This L&RS Note explores the right to request flexible working arrangements, including its applications across a number of jurisdictions, with a view to informing legislative options to promote flexible working arrangements in the Irish context. The Note begins with an overview of key findings emerging from the research.
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Key findings and their potential operationalisation in Ireland

This section briefly summarises the key findings emerging from this research and outlines a number of observations.

There is no one clear definition of Flexible Working Arrangements (FWAs). This reflects the reality that there are considerable differences in the existing canon of legislation seen across EU and other States with respect to FWA. Individual jurisdictions tend to be unique as to the emergence of employment related legislation that deals with FWA. This reflects the difference across States in their social, cultural and economic contexts and how this has informed the development of legislation over recent decades.

Nevertheless, drawing from the definitions offered and the literature, FWAs can be said to deal with two main things; the first is working time and the second is place of work. In the contemporary context, FWA should be seen in the context of wider discussions at policy and legislative levels about work-life balance. This is also the background to recent Irish Government initiatives around remote working and the recent consultation process on FWA.

The balance of research supports FWA, highlighting advantages to both employers and employees, although some studies report disadvantages. The research points to the importance of family friendly policy and laws for the success of FWA for not only mother and women, but all employee categories.

At the policy level, there is a clear momentum for the introduction of FWA. This is seen, albeit with more focus on caring responsibilities, in the EU Directive on Work-life Balance that requires Member States, by 2024, to introduce the right to request FWA for parents of children up to 8 years, requires employers to respond to a request for FWA and to provide for employees to return to previous work patterns after a period of time availing of FWA.

In Ireland at a policy level, the current Programme for Government also makes commitments to introduce flexible working. In addition, the Government, through the Department of Children, Disability, Equality, Disability and Youth (DCEDIY), initiated a consultation FWA in May 2021, following on from that begun in 2019 by the then Department of Justice and Equality. The guide documentation accompanying the most recent consultation suggests that government is seeking to go beyond the targeting of parents with caring responsibilities as beneficiaries of FWA, to extend this also to include a broader cohort of employees and employers.

At the policy level, the Citizen’s Assembly on Gender Equality recommended, in its report to the Oireachtas, the introduction of a statutory right to reasonable access to FWA. Finally, the General Scheme of the Work Life Balance and Miscellaneous Provisions Bill 2022 has recently been published, however, the proposed Bill extends the right to request FWA solely to employed parents of children up to age eight for caring purposes.

Regarding what is seen internationally, legislative approaches to FWA differ across countries for the reasons stated. They vary between those targeted at carers, and those targeted at all employees regardless of their caring needs.

The overview of FWA legislation in selected jurisdictions shows that those with the most comparatively advanced FWA legislation are also those that had earlier introduced legislation to partially provide for FWA. Such legislation also does not exist independent of other provisions in
the same piece of legislation, or indeed other Acts dealing with employment. Thus, in these cases, FWA legislation tends to build on existing legal architecture.

It is worth noting also from this comparative review of FWA legislation across a number of States that such legislation tends to be related to employment law and not to leave-related legislation, as seems to be the case in Ireland indicated by the recent DCEDIY-led consultation and subsequent General Scheme. This may have resulted in a degree of uncertainty among elected Members’ Parliamentary Questions in respect of which Government Department and Minister has policy responsibility for FWA. ¹

The operation of the laws discussed in other jurisdictions also differ as to their breadth, coverage of employees with or without care responsibilities, the remedies available on refusal of a request for FWA, the limitation on the number of employee numbers, the period of continuous employment required for employees to be eligible to request FWA, and where such requests stand in respect of collective agreements etc.

While it is not the role of this paper to make legal judgments on the benefits of legislation seen in one or another State with respect to the potential to introduce FWA legislation in Ireland (this is the role of legal professionals), it is clear that in the Irish case the challenge of constructing FWA legislation is made more difficult by the policy split between (employment) leave policy with DCEDIY and employment with the Department of Enterprise, Trade and Employment. From the foregoing review of FWA in other States, FWA legislation tends on the whole to come under the remit of employment legislation, which also reflects the different legislative composition of the various States.

Introduction

The aim of this L&RS Note is to present comparative research on the right to request flexible working arrangements in a set of EU and Irish-related jurisdictions: Finland, the Netherlands, Australia and New Zealand.²

The central purpose of the research is to explore how other jurisdictions have approached introducing the right to request flexible working arrangements (hereafter “FWA”) in policy and legislative terms, and draws out points of learning and relevance to the Irish context.

The paper begins by providing an overview of the background policy context for FWA. Following this, the paper looks at the context in Ireland in respect of the right to request FWAs. In this regard, it looks at current policy and legislation, and also current developments including those around recent statutory consultations, the work of the Citizen’s Assembly and forthcoming legislation on work life balance.

From here the paper examines the comparative situation, outlined in Table 3 below, in the named countries with respect to the right to FWAs. It does this across a set of themes that may be of relevance to Ireland.

Flexible working arrangements: background and policy context

The Covid-19 pandemic and associated impacts such as employment layoffs and working from home obligations has had a significant impact across the labour market.³ There is some evidence to suggest that the impact has been unequally gendered, that it affected women to a greater extent than men.⁴ For instance, studies show that women spend significantly more time on childcare and housework than men in ordinary times, however during Covid-19 this has constrained women’s capacity to work from home and has deepened existing economic gender inequalities.⁵ Before the onset of the pandemic however, the impact assessment accompanying the proposal for the EU Directive on Work-life Balance pointed to the unavailability of FWAs leading to some workers, particularly women, to exit the labour market permanently or for long periods when taking on caring responsibilities.⁶ Notwithstanding this, the Covid-19 pandemic and the requirement for many to work from home, where applicable, has brought the issue of flexible work and their arrangements to the fore. In tandem with this renewed focus on FWA, there has been a debate about the eligibility of employees to request FWA across different sectors and different types of employment.

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² This briefing paper is policy based and as will be explained further in the text, the approach adopted is to look in detail at those jurisdictions most relevant to the Irish context in respect of the right to request FWAs.
There is no one clear definition of FWA that is broadly accepted. This is by virtue of the differences in legal environments across jurisdictions with respect to employment law, policy responsibility at government level, employment/organisational practices, family/personal leave arrangements, public service provision and cultural practices. However, there are a set of themes that are common to most understandings of what flexible working refers to and as shown in Table 1 below, FWA can take on many forms:

Table 1: Types of FWA

<table>
<thead>
<tr>
<th>Type of FWA</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>Part-time work</td>
<td>When employees are contracted to work anything less than full-time hours.</td>
</tr>
<tr>
<td>Term-time work</td>
<td>An employee remains on a permanent contract but can take paid/unpaid leave during school holidays.</td>
</tr>
<tr>
<td>Job-sharing</td>
<td>Where two (or occasionally more) people share the responsibility for a job between them.</td>
</tr>
<tr>
<td>Flexitime</td>
<td>Allows employees to choose, within certain set limits, when to begin and end work.</td>
</tr>
<tr>
<td>Compressed working hours</td>
<td>This does not necessarily involve a reduction in total hours or any extension in individual choice over which hours are worked. The central feature is reallocation of work into fewer and longer blocks during the week. Examples are four-and-a-half-day weeks and nine-day fortnights.</td>
</tr>
<tr>
<td>Annual hour</td>
<td>The total number of hours to be worked over the year is fixed but there is variation over the year in the length of the working day and week. Employees may or may not have an element of choice over working patterns.</td>
</tr>
<tr>
<td>Working from home</td>
<td>Employees regularly spend time working from home.</td>
</tr>
<tr>
<td>Mobile working</td>
<td>Employees work all or part of their working week at a location remote from the employer’s workplace (which may be the employee’s home).</td>
</tr>
<tr>
<td>Zero or banded hours contracts</td>
<td>An individual has no guarantee of a minimum number of working hours, so they can be called upon as and when required and paid only for the hours they work.</td>
</tr>
</tbody>
</table>

Source: L&RS, adapted from various sources.

In terms of definitions and with the above caveat in mind, the Law Society of Ireland provides the following definition:

“Flexible working’ means any type of working arrangement that differs from the traditional Monday to Friday, nine-to-five model – and gives some flexibility on how long, where, and when employees work.”

According to an academic study, FWAs relate to employees’ request for: flexibility in work start and finish times, reduced working hours, or changes in place of work. FWAs are initiated by employees to negotiate when, where and how much work they wish to undertake to achieve a satisfactory work-life balance.

In the UK, flexible working is understood as a way of working that suits an employee’s needs, for example having flexible start and finish times, or working from home.

In Ireland’s National Remote Work Strategy, “Making Remote Work”, flexible working is defined as “a type of working arrangement which gives a degree of flexibility on how long, where, when and at what times employees work.”

In the Irish case also, the consultation document on FWA from the Department of Children, Equality, Disability, Integration and Youth stated that FWA revolved, in the main, around the following areas:

- starting or finishing work at differing times;
- working compressed hours;
- having access to flexi-time;
- being able to work remotely; and
- access to part-time or shared working options.

Across the literature, FWAs are classified into two main categories of, first, flexibility in work schedule and, second, flexibility in work location. The first practice is often referred to as ‘flexitme’, while the second practice has been alternatively called ‘flexplace’, ‘telework’, ‘telecommuting’, and ‘e-working’. As such, although FWA practices are becoming increasingly popular around the world, they are not new.

A large empirical study in Canada (2021) looked at some of the outcomes of FWA. It found, among other things, that male and female employees with both flexible work time and the option of working from home, and only flexitime, had a higher job and work-life balance satisfaction than those without any FWA and those with only a remote working option. It also showed that the

9 guide-to-flexible-working-2017.pdf (lawsociety.ie)
11 Flexible working - GOV.UK (www.gov.uk)
13 gov.ie - Public Consultation on Flexible Working (www.gov.ie)
possibility of working from home without any discretion over the timing of work does not lead to positive work life balance outcomes. Moreover, this study established where there was a combination of flexibility with regard to the place of work and flexibility in the timing of work positive outcomes were reported. This study also found “rather unexpectedly” that the positive association of FWAs with work-life balance are stronger for those without dependent children than those with dependent children. Finally, with respect to benefits to the employer, it was shown that the positive associations of flexible place and timing of work also increased commitment to the role and job motivation.

While most of above focus on the benefits to employees, the OECD (2016) cite research that shows that flexible workplace practices are more often than not primarily designed to address employer needs in the production process, but they can also improve the work life balance of employees in a manner which is consistent with enterprise needs. In its report, the OECD also note that working time flexibility can help working parents to reconcile their work-schedule with childcare providers and/or school hours, and also can make an important contribution to employees’ satisfaction with their work-life balance. They note also that working from home saves time on the commute and helps employees to be close to children and partners in case of care needs.

This work by the OECD highlights therefore that there are two stakeholders in FWA, the employer and the employee.

One rationale for the introduction of flexible working is to facilitate family life through better work-life balance. However, some studies show that where flexible working is introduced, men work longer and more intensely, while women are more likely to increase activities outside work. Consequently, where access to flexible work is not shared between men and women, a number of studies have noted that this has the potential to reproduce existing gender/employment inequalities.

A 2018 Eurobarometer survey found that Irish people reported having more access to flexible work than their European peers. However, they reported greater negative consequences associated with availing of such arrangements. Some 47% of Irish people use FWAs (compared to an EU average of 42%), while 39% said that availing of flexible working arrangements could have or has

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17 While this particularly finding would seem on first glance to be counterintuitive, the authors of this study providing for the following assessment (Dilmaghani, M., 2021:182):

“These findings are in line with nascent literature that documents the value of FWA measures for individuals without children and those who live alone … This literature indicates that workers without responsibility for raising a family are also responsive to FWAs in order to attend to their personal and social lives. Given the focus of the past literature on the effects of FWAs on work and “family” balance, this set of regressions highlights the importance of further research into the value of job flexibilities for work and “life” balance.”

18 OECD (2016) Be flexible! Background brief on how workplace flexibility can help European employees to balance work and family. Paris: OECD Social Policy Division.


21 Negative consequences included: being badly perceived by colleagues for taking FWA; can have a negative impact on a career – bonus, promotion and type of work allocated.
had a negative impact on their career (compared to an EU average of 31%). In Ireland, 34% stated that availing of FWAs was badly perceived by colleagues (compared to 26% in the EU).22

Other research also broadens the focus on to the diversity among the employees who might benefit from flexible working arrangements in respect of different needs associated with age, gender, care responsibilities etc.23

Research for the National Advisory Council of Employment of Women in Australia (2010) suggest that the key debates (prior to the Covid-19 Pandemic) in the literature about the ‘right to request’ FWA legislation concern extending the ‘right to request’ to all employees, with much of the literature favouring extending the ‘right to request’ FWA to all employees, irrespective of caring responsibilities.24

Impact of right to request flexible working arrangements

The following is an overview of some of the research evidence sourced on the impact of FWA in jurisdictions where the ‘right to request’ such arrangements exist.

An earlier report (2009) on the impact of flexible work arrangements on New Zealand families concluded that:25

“…such arrangements provide significant benefits for [employees] and their families, including less stress and pressure and more opportunities to spend time together. Flexible work arrangements can also allow family members to meet their care responsibilities while maintaining their participation in the paid workforce. The arrangements wanted and needed by families changed as their families changed; for example, as children reached school age, or older family members became increasingly more dependent.”

A later study looking at women working in New Zealand’s public service found the following:26

“choosing to access [FWA] is far from simple” and the “findings reveal that voice has an important role to play in understanding the complex processes and structures that shape workplace flexibility. Clear obstacles remain for women in accessing workplace flexibility within the New Zealand public services. These, in part, reside within organisational structures but are also reinforced by limitations in the current framing of legislation. For most, working in an environment with significant workloads, time pressures and anxiety about job security, and working within a culture where management typically reject requests, limits the take-up of FWAs. An analysis of voice demonstrates that the management of workloads and time pressures are aspects of employment that are subject to managerial discretion, but where women have little influence. There are significant

23 Parry, J. (2017) Employers, the right to request flexible working and older workers: Research briefing, Southampton: Centre for Research on Ageing, University of Southampton.
implications of these findings both for organizational provision and the current framing of the legislation."

A study (2012) comparing the experiences of working parents and its impact on children across Finland, the UK and the Netherlands found:27

“a universal, although weak association between nonstandard working hours and higher child internalizing problems. However, flexible arrangements both in working life and daycare services may help to promote children’s socioemotional wellbeing — such as prosocial behavi[u]rs - in families where parents work nonstandard times.”

Another recent study (2020) looking at how effective flexible work arrangements are in Australia, concluded that FWA have important and potentially positive relationships with both mothers’ and fathers’ wellbeing. This study made policy suggestions as follows:28

“ensuring equitable access to family-friendly workplace arrangements for fathers, along with mothers, will support women’s access to paid work and men’s access to caring for their children. Irrespective of causal direction, greater access to FWAs is linked to improved health outcomes. Second, we draw attention to the salience of informal flexibility for parents, an ‘invisible’ aspect of the work-family interface, as well as formal leave arrangements.”

A further study (2019) looked at the impacts of FWA in respect of educational attainment.29 It noted that gendered norms around parenting tend to encourage mothers in particular to adapt their employment to the demands of their families. The authors cite research in this regard showing that not all mothers have the same access to FWA and that social class and levels of educational attainment, among other things, affect access to employment roles with varying levels of corresponding FWA: professional and management roles tend to have greater access to FWA.30

Finally, it has been shown also that those Nation States with more family friendly policy and legislative architecture lead to more positive employer perceptions of, and consequently employee benefits from, FWAs. Crucially external policy conditions to particular employment roles mediate the impact of employment disadvantages associated with motherhood (gender pay gap, promotion etc.)31 32


In addition, it has been shown that those countries with more workplace flexibility, regardless of gender or parental status, is linked to a cultural shift whereby workers come to see work time as encroaching on their personal, private, non work time. Moreover, this study found at all workers, that is not only mothers and women, reported working in higher quality jobs in countries with greater access to and support of FWAs.\textsuperscript{33}

**Flexible working policy and legislation in Ireland**

Currently, in Ireland FWA are provided by individual employers or, to a limited degree, by legislation. This is similar to what happens in general internationally, where leave policies are increasingly moving to a mixed system (in Europe) which combine basic citizenship-based leave benefits with employer-based benefits.\textsuperscript{34} The main legislative options for FWAs tend to relate to caring responsibilities, and in particular to caring for children. Table 2 below shows the main provisions currently on the statute books in Ireland.

**Table 2: Leave for parents in Ireland**

<table>
<thead>
<tr>
<th>Type and name of leave</th>
<th>Eligibility</th>
<th>Duration of entitlement</th>
<th>Paid\textsuperscript{35}</th>
<th>Principal legislation</th>
</tr>
</thead>
<tbody>
<tr>
<td>Maternity leave</td>
<td>Female employees</td>
<td>Up to 26 weeks and up to 16 unpaid weeks</td>
<td>Yes. Maternity Benefit \textit{is paid} at a rate of €250/week for 26 weeks</td>
<td>Maternity Protection Acts 1994 and 2004</td>
</tr>
<tr>
<td>Adoptive leave</td>
<td>Adoptive mothers, men adopting alone</td>
<td>24 weeks and up to 16 unpaid weeks</td>
<td>Yes. Adoptive Benefit \textit{is paid} at a rate of €250/week for 24 weeks</td>
<td>Adoptive Leave Acts 1995 to 2004</td>
</tr>
<tr>
<td>Paternity leave</td>
<td>New parents of children under 6 months of age (but not the mother of the child)</td>
<td>Up to 2 weeks</td>
<td>Yes. Paternity Benefit \textit{is paid} at a rate of €250/week for 2 weeks</td>
<td>Paternity Leave and Benefit Act 2016</td>
</tr>
</tbody>
</table>


\textsuperscript{34} Dobrotić, I. & Blum, S. (2017), “Parental leave reforms and policy ideas: are European countries heading towards an employment led social-investment paradigm”, paper presented at the ESPAnet Conference 2017, 14–16 September, Lisbon.

\textsuperscript{35} Department of Employment Affairs and Social Protection (2020) \textit{Social Welfare rates of payment}, Dublin: DEASP. Available \url{here}. 
<table>
<thead>
<tr>
<th>Flexible Working Arrangements: Overview &amp; comparative research</th>
</tr>
</thead>
</table>

| Parent’s leave | Parents of children under 1 year of age (or in first year of adoption) - the General Scheme proposes increasing this to the first 2 years from April 2021 | Up to 5 weeks | Yes. Parent’s Benefit is paid at a rate of €250/week for 5 weeks. |

| Carer’s Leave | Persons in employment for a minimum of 12 months continuously where the person to be cared for is verified by a GP as needing full-time care and attention. | Up to 104 weeks, including breaks for return for employment for minimum of 6 weeks between periods of Carer’s Leave. | Unpaid. However, depending on the volume of PRSI contributions made, applicants may qualify for Carer’s Benefit or the means-tested Carer’s Allowance. |

Source: Adapted from ‘Leave for parents’ and ‘Carer’s Leave’, Citizensinformation.ie

As can be seen from Table 2, there is at present no statutory provision for the right to universal flexible working arrangements in Ireland. However, there is the possibility that individual employers may grant requests for flexible working arrangements; however, this is at the discretion of the employer.

It should be noted also the current Programme for Government – “Our Shared Future” – makes a number of commitments to flexible working: first, in respect of the National Economic Plan – Enterprise Policy, it states the following: “[e]nable increased remote, flexible and hub-working arrangement to promote better work-life balance, higher female-labour-market participation, less commuting, and greater regional balance” (2020: 22), and second, under “Child and Family Support” it states the following:36

“Enable increased remote, flexible and hub-working arrangements to support families in their parenting and childcare choices, while also supporting enterprise. We will support the higher participation of women in the workplace, less commuting, and greater regional balance. Such changes will give long-term resilience to our economy and society. We will work with the childcare sector to introduce more flexibility in childcare settings”

Policy responsibility for flexible work arrangements in Ireland

The government department with responsibility for leave policy in Ireland is the Department of Children, Equality, Diversity, Integration and Youth (DCEDIY). This is due in the main to the transfer of the Equality Division (the Government section with responsibility for leave policy) into this Department from the Department of Justice (and Equality), following the formation of the current Government in June 2020. This policy separation means that leave policy is related more so to issues of equality and less so to employment policy and related employment legislation. The Department of Enterprise, Trade and Employment (DETE) does not therefore have direct policy responsibility for flexible work arrangements, although it does have policy responsibility for employment rights and employment rights legislation. It is important to note therefore that legislating for FWA in Ireland would go across the policy remit of two government departments, with DCEDIY having lead responsibility for any draft Bill, with input as required from DETE in respect of changes, if needed, to current employment legislation.

Policy context and developments

This section provides a brief overview of some of the main areas which serve as the policy context for discussions about FWAs in Ireland. It examines the recent EU Directive on work-life balance, the Government’s consultation on FWAs and the recent discussions of the Citizen's Assembly.

EU Work-Life Balance Directive

In August 2019, the Work-Life Balance Directive (the “Directive”) came into force in EU Member States. It introduced a new set of legislative actions aimed at achieving better work-life balance for parents and carers.

37 The Employment Rights Policy Unit transferred to the Department of Enterprise, Trade and Employment (DETE) in October 2020 from the Department of Social Protection, which under the previous Government to 2020 was named the Department of Employment Affairs and Social Protection. The Employment Rights Policy Unit has lead responsibility for the following pieces of legislation:

- Employment (Miscellaneous Provisions) Act 2018
- Minimum Notice and Terms of Employment Act 1973
- Protection of Employment Act 1977
- Payment of Wages Act 1991
- Terms of Employment (Information) Act 1994
- Organisation of Working Time Act 1997
- Protection of Employees (Part-Time Work) Act 2001
- Protection of Employees (Fixed-Term Work) Act 2003
- Protection of Employment (Exceptional Collective Redundancies and Related Matters) Act 2007
- Protection of Employees (Temporary Agency Work) Act 2012

38 A broadly similar process was seen in respect of the Family Leave and Miscellaneous Provisions Act 2021 – changed from the General Scheme of the Parent’s Leave and Benefit (Amendment) Bill 2021, due to the inclusion of amendments to the Adoptive Leave Act 1995 as well as the Parent’s Leave and Benefit Act 2019. In this case of the first act (Family Leave etc.) the lead Department was DCEDIY with input from the Department of Social Protection in respect of Parent’s Benefit. It should be noted also that there was input also on this legislation from the Department of Justice in respect of Part 9, which amended the Judicial Council Act 2019 and the Personal Injuries Assessment Board Act 2003.
The Directive repeals Council Directive 2010/18/EU and provides, among other things, the following:

- Ten working days of Paternity leave, paid at no less than the level of sick pay;
- Two months of non-transferable (between parents), paid Parental leave;
- Five days of annual carer’s leave; and,
- Flexible working patterns.\(^{39}\)

Among other things, the Directive states in its recital preamble that work-life balance is a considerable challenge for many parents and workers with caring responsibilities, with a negative impact on female employment. It states also that a major factor contributing to the under representation of women in the EU labour market is the difficulty associated with balancing work and family obligations. In addition, the Directive’s recital observes that where women have children, they tend to work less hours in paid employment and spend more time fulfilling unpaid care responsibilities. It notes also that having an ill or dependent relative has been shown to have a negative impact on female employment, leading some women to drop out of the labour market entirely.

Article 9 of the Directive treats ‘flexible working arrangements’ and states the following:\(^{40}\)

“1. Member States shall take the necessary measures to ensure that workers with children up to a specified age, which shall be at least eight years, and carers, have the right to request flexible working arrangements for caring purposes. The duration of such flexible working arrangements may be subject to a reasonable limitation.

2. Employers shall consider and respond to requests for flexible working arrangements as referred to in paragraph 1 within a reasonable period of time, taking into account the needs of both the employer and the worker. Employers shall provide reasons for any refusal of such a request or for any postponement of such arrangements.

3. When flexible working arrangements as referred to in paragraph 1 are limited in duration, the worker shall have the right to return to the original working pattern at the end of the agreed period. The worker shall also have the right to request to return to the original working pattern before the end of the agreed period where justified on the basis of a change of circumstances. The employer shall consider and respond to a request for an early return to the original working pattern, taking into account the needs of both the employer and the worker.

4. Member States may make the right to request flexible working arrangements subject to a period of work qualification or to a length of service qualification, which shall not exceed six months. In the case of successive fixed-term contracts within the meaning of Directive 1999/70/EC with the same employer, the sum of those contracts shall be taken into account for the purpose of calculating the qualifying period.”

Under the Directive, Member States have three years to comply with its provisions. In Ireland, national preparations for transposition of the Directive are being led by the DCEDIY.

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\(^{40}\) [https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32019L1158#PP4Contents](https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32019L1158#PP4Contents)

### Consultation on flexible work arrangements

In Ireland, partly in response to the EU Work-Life Directive, the initial consultation process on flexible working took place under the aegis of the equality division of the then Department of Justice and Equality in late 2019. Shortly after the closing date for that consultation, the Covid-19 pandemic was declared, which coupled with the hiatus between governments most likely led to a delay in progressing the policy development process. The consultation process was re-launched in May 2021 with a fresh round of consultations, this time led by DCEDIY, which as noted now has responsibility for the equality brief including family leave policy.

In DCEDIY’s documentation and guidance for the 2021 consultation on flexible working, it states it is seeking the views of employers, employees and members of the wider public on the following areas:

- issues of importance in terms of flexible working;
- types of flexible working arrangements currently in place and suggested changes;
- the potential impact of changes in technology, the workplace, the family and society on the types of flexible working arrangements available to, or sought by, employees;
- the changing nature of flexible working arrangements in light of the pandemic;
- the potential obstacles that may exist for small, medium and large employers when facilitating flexible working arrangements for employees as well as the potential administrative impact; and,
- the success factors that will help the Government and businesses to develop flexible working options that suit employees and employers.

Importantly, DCEDIY’s consultation guidance also notes that the Government, in undertaking the consultation, is seeking to develop policy that not only takes account of the needs of families with young children but also, individuals, employers and the broader economy.

The DCEDIY guidance note concludes that the Government:  

"will draw on the findings of this consultation to consider whether or not new legislation is needed. It will also consider whether existing supports meet the needs of businesses and employees and if additional supports are required. It will look at how technology and working methods can help employers and employees to have flexible working arrangements that meet the needs of employee and business alike."

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42 This consultation ran from 05 May 2021 to 31 May 2021


44 DCEDIY (2021) Flexible working consultation: Guidance note, Dublin : DCEDIY
Citizen’s Assembly on Gender Equality

The Citizens’ Assembly on Gender Equality was established by an Oireachtas resolution in July 2019 to consider gender equality and make recommendations to the Oireachtas to advance gender equality.45 This included, among other things, to:

- identify and dismantle economic and salary norms that result in gender inequalities, and reassess the economic value placed on work traditionally held by women.
- in particular, seek to ensure women’s full and effective participation and equal opportunities for leadership at all levels of decision-making in the workplace, politics and public life; and,
- examine the social responsibility of care and women and men’s co-responsibility for care, especially within the family.

In its report, the Assembly made a number of recommendations, ranging from entering an equality and non-discrimination provision in the Constitution to care, social protection and education etc. In respect of FWA, its recommendation number 36 stated the following: “Introduce a statutory right to reasonable access to flexible working.”46 This followed balloting by the Assembly members in which 95.6% opted to recommend that such a right be introduced by the Oireachtas. The basis of arriving at this conclusion included the belief that increased access to flexible working is important for gender equality as it enables all workers, women and men, to combine paid work with caring responsibilities – with positive effects for women and men, broader equality and work-life balance. In this context, the report of the Assembly noted that in Ireland 66% of women compared with 51% of men have no control over their working time compared to the EU average of 57% and 54% respectively.

Work Life Balance and Miscellaneous Provisions Bill 2022

The General Scheme of the Work Life Balance and Miscellaneous Provisions Bill 2022 was approved by government and published by the DCEDIY on 21 April 2022.47 The press release accompanying publication of the General Scheme stated that the Bill will, among other things, transpose elements of the EU Work Life Balance Directive and in so doing seeks to provide new rights with respect to employment.48

In this context, the general scheme of the Bill makes multiple references to “flexible working arrangements”. A number of the “Heads” refer directly to FWAs, albeit with qualifications. For instance, Head 3 provides for amendments to the Parental Leave Act 1998 with the effect of giving employed parents whose children are aged up to eight years the right to request FWA for caring purposes. Head 7 in turn provides for the protection of employees from penalisation for, among

45 2020-2021 Citizens’ Assembly on Gender Equality - The Citizens’ Assembly (citizensassembly.ie)
47 A “General Scheme”, or draft “Heads of Bill” (named after the Heads, or section titles, of a General Scheme), is a draft Bill prepared by the relevant Minister and her/his Departmental officials which has been approved by Government for referral to the Office of Parliamentary Counsel (in the Attorney General’s Office) for formal drafting as a Bill, for subsequent Cabinet approval and referral for consideration by the legislature. In keeping with Houses of the Oireachtas standing orders, a general scheme of a Government Bill should undergo pre-legislative scrutiny (PLS) by an Oireachtas Committee before the text of the Bill is finalised by the government department and the Office of Parliamentary Counsel. At the end of the PLS scrutiny process, the Committee produces a report and lays it before the Houses of the Oireachtas. The report makes recommendations on the Bill based on the Committee’s scrutiny. See Houses of the Oireachtas - How laws are made – Houses of the Oireachtas
other things, requesting FWA (again through a proposed amendment to the Parental Leave Act 1998).

The general scheme of the Bill for the most part proposes to transpose Articles 6 and 9 of the EU Work Life Balance Directive for employees with children aged up to eight in respect of the right to request FWA for caring purposes.\(^{49}\) The general scheme provides that such requests apply to this category of employee only. It also provides that employers have discretion to refuse or defer requests for FWA due to the likely effects on an employer’s business, profession or occupation. The principal act that the general scheme of the Bill seeks to amend is therefore the Parental Leave Act 1998, while it does propose consequential amendments to related employment and family leave legislation,\(^{50}\) these are secondary to the amendments proposed for the principal act. As such, the general scheme of the Work Life Balance and Miscellaneous Provisions Bill 2022 does not broaden or extend to all employees the right to request FWA beyond parents whose children are aged up to eight years.

**Comparative research on “Right to request” FWA**

In addition to collective and individual bargaining processes between employees and their employers, a number of Nation States\(^{51}\) have introduced laws that are designed to guarantee employer provision of some flexible working arrangements, and sometimes these are targeted specifically at fathers and mothers, such as the case in Ireland currently with its suite of family leave legislation.\(^{52}\)\(^{53}\)

It has been argued that such policies and legislation spring primarily from the need for employees to engage both in paid employment and to undertake family roles and that the “political potency of the work and family clash” has been a central factor in Governments legislating for “Right to Request” flexible working arrangements policies.\(^{54}\)

Legislative approaches to workplace flexibility varies across countries.\(^{55}\) For example, in countries such as Australia, Norway and Sweden, the right to flexible working is targeted at carers and/or parents of young children.

By contrast, a ‘right to request’ flexible working is granted to all employees, irrespective of their reasons for seeking change in France, Germany, New Zealand and the Netherlands (for workers in

\(^{49}\) It should be noted that the general scheme of the Bill proposes ancillary amendments extending the right to request FWA in cases of Force Majeure Leave, leave for medical care purposes and provides for related amendments to the relevant pieces of legislation.


\(^{51}\) The “Nation States” is used here to differentiate against “States” that comprise federal jurisdictions with sub-national States such as Australia.

\(^{52}\) OECD (2016) Be flexible! Background brief on how workplace flexibility can help European employees to balance work and family, Paris: OECD Social Policy Division.

\(^{53}\) See also previous response from Library and Research to the Member in respect of family leave policies and legislation currently operating in Ireland.


firms with 10 employees or more) and, since 2014, in the United Kingdom also. Typically, in these cases, employers must consider the employees request and can only refuse it if there is a clear business case for such a refusal.56

Employees can also appeal in the courts in cases where employers refuse such a request. Often legislation focuses on the number of hours worked, but the ‘right to request’ legislation in New Zealand, the United Kingdom and the Netherlands covers flexible working rights for employees in a comprehensive manner, including the scheduling of hours and the location of work.

Table 3 below shows the arrangements across a range of countries as at the end of April 2021 regarding the right to request flexible work.

Table 3: Statutory leave entitlement re FWA across a broad range of countries (April 2021)

<table>
<thead>
<tr>
<th>Country</th>
<th>Right to request flexible work</th>
</tr>
</thead>
<tbody>
<tr>
<td>Australia</td>
<td>Yes: until child is 18; also, all with caring responsibilities</td>
</tr>
<tr>
<td>Austria</td>
<td>X</td>
</tr>
<tr>
<td>Belgium</td>
<td>X</td>
</tr>
<tr>
<td>Brazil</td>
<td>X</td>
</tr>
<tr>
<td>Bulgaria</td>
<td>Right to work from home for mothers of children under 657</td>
</tr>
<tr>
<td>Canada</td>
<td>Federal workers only (1 of 14 labour law jurisdictions)</td>
</tr>
<tr>
<td>Chile</td>
<td>X</td>
</tr>
<tr>
<td>China</td>
<td>X</td>
</tr>
<tr>
<td>Croatia</td>
<td>X</td>
</tr>
<tr>
<td>Cyprus</td>
<td>X</td>
</tr>
<tr>
<td>Czech Republic</td>
<td>X</td>
</tr>
<tr>
<td>Denmark58</td>
<td>X</td>
</tr>
<tr>
<td>Estonia</td>
<td>X</td>
</tr>
<tr>
<td>Finland</td>
<td>Yes, introduced in late 2020.</td>
</tr>
<tr>
<td>France</td>
<td>X</td>
</tr>
<tr>
<td>Germany</td>
<td>X</td>
</tr>
<tr>
<td>Greece</td>
<td>X</td>
</tr>
<tr>
<td>Hungary</td>
<td>X</td>
</tr>
<tr>
<td>Iceland</td>
<td>Yes: employers required to support family/work balance</td>
</tr>
</tbody>
</table>


57 Although there is this statutory right of remote working for mothers with children under the age of six, in practice this is nonapplicable. This is because employers in the private sector refuse flexible or remote working, based on the argument that private sector jobs require strict working hours and physical presence. This affects the majority of young Bulgarian women who primarily work in this sector. See additional comments in the Bulgarian country note.

58 Denmark: no statutory entitlement to childcare leave or career breaks, dependent on collective agreement or individual contract.
<table>
<thead>
<tr>
<th>Country</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>Ireland</td>
<td>Yes: on return from Parental leave</td>
</tr>
<tr>
<td>Israel</td>
<td>X</td>
</tr>
<tr>
<td>Italy</td>
<td>Yes: until child is 6 years old or, if child has disabilities, until 18</td>
</tr>
<tr>
<td>Japan</td>
<td>Yes: employees exempted from the entitlement to reduced hours to 3 years.</td>
</tr>
<tr>
<td>Korea</td>
<td>X</td>
</tr>
<tr>
<td>Latvia</td>
<td>Yes: pregnant women, women until a child turns 1, breast-feeding mothers,</td>
</tr>
<tr>
<td></td>
<td>and workers with a child up to 14 (or 18 if child has a disability)</td>
</tr>
<tr>
<td>Lithuania</td>
<td>Yes; all employees</td>
</tr>
<tr>
<td>Luxembourg</td>
<td>X</td>
</tr>
<tr>
<td>Malta</td>
<td>Public sector: Yes: teleworking for 12 months (renewable yearly)</td>
</tr>
<tr>
<td></td>
<td>Private sector: X</td>
</tr>
<tr>
<td>Mexico</td>
<td>X</td>
</tr>
<tr>
<td>Netherlands</td>
<td>Yes: flexible hours and working from home for all employees if employer has</td>
</tr>
<tr>
<td></td>
<td>10+ employees</td>
</tr>
<tr>
<td>New Zealand</td>
<td>Yes: any worker</td>
</tr>
<tr>
<td>Norway</td>
<td>X</td>
</tr>
<tr>
<td>Poland</td>
<td>Yes: in certain circumstances, e.g. a disabled or seriously ill child</td>
</tr>
<tr>
<td>Portugal</td>
<td>Yes: entitlement to work flexible hours until child 12 years</td>
</tr>
<tr>
<td>Romania</td>
<td>X</td>
</tr>
<tr>
<td>Russian Fed.</td>
<td>X</td>
</tr>
<tr>
<td>Slovakia</td>
<td>Yes: Pregnant women and women and men taking care of children under 15</td>
</tr>
<tr>
<td></td>
<td>may ask for shorter working hours. Employers may decline the request due to</td>
</tr>
<tr>
<td></td>
<td>serious operational reasons.</td>
</tr>
<tr>
<td>Slovenia</td>
<td>X</td>
</tr>
<tr>
<td>South Africa</td>
<td>X</td>
</tr>
<tr>
<td>Spain</td>
<td>X</td>
</tr>
<tr>
<td>Sweden</td>
<td>X</td>
</tr>
<tr>
<td>Switzerland</td>
<td>X</td>
</tr>
<tr>
<td>United Kingdom</td>
<td>Yes: all employees</td>
</tr>
<tr>
<td>USA</td>
<td>X</td>
</tr>
<tr>
<td>Uruguay</td>
<td>X</td>
</tr>
</tbody>
</table>


**Comparative research among selected jurisdictions**

This section provides an overview of the operation of FWA in (Nation) States where such arrangements have been the subject of legislation in recent years. As such, it draws for the most part from the findings in Table 3 (above) and focuses on those countries with the right to request FWA in place. It should be noted at this point that the comparisons between States is partial given that we are not able to compare like with like due to the different legal, policy, administrative,
cultural and historical contexts of these States from which their specific arrangements emerge. That being said, the following sections provides the overview under a number of themes which seeks to thread a narrative through each State’s FWAs. The themes are legal framework, right to request FWA, and employer’s duties.

Finland

Legal framework
FWAs are provided for in Finland by the Working Hours Act 2020. It is suggested that the Act responds to changes in the labour market and working life, such as the growing popularity of time and location independent working. The Act caters to the requirements of the EU Directive on Working Time. The major difference between this and the previous Working Hours Act 1996 (amended in 2005) is that work performed at home now falls within the scope of the 2020 Act. Although the Working Hours Act 2020 thus caters to the growing popularity of FWAs, it should be noted that even before the introduction of the 2020 Act an examination of the labour market in Finland revealed that it has the most family friendly arrangements in Europe for flexible working hours. This applies not only to those who have the most qualifications, but also to those who leave formal education with the least qualifications.60

While the Act deals with a broader set of provisions than FWAs alone, section 13 of the Act (Flexible working hours) provides for flexible working arrangements.

Right to request FWA
It is important to note that references and provisions in the Act to FWA do not exist independently of other parts of the Act or other related legislation. With that being said, under the Act, the employer and the employee agree on the flexible working hours arrangement, if the nature of the employee’s role/work is such that they decide independently how to allocate at least half their working time and place of work.61

When working under FWA, the daily regular working time of the employee must be reduced or extended by a flexible working hours period which will not exceed four hours. The adjustment may take place at the beginning or end of the working day, or in the evening after the working day has ended.

In this flexible working hours arrangement, the weekly regular working time may not exceed 40 hours during a four-month reference period. At the end of the reference period, the accrued excess may not exceed 60 hours and deficit may not exceed 20 hours. The number of accumulated working hours may exceed 60 during the reference period, as long as it decreases to the maximum allowed by the end of the period. To reduce accumulated excess hours, employees can work shorter days or take entire days off.

In addition, the employer and the employee may deviate from the provisions of a collective agreement regarding duration and placement of regular working time, so as to agree on a FWA whereby the employee may independently decide on the placement and place of work for at least

59 For more see the following: https://tem.fi/en/new-working-time-act-in-a-nutshell
61 Ally Law (2019) “Finland’s updated Working Hours Act takes effect 1 January 2020”.
half of the working time. A FWA is also an option in roles that are not tied to a specific time of day, day of the week or place of work.

Under the Act, an agreement on FWA between employer and employee must cover at least the following:

- the days to which the employee may allocate the working hours;
- the placement of the weekly rest periods;
- any fixed working hours, however, not their placement between 23.00 and 06.00;
- the working time applicable after expiration of the agreement on FWA.

**Employer’s duties**

The employer must supervise weekly leave reported and taken by the employee and, if required, may take necessary action regarding the employee’s working hours. As a last recourse, an employer may terminate the agreement on the FWA.

**New Zealand**

**Legal framework**

In New Zealand, under the *Employment Relations Amendment Act (2014)*, all employees can ask at any time to change the following:62

- hours of work (over a day, a week or year);
- days of work;
- place of work.

The 2014 Act amends the *Employment Relations Act 2000*.

**Right to request FWA**

All employees have the right to request FWA, that is not just those with care responsibilities. Under the Act, an employer is obliged to give each employee’s request for flexible work *fair consideration* and to respond to such a request not later than one month following receipt.

All employees are able to request FWA from the start of their employment. Under the Act, a request for FWA can be made at any time, for any purpose or reason, and there are no limits on employees as to how many requests can be made in any period. Furthermore, there is no requirement for an employee to tell an employer the reason for the request.63

The New Zealand Ministry of Business, Innovation and Employment provides online toolkits for employers and employees on the protocol for requesting flexible working arrangements, responding to such requests and facilitating them should they be accepted.64 This includes a ‘request for flexible working arrangements checklist’, which sets out the steps required in requesting FWA.

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62 Employment New Zealand, “Flexible working arrangements”.
### Employer’s duties

Under the 2014 Act, employers have a duty to consider requests from employees for FWA. The employer has one month to respond to each request in writing. Crucially, the employer can decline such requests, clearly stating the reasons in writing, and relating these to “good” business reasons. These may include one or more of the following:

- Employer cannot reorganise work among existing staff;
- Employer cannot recruit additional staff;
- Negative impact on quality of employer’s business;
- Negative impact on performance of employer’s business;
- Not enough work during the periods the employee proposes to work;
- Employer’s planned structural changes;
- Burden of additional costs on employer; and,
- Negative effect on ability of employer to meet customer demand.

An employer may also refuse a request for FWA where it conflicts with a collective employment agreement.

An employee can make a formal complaint in the event of a refusal of a request for FWA only where they consider an employer has made a wrong decision about their eligibility to apply for flexibility, or where the employer has not complied with the statutory, described process for considering a request.  

### Australia

#### Legal framework

In Australia, the employment conditions of most employees are set by federal legislation in combination with awards, collectively negotiated enterprise agreements, and employer or company policies. The federal *Fair Work Act 2009* provides ten National Employment Standards that prescribe the minimum set of entitlements for employees. One of these standards relates to the right to request FWA. The Act also provides for collective agreements to include an individual flexibility clause.

#### Right to request FWA

Any employee can request flexibility – but certain employees have a statutory legal entitlement to request FWA, these include:

- are the parent, or have responsibility for the care, of a child who is school aged or younger;
- are a carer (under the *Carer Recognition Act 2010*);
- have a disability;
- are 55 or older;
- are experiencing family or domestic violence; and,
- provide care or support to a member of their household or immediate family who requires care and support because of family or domestic violence.

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66 Australian Public Service Commission (2021) “Flexible working arrangements”

Employees who have this legal entitlement include employees (other than casual employees) who have worked with the employer for at least 12 months and long-term casual workers who have a reasonable expectation of continuing employment with the employer on a regular and systemic basis. A FWA may involve a change in working arrangements for a set period or on a longer basis, in keeping with the requirements of the employee concerned.

**Employer’s duties**

An employer must respond to a request for FWA within 21 days and may refuse the request only on ‘reasonable business grounds.’ While examples of ‘reasonable business grounds’ are provided in the legislation, these do not limit what might be included. The request is ultimately not enforceable by any third-party body. Reasonable business grounds include:

- the requested arrangements are too costly;
- other employees’ working arrangements can’t be changed to accommodate the request;
- it’s impractical to change other employees’ working arrangements or hire new employees to accommodate the request; and,
- the request would result in a significant loss of productivity or have a significant negative impact on customer service.

If an employee is not satisfied with the reasons set down by employers in a refusal of a request for FWA, they can apply to the Fair Work Commission, however the Commission cannot direct an employer unless the refusal breaches the employment contract or a collective agreement.

**Netherlands**

**Legal framework**

The Dutch *Flexible Working Act (2016)* provides for flexible working in terms of both time and location-based flexibility. It provides that all employees with at least six months of continuous employment with the current employer, where such employers employ at least 10 employees, are entitled to request an increase, decrease, or adjust their working hours and the right to work from home.

**Right to request FWA**

Employees can request FWAs at least two months before the proposed start date. Furthermore, apart from the amount of hours, employees can request a change in the timing of the hours worked, if this is possible and in line with the activities of the company. In addition, employees are allowed to request a change of location at which they work. For example, they are allowed to request placement at a different company’s establishment, or to work from home. Grounds for rejection by the employer for these kinds of requests are the same as for a requests for an increase or decrease in working hours.

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68 Workplace Gender Equality Agency, *Flexible work*
70 Fair Work Ombudsmen, *Flexible working arrangements*
Employer’s duties

In principle, the employer should honour such a request unless there is a “significant business or service interest” involved in not doing so. The employer, who has a duty to consider such requests, is required to inform the employee of their decision not later than one month before the proposed start date for the FWA. A failure to respond automatically leads to the granting of requests for FWA. A relevant employer might reject a request of a change of workplace based on a number of factors. These include if the change:

- causes difficulties for the business due to the reallocation of hours;
- causes safety problems;
- causes roster problems;
- leads to financial or organisational problems;
- is not supported by sufficient work; and,
- is not in line with an established formation or staff budget.

Two years after a request has been denied, the employee is entitled to file a new request. These guidelines also apply to employees requesting an increase or decrease in their working hours.

Poland

Legal framework

In Poland, a Bill has been introduced to parliament which seeks, among other things, to fulfil Poland’s obligations under the 2019 EU Directive on Work-life balance and also the 2019 EU Directive 2019 on transparent and predictable working conditions. The Bill is an amendment to the Polish Labour Code.

Right to request FWA

In respect of FWA, the Bill provides for the following:

- Changing the definition of a “child” from 4 to 8 years of age, up until which the employer cannot require an employee-parent to work overtime, at night, or in the interrupted working time system, and cannot instruct an employee-parent to work away from his/her regular place of work;
- Such employees will have the right to request that their work be organised in a flexible way, which includes telework (soon to be replaced by remote work), flexible working time, and individual work schedules.

Employer’s duties

It is proposed under the Bill that employees with children up to eight years of age will be able to request (i) a more flexible work schedule, (ii) a limitation of working hours, or (iii) the possibility to work from home. However, employers will not be obliged to grant such requests. Employees will also be able to request a return to the previous working time schedule before the end of the agreed period of flexible working.

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72 Lexology (2020) “Working from home: Legal obligations under Dutch law and practical guidelines”
74 Poland : Amendment of the Labour Code - Lexology
75 Latest amendments to labour law - Lexology
The Bill provides for, upon an employee’s request, occasional remote work for up to 24 days per calendar year will be possible with the employer’s consent and without most of the formalities and costs for the employer.

The employer’s obligation to formally justify why it is impossible to change the type of work, type of contract or working time in the event an employee who has been employed for at least 6 months requests such changes.

It should be noted that the Bill providing for the above is in the process of consultation and further assessment of the operation of the Act would be merited following commencement.

**Portugal**

**Legal framework**

Under the Portuguese Labour Code, an employee with a child under the age of 12 or, regardless of age, a child with a disability or chronic illness, provided that they are part of the same household, is entitled to work part-time or to work flexible working hours, which may be exercised by either or both parents.\(^76\)

**Right to request FWA**

There exists, in line with the provision above, the right to FWA. The request must be made in writing to the employer, who must be given 30 days’ notice by the employee before the flexible working/part-time work commences.\(^77\)

**Employer’s duties**

Employers, on receipt of a request for FWA, can only refuse to grant these requests where they have exceptional business reasons for so doing or where the employee is essential to the functioning of the business. In any case, where these requests are refused by an employer, that refusal must be reviewed Portuguese Commission for Equality in Labour and Employment, whose decision on the refusal can only be challenged by the court.\(^78\)

**United Kingdom**

**Legal framework**

Under Part 8A of the Employment Rights Act 1996, subsequent to its amendment in 2014, all employees in the UK have the right, after 26 weeks of employment, to make a statutory request to work flexibly.\(^79\) An employee can make such a request once in each 12-month period.

**Right to request FWA**

A request from an employee to an employer for FWA must be in writing and include the following:

- Date of application, changed to working conditions sought and the date on which such a change is sought;

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\(^76\) [Employment and Employee Benefits in Portugal: Overview | Practical Law (thomsonreuters.com)](https://thomsonreuters.com)

\(^77\) [LEG-Employment-Law-Overview-2021-2022_Portugal_27.03.21.pdf (leglobal.org)](https://leglobal.org)

\(^78\) [Employment and Employee Benefits in Portugal: Overview | Practical Law (thomsonreuters.com)](https://thomsonreuters.com)

\(^79\) [Code of Practice on handling in a reasonable manner requests to work flexibly | Acas](https://acas.org)
• The likely effect of the change in working conditions requested by the employee on the employer and potential remedies of offset any such effects; and,
• A statement that the request is a statutory request and if and when a previous application for FWA was made by the employee in question.

Employer’s duties

Employers, on receipt of a request for FWA, are required to consider requests and ensure that no discrimination takes place in respect of the employee. Employers, on reaching a decision on such requests, should inform the employee in writing in a prompt manner – all requests including appeals must be considered and decided within three months of original receipt of request, unless otherwise mutually agreed.

If a request is rejected by the employers, one or more of the following business reasons must be cited in the written response:

• the burden of additional costs
• an inability to reorganise work amongst existing staff
• an inability to recruit additional staff
• a detrimental impact on quality
• a detrimental impact on performance
• a detrimental effect on ability to meet customer demand
• insufficient work for the periods the employee proposes to work
• a planned structural change to your business

Where requests for FWA are rejected by employers, the employee has right to appeal under a reasonable procedure.80

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80 Code of Practice on handling in a reasonable manner requests to work flexibly | Acas