

# HRWS TRENDING

MAY 2019

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You Missed the April HR Clinic?

"Personal Appearance Policies  
in the Workplace:  
What You Must Know"

Email Us with Subject Line:  
"Please Send April 2019 HR  
Clinic"

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**HRWS**  
HR WORKPLACE SERVICES

## CONSIDERING FLEXIBLE WORKING OPTIONS?

### WHAT EMPLOYERS MUST KNOW

"Flexible working" involves employers adjusting their preferred working arrangements to accommodate their employees' preferences. When making decisions about the availability of flexible working, best practices indicate it should be:

- ▶ open to all employees and managers on the same terms
- ▶ open to the workforce as a whole (not just those entitled by legal right)
- ▶ based on an objective assessment of the business case
- ▶ done without examining reasons why individuals want to move to flexible working

These four best practice points should prevent any sense of divisiveness that could otherwise result if only specific groups are eligible to apply for work flexibility. Moreover, it will work to ensure that all applications are treated objectively and consistently.

Even so, employers should be reminded that disabled employees have special protection under the law, regarding "reasonable accommodations" – those that employers are expected to make in order for said employees to obtain or maintain gainful employment. This may involve flexible working permission.

In any case, employers should consider the following factors (whether positive or negative) when developing a business case on the potential impact of flexible working:

- ▶ Flexible working legislation compliance (right to request)
- ▶ Spread of employees' weekly working hours and availability/role coverage
- ▶ Customer service
- ▶ Productivity
- ▶ Absence
- ▶ Attendance
- ▶ Stress
- ▶ Workplace turnover
- ▶ Key staff member retention
- ▶ Recruiting
- ▶ Employee commitment & job satisfaction
- ▶ Equal opportunities & diversity
- ▶ Payroll costs
- ▶ Accommodation and facilities costs
  - ▶ may increase with uptick in # of part-timers
  - ▶ may decrease if # of home-based workers rises
- ▶ Communication & meeting costs

Like just about every workplace policy, we suggest to never "go forth" alone. Speak to a specialist throughout the process and rest assured, HRWS is here to help.

### INSTITUTING YOUR FLEXIBLE WORKING POLICY

Typically, we run two entirely separate featured articles with every issue of Trending. However, we have seen so many

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queries lately on flexible working policies, we wanted to address it at several levels. Now that we have discussed what to consider before you implement, we wanted to share some ideas about how to effectively write and introduce such a flexible working policy - for seamless integration and limited exposure to compliance issues.

To begin, an organization's procedure for handling flexible working requests should be broadly neutral. With that, its flexible working policy can and should clearly lay out its statement of intent. For example, it could explain that the organization:

- ▶ actively supports flexible working arrangements, provided that both the organization's and employees' goals and objectives can be met
- ▶ requires entire staff to support this common stance
- ▶ is strongly opposed to singling out those who work under flexible working arrangements (or request to do so, more often)

The policy could go on to point out:

- ▶ requests to work flexibly will be assessed according to a set of objective criteria

- ▶ that the criteria for considering requests are unrelated to the individual's personal circumstances

At this point, it is wise to refer to the actual procedure for handling flexible requests and then clearly summarize the main points. The policy should highlight the business constraints limiting access to flexible working, as well as the benefits to both the organization and the individual when such requests are granted. State that managers will approach requests with positivity and strive to find mutually acceptable outcomes within the parameters of business need.

Further, support should be pledged through guidance, training and where appropriate, the resources necessary for those supervising those with flexible arrangements. And finally, and perhaps most importantly, provide the types of flexible working arrangements that are being offered.

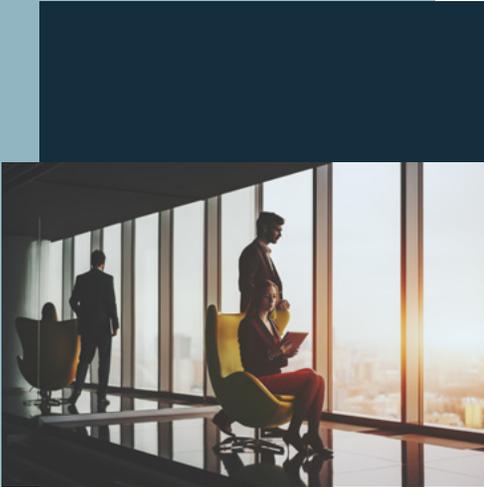
Much like our advice in this issue's previous article, we suggest that you do not go about the writing or delivery of this policy alone. Speak to a specialist and, if you have access to HRWS – do not hesitate to reach out. We have the requisite experience and training to help you craft and implement a useful and compliant flexible working policy.

## INTERESTING QUESTIONS RECENTLY ASKED OF HRWS ADVISORY STAFF

**Q:** May an employer allow a nonexempt employee to work from home or have a flexible schedule?

**A:** **Yes.** An overtime-eligible employee is not required to have a predetermined schedule, and there are no restrictions under the Fair Labor Standards Act (FLSA) on when or where the work is performed. Further, FLSA also does not require minimum or maximum hours for a shift or prohibit split shifts. For example, an overtime-eligible worker may have a flexible schedule that requires the employee to work exactly 40 hours a week, but does not require the employee to work any particular hours. However, an employer must also check applicable state law for possible limitations on the flexibilities an employer may provide its nonexempt employees.





**Q:** Can an employer restrict an employee's right to discuss working conditions?

**A:** **No.** Under the National Labor Relations Act (NLRA), employees have the right to share complaints and engage in collective action or protected concerted activity to improve their wages, hours and working conditions. The NLRA protects the right of employees to discuss work-related issues with other employees.

**Q:** Is an employee's business use of a company car a working condition fringe benefit?

**A:** **Yes.** To qualify as a working condition fringe benefit, an employee must substantiate his or her business use of a company vehicle through adequate records or by sufficient evidence that corroborates his or her own statements. An employee need not keep a contemporaneous log, but written records made close to when the employee incurs expenses are the most persuasive. An employee must keep receipts and an account book, diary, log, statement of expense, trip sheets and similar records that prove these elements:

- ▶ The time and place of the travel
- ▶ The business purpose of the travel
- ▶ The business relationship to the individuals with whom the employee met.

**Q:** How should an employer handle an employee who is transitioning to a new gender?

**A:** An employer and or HR professional should meet with the employee in confidence to discuss the transition. The employer should provide support and assist the employee in planning any time off that may be needed for medical surgeries or appointments, including any recovery time. The employer may also wish to discuss whether the employee will stay in his or her current position or request to be relocated - and how supervisors, co-workers, clients and customers will be informed of the transition.

The employer should also discuss the expected date of transition, including the personal details such as what name the employee will go by, which restrooms or locker rooms will be used, potential changes to records, and dress code considerations (note: enough flexibility should be given to accommodate the employee's transition). All discussions should be held privately, in confidence, offering the utmost in sensitivity and understanding.

## 6 CRITICAL RULES HR FOLKS MUST KNOW

**1. Know and understand policies -**  
you need to be the go-to person for this basic information.

**3. Employees have rights -** all have rights under state, federal and local law. Know them well so you never violate them.

**5. Know what questions are okay to ask -** have questions planned in advance so you do not venture into the realm of the illegal.

**2. Keep information confidential -**  
it is up to you to keep things discrete and protected (this includes personal problems).

**4. It is illegal to hire an individual who is illegally residing in the country -**  
regardless of political views, each individual's identity and employment eligibility must be verified.

**6. Health benefits must be compliant -**  
make no assumptions. Work to ensure your company is compliant and your employees' benefit options are well represented.

While this list is merely a jumping off point, knowing all six is mission critical to every HR person. As one delves into more gray area, we invite you to contact our HRWS advisors with anything that presents.

### CONTACT US

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