Rejected flexible working request – Reasonable or not?

An employee was returning from maternity leave in a 2016 case – She had asked for an evenings-only homeworking arrangement. This was rejected and she claimed sex discrimination. Why did she lose?

Change of hours

Fairly frequently, when a female employee is about to return to work from a period of maternity leave, she may request either: **(1)** a change to part time hours; or **(2)** a flexible working request. Sometimes, the employee will ask them for both, e.g. fewer hours at a different time of day. If you are the employer, this can make you feel quite nervous - after all, there are so many scare stories about.

Pro-employer case

However, as one smaller employer has just found out, if you do things by the book there isn't any need to worry. The case details are: Ms Whiteman (W) worked as a designer for CPS Interiors Ltd, a small business which refurbishes commercial premises. Having had twins she asked if she could reduce her hours on return from maternity leave and have a homeworking arrangement whereby the majority of her working hours would be after 6.00pm.

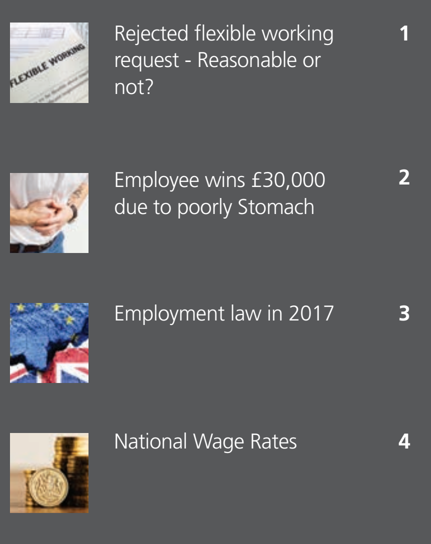
In consideration

CPS accepted W's request for reduced hours but considered that, although working at home primarily in the evenings may have been possible, it could not accommodate W's request because:

- Its team has a collaborative way of working, i.e. the designers get together in a room to look at and discuss technical designs; and
- Designs often have to be changed at short notice and that would be difficult if an employee worked only at home in the evenings.

W was unhappy about this response and resigned giving the reason for her resignation as the handling of her flexible working request. CPS offered to deal with her complaint under its grievance procedure and invited W to retract her resignation. She refused both and instead issued tribunal claims for constructive dismissal, sex discrimination and breaching the flexible working legislation.

The tribunal rejected all of W's claims, stressing that there's no statutory right to work flexibly; only a right to request a flexible working arrangement. Provided you follow the relevant Acas guidance and your approach is not discriminatory, you can reject a flexible working request on one or more of the accepted business grounds.



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Employee wins £30,000 due to poorly Stomach

A male employee who was sacked after he was embarrassingly caught short on two occasions has won his unfair dismissal claim and compensation of nearly £30,000. Why did the employer make such a mess of this case?

Two unfortunate incidents

In October 2016 there were media reports about Keith Garvey (G). He had previously been employed as a driver by Hyde Details (H) in Manchester but was sacked following two rather unfortunate and embarrassing incidents. G has Type 2 diabetes for which he needs to take prescribed medication. As a side effect of this medication, G can often feel sick and have a poorly stomach.

First Occasion

G experienced one of those occasions in January 2015 and needed to make an emergency dash to the gents. He didn't make it in time and ended up leaving the floor and toilet in quite a mess. G admitted what had happened to his bosses who at that point didn't know about his diabetes or prescribed medication. G was given a written warning for leaving the toilet area in an unacceptable and unhygienic state, which H said was a "Health and Safety issue".

Second Occasion

Having tried to put this incident behind him, G was mortified to find himself in exactly the same position in December 2015, when he was caught short again. He later stated that he had got "on [his] hands and knees to try and clear it up but had made a real mess". He said that he had informed two cleaners who were standing outside the toilets but H later disputed this. This time, G advised his supervisor what had happened who told G to go home and get changed.

Forced resignation

The next day G was called into a director's office and given a firm ultimatum: either resign immediately and get a good reference or be sacked (and presumably get nothing). Under the circumstances, G felt he had no option but to resign. However, he had a hand injury so couldn't write. So H wrote the resignation letter for him and he just signed it. He then claimed constructive dismissal and disability discrimination at the tribunal.

It agreed that H's behaviour was unacceptable but before compensation could be awarded the parties settled at a figure said to be £30,000.

Adjustments for Breastfeeding Employees

Breast-feeding employees:
Another employment tribunal decision illustrates well how a failure to make adjustments to enable employees to breast feed can lead to an expensive finding of sex discrimination. Here, two flight attendants wanted to continue breast feeding when they returned to work, which was not possible due to their working patterns. Options: Alternative duties, a bespoke roster or suspension on full pay should have been the airline's approach.

Employment law in 2017

So the intention is to trigger Article 50 and start the formal Brexit process by March 2017 at the latest. What are the Governments plans in relation to EU-derived employment laws?

Official position. In October 2016, at the Conservative Party conference, the government laid out its skeleton plans for Brexit. It stated that Article 50 will be invoked "by March 2017 at the absolute latest". This is, however, only part of the picture; in addition, employers need to know what's going to happen to EU-derived employment laws.

Major legislation. In the autumn 2016 Parliamentary session a new "Great Repeal Bill" will be introduced. Whilst this could be enacted before or during the Article 50 negotiations it would not come into force until the day we officially leave the EU. On that date two important things will happen. Firstly, the European Communities Act 1972 - which gives direct effect to all EU laws in the UK - will be repealed. Secondly, all existing EU legislative provisions will be transposed into UK domestic law, i.e. everything stays exactly as it is.

Moving forward. In practical terms, this change will enable the government to scrap, alter or introduce legislation as it deems appropriate from that point without any outside interference. It's likely that the Bill will sail through the House of Commons but it may well struggle as it hits the House of Lords - so, although this is the government's plan, it is by no means a done deal.

No to overtime!

An employee who was dismissed after she refused to work overtime in the run up to Christmas has lost her tribunal claim for unfair dismissal. What were the details of the case?

Many smaller employers have peak periods when they are at their busiest and often severely stretched. For Bramble Foods Ltd (B), its annual peak period starts around mid-September and continues for approximately eight weeks. During this time, B produces and packs premium food products for Christmas, such as hampers and gifts and, as you might expect, every employee is crucial in order to fulfil customer orders.

Help!

B's employment requires this of its employees: "you are expected to work such further hours as may be reasonably necessary to fulfil your duties or the needs of the business". Prior to 2014, any overtime worked during the eight-week peak period was voluntary but this meant B was often short-staffed. So in 2014 B asked all 75 employees, with the exception of Mrs Edwards (E), which Saturday mornings they could work in the September and October. E was excused at that time because of her caring responsibilities.

Refusing overtime

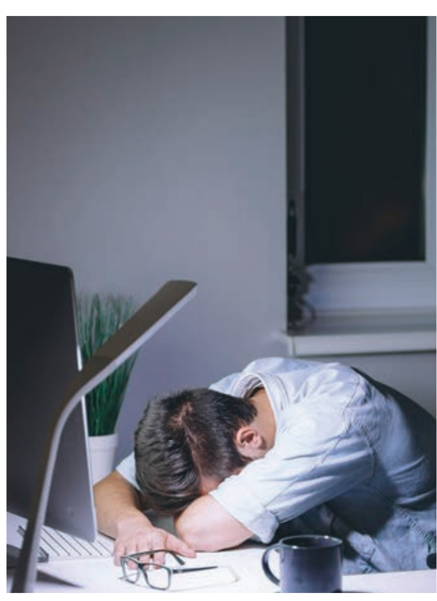
In June 2015 B gave all employees a form asking them to indicate their willingness to work from four to eight Saturday mornings (for four hours) in the eight-week peak business period. All but one employee agreed to work at least four Saturdays that year. The employee who refused was E who returned her form with "none" written on it. Managers had a number of informal chats with her and explained that she was the only employee who hadn't agreed to do some overtime and that this was unfair on other staff.

Getting disruptive

E's reason for refusal was that she spent Saturday mornings with her husband. Her behaviour then became disruptive and complaints were received about her shouting, swearing, banging on her desk and constantly talk about Saturdays. On 14 September 2015 a colleague raised a formal grievance about E's conduct and alleged that she had mocked those who had agreed to Saturday overtime and boasted that she would be "having a lie in" on Saturdays while they were working.

At the same time, approximately 30 employees threatened not to work overtime if E was excused. Following disciplinary proceedings, E was dismissed on 13 October for: (1) unreasonably refusing to comply with the terms of her employment and/or a reasonable management instruction; and (2) using inappropriate and unacceptable conduct towards a fellow employee. She claimed unfair dismissal but lost.

The tribunal ruled that it was wholly reasonable for B to require E to do some overtime (as set out in her contract) and she had no legitimate reason for refusing this. It also noted that her behaviour was having an adverse effect on B and its workforce. However, had B not included an appropriate clause in its employment contract, its hands would have been tied.



National Wage Rates

Earlier this year, the government confirmed that, from 2017 onwards, the rate change date for both the NLW and the NMW would be 1 April each year. So, it has now announced that, from 1 April 2017, the NLW and NMW rates will rise as follows:

- The NLW rate for workers aged 25 and over will increase from £7.20 to £7.50 per hour
- The NMW standard (adult) rate for workers aged 21 to 24 will increase from £6.95 to £7.05 per hour
- The NMW development rate for workers aged 18 to 20 will increase from £5.55 to £5.60 per hour
- The NMW young workers rate for those aged 16 and 17 will increase from £4.00 to £4.05 per hour
- The NMW apprenticeship rate will increase from £3.40 to £3.50 per hour (this rate applies to apprentices under 19 years of age or those aged 19 and over but in the first year of their apprenticeship).

In addition, the daily accommodation offset will increase from £6.00 to £6.40 per day. The offset is the maximum daily sum that employers who provide accommodation for workers can deduct towards those costs.

The government has also announced plans to spend £4.3 million on helping small businesses to understand the NLW and NMW rules and on cracking down on employers who break the law by not paying the NLW/NMW.

In just 90 minutes 17 drivers were spotted using mobile phones on the M20 as reported by the Daily Mail Newspaper

Do you have Employees using your Company vehicles?

Do you have the appropriate Policy in place?

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