 month of receiving it.

FOR WHAT REASONS CAN AN EMPLOYER REFUSE A REQUEST?

A request can only be refused if it cannot be reasonably accommodated on one or more of the grounds specified in the Act, (see below).

WHAT MUST THE EMPLOYER DO IF REFUSING A REQUEST?

Notify the employee in writing of the ground or grounds upon which it is refused and explain why it applies.

WHAT ARE THE SPECIFIED GROUNDS FOR REFUSING A REQUEST?

- The work cannot be reorganised among existing staff
- The employer is unable to recruit additional staff
- Granting the request would have an impact on quality
- Granting the request would have a detrimental impact on performance
- There is an insufficient amount of work during the periods the employee proposes to work
- Structural changes are planned
- The additional costs would impose a burden
- Granting the request would have a detrimental effect on the employer's ability to meet customer demand.

The employer *must* refuse a request from an employee bound by a collective agreement and explain why the request is being refused, if it:

- Relates to working arrangements covered by the collective, and
- The employee's working arrangements would be inconsistent with the collective if the request were granted.

WHAT IF THE EMPLOYEE DISPUTES THE EMPLOYER'S REFUSAL?

The role of the Labour Inspector

Labour Inspectors can provide employees and employers with any assistance they consider appropriate where the employee is considering or has requested a change in work arrangements.

If the employee believes that his or her employer has not complied with the requirement to respond to the employee's request in accordance with the Act's requirements the employee may refer the matter to a Labour Inspector who must, to the extent practicable, assist the parties to resolve the dispute.

MEDIATION

An employee who is not satisfied with the outcome of a Labour Inspector's intervention can refer the matter to mediation.

Referral to the Employment Relations Authority

If mediation is unsuccessful, the employee can refer the complaint to the Employment Relations Authority. Referral must be within 12 months of:

- The date on which the employer notified the refusal (if notification was within 1 month of the employer receiving a request), or
- The date on which the employer received the employee's request, in any other case.

The employee can ask the Authority to decide whether the employer complied with the notification requirements to:

- Respond in writing
- Within the 1 month time limit
- Set out the reasons for refusal and,
- Explain why a specified ground applied.

WHAT IS THE PENALTY FOR FAILING TO RESPOND TO A REQUEST IN THE WAY THE ACT REQUIRES?

An employer who does not respond to an employee's request in the way the Act provides can be fined up to $2,000 payable to the employee.

CAN AN EMPLOYEE APPEAL BEYOND THE EMPLOYMENT RELATIONS AUTHORITY?

An employee can challenge an employer only on the basis that the employer followed a wrong process and cannot challenge a refusal beyond Authority level. In other words, the employee cannot appeal to the Employment Court.

However, the Authority's decision can be subject to an application for judicial review on the basis that the Authority was not entitled to make the decision it did make

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For further information regarding Flexible Working Arrangements or other aspects of Employment Relations, please contact the Canterbury Employers' Chamber of Commerce, email info@cecc.org.nz or phone 03 366 5096.