



The Employment Relations (Flexible Working) Bill

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Executive Summary

Introduction

Working conditions in industrialised countries have changed dramatically over the past two decades. The application of new technologies and the emergence of new forms of work organisation have transformed the 'standard' full time permanent job with benefits into more temporary work, part-time contract, unregulated work, home based work, and other non-standard work arrangements.

In December 2019, although a Green Paper for a new law of Employment was introduced, the Bill was not confirmed during the May 2021 Queen's Speech. The Government has since indicated that the Bill will be forthcoming 'when parliamentary time allows'. This delay may be due to the fact that the Covid-19 pandemic has fundamentally shifted the way in which people work, and other new aspects need to be taken in consideration.

Nevertheless, an Employment Relations (Flexible Working) Bill was introduced on 15 June 2022, by Labour MP Yasmin Qureshi as a Private Member's Bill, presented to Parliament through the ballot procedure. It is due to pass the report stage in Parliament on 24th February 2023¹.

This Bill will ensure more people can access flexible working and act as a catalyst to address the barriers faced by women, the disabled, carers, and older people. In fact, the Bill would amend the Employment Rights Act 1996 to change the current right to request flexible working in the following ways:

- by removing the requirement for employees to explain in their applications what effect they think it will have on the employer;
- by allowing employees to make two flexible working requests per 12 months instead of the one currently allowed;
- by requiring employers to consult with the employee before being allowed to refuse an application;
- by reducing the deadline for an employer decision on flexible working requests from three months to two months.

The Bill would apply to England, Scotland and Wales². Additionally, in October 2022, other two laws have been introduced: one that offers pregnant women and new parents greater protection against redundancy and another which introduces entitling unpaid carers to 1 week of unpaid leave a year to support those most in need.

¹ Parliament.UK, Employment Relations (Flexible Working) Bill

² Brione P., 2022

Implications and Recommendations

The growth in hybrid and remote working since 2020 has had a significant impact in raising the profile of flexible working, raising challenges for organisations in responding to this demand, but also in offering new opportunities for employees. In fact, recent evidence suggests that a majority of workers indicate a preference for more flexibility over their hours of work.

To start with, it has been shown to support general mental and physical well-being, in a number of ways:

- Having a positive work-life balance makes life less stressful and can reduce illness;
- Reducing the commute by working from home frees up time, energy and headspace;
- Being able to work when, where and how they want increases employees' sense of control;
- Freeing up time for exercise can support physical wellness and stamina;

Nevertheless, potential positive benefits from flexible working are not equally distributed throughout the population and could increase inequalities in employment and ability to work, including socio-economic status, education, age, gender, ethnicity and geography. Many workers in 'flexible' jobs share labour market characteristics with the unemployed (lower credentials, low income, female gender, immigration background) and go themselves through periods of unemployment. Therefore, working conditions under those new types of work arrangements may be as dangerous as unemployment for workers' health: young workers, those living in shared accommodations, parents and carers.

Experts recommend, among other suggestions, that both the Government and companies should ensure appropriate policies, processes and resources to support flexible working and to reduce inequalities; they should issue good practice guidance for maintaining physical and mental health when working flexibly and provide the correct and relevant equipment for employees working from several locations.

On these premises, the restructuring of the post-pandemic working sector could provide the opportunity for new social arrangements that should not only be more efficient, but also more humane.

The Paper

Background

On 23 September 2021 the Department for Business, Energy and Industrial Strategy launched a consultation on Making Flexible Working the Default³. This consultation noted that 'the pandemic has shifted the way we think about flexible working', as well as the Conservative 2019 manifesto commitment to consult on 'making it the default', and sought feedback on a number of proposed legislative changes such as:

- making the Right to Request Flexible Working a day one right;
- whether the eight business reasons for refusing a Request will remain valid;
- considering the administrative process underpinning the Right to Request Flexible Working;
- requiring the employer to suggest alternative arrangements;
- requesting a temporary arrangement;

The consultation, which also discussed the idea to turn the current 'Right to Request' into a 'Right to Have', removing the ability of employers to reject requests - declined this idea as not 'achievable in a practical or sensible way'. The consultation closed on 1 December 2021.⁴

The 2022 Queen's speech was widely expected to be the moment when the Government would have announced its intention to implement a number of significant employment law reforms, yet the Bill was not ultimately introduced. On 5th December 2022, the Government released his response to the consultation, supporting the Employment Relations (Flexible Working) Bill throughout its journey in Parliament.

The initial Employment Bill

The initial Employment Bill had its second reading in May 2022⁵, yet no further decisions have been made. The Bill would have ensured more people can access flexible working and act as a catalyst to address the barriers faced by women, the disabled, carers, and older people.

The Employment Bill was due to cover the following reforms, which have been under discussion since December 2019^{6,7}:

³ GOV.UK, Making Flexible Working the Default, December 2022

⁴ Brione P. 2022

⁵ Parliament.UK, Carer's Leave Bill

⁶ Parliament.UK, Employment Bill

⁷ Lewis Silkin, Queen's Speech 2022

- **Making flexible working the default;**
- **Extending redundancy protection for pregnancy and maternity;** the Government has promised to extend priority for alternative employment opportunities on redundancy to all pregnant employees and for up to 6 months after return from maternity leave, with similar protections for parents returning from adoption or shared parental leave.
- **Leave for neonatal care;** the Government has promised a new right to 12 weeks' paid neonatal leave for parents whose babies spend time in neonatal care units.
- **Leave for unpaid carers;** the Government has proposed that working carers will be able to take up to 5 days' carers leave each year to help them carry out their caring responsibilities, although this will be unpaid.
- **Tips to go to workers in full;**
- **The right to request a more predictable contract;** based on the Good Work agenda, the Government had been expected to introduce a new right for workers with variable hours to request a more stable and predictable contract after 26 weeks' service and, possibly, new rights to reasonable notice of working hours and compensation for short-notice shift cancellation.
- **A single enforcement body;** the Good Work Plan proposed a single labour market enforcement agency, with the intention to combine existing bodies, and expand this new body's remit into the enforcement of statutory sick pay, holiday pay for vulnerable workers and the regulation of umbrella companies.

Other expected reforms from the Good Work Plan

As well as the changes announced in 2019, there are a number of other employment law reforms that could have been either included in an Employment Bill or brought forward as separate legislation:

- **Sexual harassment;** a new proactive duty on employers should prevent sexual harassment in the workplace and bring would back laws making employers responsible if employees are harassed by customers or other third parties.
- **Non-disclosure agreements (NDAs);** legislation has also been promised on non-disclosure agreements since 2019, driven by concern about use of NDAs to silence victims of harassment.
- **Ban on 'exclusivity clauses' in contracts for low-paid workers;** on 9 May 2022 the Government published a press release on widening the ban on exclusivity clauses for low-paid workers, which would apply to those whose guaranteed income is at or below the lower earnings limit of £123 per week. The proposals will widen the ban on exclusivity clauses,

which restrict staff from working for multiple employers, to contracts where the guaranteed weekly income is on or below the Lower Earnings Limit of £123 a week. An estimated 1.5 million workers are earning on or below £123 a week and the new reforms will ensure that workers in this group that have exclusivity clauses are able to top up their income with extra work if they choose.

The reforms will give workers more flexibility over when and where they work to best suit their personal circumstances such as childcare or study, including the option of working multiple short-hours contracts.

As well as supporting workers to increase their income, the reforms will also benefit businesses by widening the opportunities to those who may have been prevented from applying for roles due to an exclusivity clause with another employer, and also helps businesses to fill vacancies in key sectors like retail and hospitality. The reforms will allow low-paid workers to re-skill and make the most of new opportunities in existing sectors with growing labour demand.

This follows Government action to support people with their cost of living, by increasing the National Living Wage to £9.50 per hour – equivalent to an extra £1,000 a year for a full-time worker – and cutting taxes for the workers on Universal Credit – the equivalent of £1,000 back/year.⁸

For this type of contract, the legislation will also extend the following rights for workers:

- not to be unfairly dismissed;
- not to be subjected to a detriment for failing to comply with an exclusivity clause;
- to claim compensation⁹;

The Employment Relations (Flexible Working) Bill

On 5th December 2022, the Government responded to the Making Flexible Working consultation¹⁰.

The promised measures aim to:

- remove the 26-week qualifying period before employees can request flexible working, making it a day-one right;
- require employers to consult with their employees, as a means of exploring the available options, before rejecting a flexible working request;
- allow employees to make 2 flexible working requests in any 12-month period;

⁸ GOV.UK, Lowest paid workers flexibility reforms, 9 May 2022

⁹ GOV.UK, Consultation Outcome, May 2022

¹⁰ GOV.UK, Making Flexible Working the Default, December 2022

- at present, under Part VIII A of the Employment Rights Act 1996, employees with at least 26 weeks' continuous service have the right to request a change to their working hours, times or location and have that request considered by their employer in line with a statutory Code of Practice. Employers are currently obliged to respond to such flexible working requests within three months. After making such an application, employees are currently prevented from making another one for the following 12 months.
- require employers to respond to requests within 2 months, down from 3;
- employees are also currently obliged in their application to explain what effect their request might have on the employer and how to deal with that.
- remove the requirement for employees to set out how the effects of their flexible working request might be dealt with by their employer.

New Pregnancy Rights

On 21 October 2022, the Government also backed a new law that offers pregnant women and new parents greater protection against redundancy. In fact, new legal powers will help to counter workplace discrimination, particularly when new parents return to work. The Pregnancy and Maternity Discrimination Bill, introduced by Dan Jarvis MP, passed its report stage in the Parliament¹¹, and will enable this redundancy protection to be extended so it applies to pregnant women as well as new parents returning to work from a relevant form of leave. This will protect new parents and expectant mothers from workplace discrimination, offering them greater job security at an important time in their lives.¹²

Under current rules, before offering redundancy to an employee on maternity leave, shared parental leave or adoption leave, employers have an obligation to offer them a suitable alternative vacancy where one exists.

New Rights for Carers

Another Bill introduced in October 2022 it's now in the report stage in the Parliament: the Carer's Leave Bill¹³, which introduces entitling unpaid carers to 1 week of unpaid leave a year to support those most in need. Eligible employees will be able to take Carer's Leave regardless of how long they have worked for their employer. This would impact millions of people across the UK who are currently providing unpaid care to dependent family members or friends¹⁴.

¹¹ Parliament.UK, Protection from Redundancy (Pregnancy and Family Leave) Bill

¹² GOV.UK, New law pregnant women, 21 October 2022

¹³ Parliament.UK, Carer's Leave Bill

¹⁴ GOV.UK, Boost for carers unpaid leave, 21 October 2022

Working from home vs. flexible working

Working from home during periods of lockdown shifted attitudes about how working can be configured differently. Data collected during the pandemic suggest that overall, people have adapted quickly and worked well from home, that initial negative impacts on mental health have decreased over time, and that that productivity has not been adversely affected.

Flexible working could also increase some people's job satisfaction and work-life balance and create more inclusive working environments for workers with certain types of disabilities. Combined with increases in the amount of time fathers have spent caring for their children during this period, it could help to accelerate changes in gender norms and be helpful for mothers' careers.

Some more specific examples of the positive impact it can have on employees include¹⁵:

- **Support with other responsibilities:** For parents of small children, and people looking after an elderly relative, being able to flex around medical appointments, school runs and other logistical issues makes being a carer easier to manage.
- **Career development and job satisfaction:** When senior level flexible roles are made available, people who need to work flexibly are able to progress their careers, making best use of their skills and improving their job satisfaction.
- **Enhanced concentration and productivity:** In a Cranfield University survey of flexible workers, 97% of managers said their quantity of work improved or stayed the same and 93% said their quality of the work improved or stayed the same. Achieving more within a flexible framework is likely to lead to increased job satisfaction.
- **Improved motivation and happiness at work:** All of the above make it more likely that flexible workers will be more motivated and happier. According to Dr Mark Winwood, a clinical director of psychological services explains 'The more control any of us feel we have over our working lives, the better we feel about work.'

There is overwhelming evidence that unemployment is strongly associated with economic strain, and psychosocial factors that increase the risk of adverse health outcomes, unfavourable lifestyles, and economic difficulties. Nevertheless, potential positive benefits from flexible working are not equally distributed throughout the population and could increase inequalities in employment and ability to work, including socio-economic status, education, age, gender, ethnicity and geography. Many workers in 'flexible' jobs share labour market characteristics (lower credentials, low income, female gender, immigration background) with the unemployed and go themselves through periods

¹⁵ Time Wise, December 2018

of unemployment. Therefore, working conditions under those new types of work arrangements may be as dangerous as unemployment for workers' health.¹⁶

Concerns and Reflections

COVID-19 has increased the unequal burden of care carried by women, causing more women than men to leave the labour market during the pandemic. Generally, parents, carers and those with people management responsibilities have put in more hours and struggled with the pressures of home schooling and collapsed home/work boundaries.

Younger workers living in shared accommodation and bedsits have been less able to access suitable workspaces. Long-term increases in working from home may have impacts on wages, the property market and on city centres. Transport ticketing options will need to respond to changes, and commuting costs could rise for some and fall for others¹⁷.

Additionally, experts have expressed concern about health and safety, as well as data security and privacy in homeworking environments. In terms of ecological concerns, WSP's calculations show that working from home rather than the office in summer saves around 400kg of carbon emissions, the equivalent of 5% of a typical British commuter's annual carbon footprint. This is because homeworking staff cut out their carbon emissions from their commute which would otherwise be greater than their home's energy consumption.

Yet, this appears to be a seasonal benefit. If an average employee worked at home all year round, they would produce 2.5 tonnes of carbon per year – around 80% more than an office worker. This is because working from home in the winter means most heating systems in Britain heat the whole house which produces far more carbon emissions than what would be produced from the commute¹⁸.

The effects of workplace wellbeing manifest in multiple ways including levels of employee job satisfaction, motivation, engagement, work-related stress, productivity and performance, or organisational commitment. Business leaders have a great responsibility to give extra care and attention to support employee wellbeing. This responsibility should include being aware of common signs of poor mental health: social withdrawal, excessive fears or anxieties and prolonged periods of sadness, among others. As well as being aware of these signs, business leaders must ensure that they put in place programmes that support employees without judgment or prejudice.

Both companies and the Government need to adapt in order to meet new policy requirements and emerging challenges. In a paper released in April 2021, the Parliament addresses the impact of remote and flexible working, and invites the Government and companies to take in consideration some arrangements.

¹⁶ Benach J, Amable M, Muntaner C, et al 2002;

¹⁷ Hobbs A., April 2021

¹⁸ WSP, 2020

For companies:

- How are organisations supporting managers and employees, and what practical job design and remote working training has been offered? What equipment and resources have been offered to employees to support safe working from home?
- What are the most effective ways to support workers' health, safety and mental well-being when working from home or in a hybrid office-home arrangement?
- Following the pandemic, what flexible working arrangements do employees and employers want in the longer-term? How will this affect organisational culture and productivity? How can organisations ensure an inclusive hybrid working environment and parity of experiences for homeworkers and office workers in terms of development and promotion?
- What are the potential impacts for infrastructure (such as telecommunications and transport) of long-term increases in widespread working from home? What are the most effective ways to address data security and privacy concerns?

For Government:

- What are the most effective strategies for preventing a widening of economic and social inequalities? What opportunities are there to narrow inequalities?
- How can governments promote investments in the physical and managerial capacity of firms and workers to work flexibly? How can governments address concerns for worker physical and mental health and well-being and inequality?¹⁹

Conclusion and Recommendations

The future of work will be distributed. It is probable that we will see a big shift from office by default to remote by default. This will also force people to reframe the way they communicate and connect with colleagues. Those whose ability is to connect with people live and to easily make conversations will need to become good written communicators for example. And companies who do not have a strict need for physical interaction are going to have to operate more like open source communities – distributed, synchronised and online.

Jay Van Bavel, Associate Professor of Psychology and Neural Science, at New York University claims that the population has had a massive intensive course in modern technology, and that these new skills and experiences will be the true engine of change. For instance, now that companies have been forced to try telecommuting, they might decide it's less expensive and more efficient to allow people to work from home. This has lots of effects that are still to be considered. One possibility is that it could increase gender equity in the workforce as parents are better able to balance work and home life. Telecommuters might move to smaller, cheaper cities or rural environments, while the big

¹⁹ Hobbs A., April 2021

city might become affordable again for families who will suddenly be able to afford life in an urban hub²⁰.

Dr Daniel Wheatley from the Department of Management at University of Birmingham, recommends that, to successfully implement flexible working policies, organisations should²¹:

- Put in place appropriate policies, processes and resources to support flexible working;
- Establish a workplace culture in which both employees and employer understand that to be successful flexibility has to work both ways, including managing expectations around how time is split between employer workplace and home, hours of work, and delivery of outputs;
- Use flexibility as an enabler of workforce diversity by tailoring working routines to individual needs, while ensuring that routines are coordinated to fit into the wider organizational context;
- Issue good practice guidance for maintaining physical and mental health when working flexibly;
- Provide the correct and relevant equipment for employees working from several locations;
- Establish social and work-focused connections within teams via regular formal and informal meetings to co-ordinate activities and support relationships among employees working distinct patterns;
- Where appropriate, adapt the physical employer workplace environment with a focus on collaborative use enabling formal and informal connection, working in hybrid formats, eg, hybrid meeting facilities, and also providing concentration spaces;
- Move away from one-size-fits-all strategies toward strategy that is flexible and has a focus on enabling a tailored approach offering employees flexibility and agency in decision-making, while effectively communicating the constraints of different business areas and considering the needs of all stakeholders;
- Businesses should also look to create a formal structure of wellness and mental health support. This is often essential for employees who might be unsure whether they can speak out or who they should come to with their problems;²²

The restructuring of society might be a never ending process, but it provides the opportunity for new social arrangements that should not only be more efficient, but also more humane, that companies should take in consideration.

²⁰ BBC, October 2020

²¹Wheatley, 19 August 2022

²² Aiello L., 9 July 2019

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