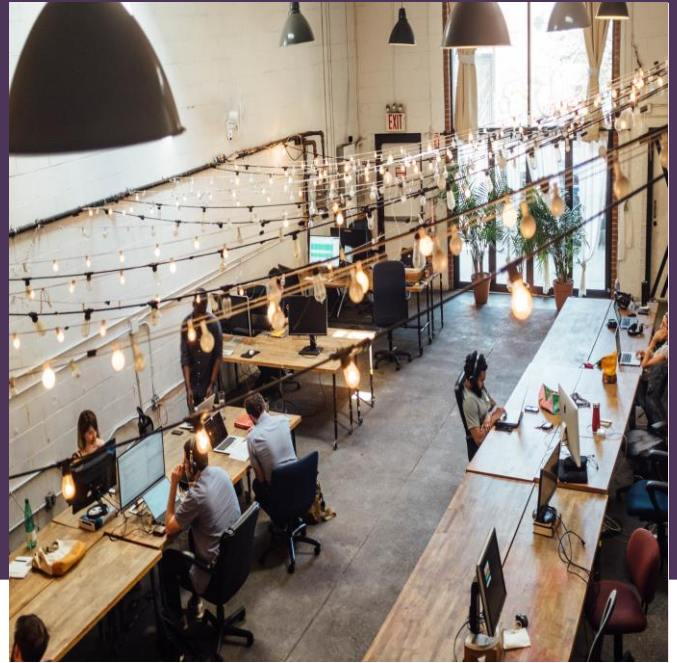




# Flexible working arrangements

2 September 2021



This factsheet contains a general guide to the law and is not a substitute for legal advice.

## What are flexible working arrangements?

Flexible working arrangements are changes to when, how or where you do your work, and can include changes to:

- Hours of work (e.g. changing start or finish times);
- Pattern of work (e.g. split shifts or job share arrangements);
- Work location (e.g. working from home).

## Can I request flexible working arrangements?

If you have worked with the same employer for at least 12 months, you are entitled to request flexible working arrangements if you:

- Are the parent, or have responsibility for the care, of a child who is school aged or younger,
- Are a carer,
- Have a disability,
- Are 55 or older,

- Are experiencing family or domestic violence, or
- Provide care or support to a member of your household or immediate family because of family or domestic violence.

If you are employed as a casual, you can also make a request if:

- You have been working for the same employer regularly and systematically for at least 12 months
- You have a reasonable expectation of continuing work with the employer on a regular and systematic basis.

This entitlement is set out in the *Fair Work Act 2009* (Cth) (**FWA**). Your award, enterprise agreement, or employment contract might provide extra rights around asking for flexible working arrangements. You should check these before making your request.

If your circumstances do not fall within those outlined above, you can still request flexible working arrangements, however you do not have an entitlement to do so under the FWA.

## How do I request flexible working arrangements?

Your request should:

- be made in writing

- explain the changes you are asking for, and
- explain the reasons for the change.

Keep copies of the written communication with your employer regarding the request.

## Does my employer need to respond?

All employers who receive a flexible working request must provide a written response within 21 days. This response must state whether the request is approved or refused.

There may be a discussion prior to your employer providing a formal response. Where employees are covered by an Award, there is a requirement to discuss the request to try to reach an agreement about changes to working conditions. We recommend taking and keeping some notes of the discussion.

Remember, you have a **right to request flexible working arrangements – this is not a right to be granted that request**. However, employers can only refuse a request on **reasonable business grounds**. If your employer does refuse your request, the written response needs to include reasons for the refusal.

If you are not entitled to request flexible working arrangements under the FWA, your employer is not required to respond this way. However, best practice employers will follow this process whether an employee is entitled to make the request or not.

## What are reasonable business grounds?

Employers are entitled to refuse a flexible working request on reasonable business grounds.

Reasonable business grounds are legitimate reasons your employer may have to refuse a flexible working arrangement request. These can include:

- the requested arrangements would cost too much,

- working arrangements of other employees cannot be changed to accommodate your request,
- it is impractical to change the working arrangements of other employees or to hire new employees to accommodate the request,
- the request would result in a significant loss of productivity or have a negative impact on customer service.

This list is not exhaustive. There could be other reasons which are reasonable business grounds.

## My request was refused

If your request was refused and you do not think there was a reasonable business ground for this, you should seek legal advice.

There is no automatic review mechanism for flexible work arrangements under the FWA. However, your employment contract, enterprise agreement, award or other legislation may provide a way to review the decision. The Fair Work Commission may also be able to deal with a dispute about whether your employer had reasonable business grounds to refuse your request or whether your employer has complied with their obligations in responding to the request, depending on the terms of your employment contract, award, enterprise agreement or other employment instruments.

A refusal to put in place flexible working arrangements might also give rise to discrimination law issues, and you may wish to seek further legal advice.

### Free legal advice

You can ring our Advice and Intake Line on 02 6257 4377, Monday-Friday, 9am-5pm.

You can also request assistance through our website [here](#).