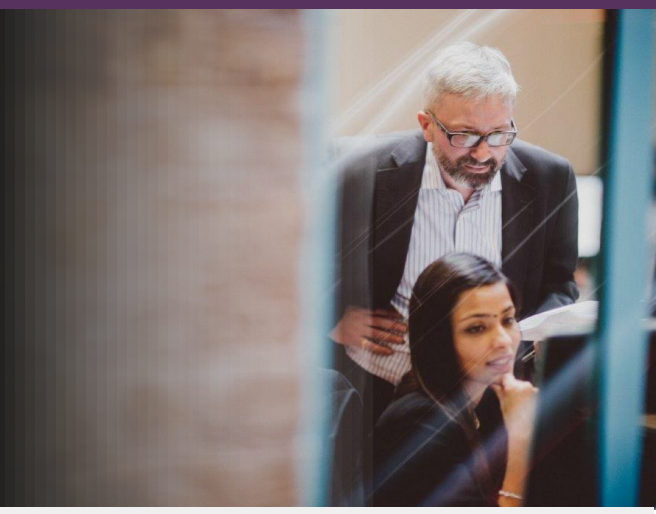
RIAA Barker Gillette

Why flexibility and rigid rules won't mix in the workplace



March 2024

From 6 April 2024, employees will have the statutory right to request flexible working arrangements from day one of their employment.

A recent employment tribunal ruling against a request for home working does not pave the way to mandatory attendance by employers looking to get staff back to the office. Instead, employers should be looking to ensure they are as considerate as possible in their approach and be ready to consider flexible working requests from day one of employment contracts starting in April this year.

The case of senior manager Elizabeth Wilson was one of the first to consider hybrid working policies since the pandemic. It involved a challenge to her employer, the Financial Conduct Authority (FCA), over its refusal to let Miss Wilson continue to work from home full-time post-pandemic.

"At first sight, the ruling could look like an endorsement for employers seeking mandatory in-person attendance in the office. It's not that, rather it reinforces established principles – which are that each flexible working application must be considered on its own merit and that employees must be able to access a clear process to make such requests," said employment partner Karen Cole.

Miss Wilson asked to work from home full-time when the FCA moved into a post-pandemic hybrid working model, which required staff to spend at least 40 per cent of their time working in the office. A long-standing employee, she pointed to her exemplary record from the pandemic's start. She argued that she did not need to go to the office to manage her team, saying she could do this online.

The tribunal was looking at a specific point of law: whether the employer based their decision on 'incorrect facts'. It found in favour of the FCA, agreeing the decision had been based on correct facts, that the organisation had given genuine consideration to the application, and provided specific reasons as to how Miss Wilson's full-time home working could have a detrimental impact.

Karen explained, "Her manager listened to the request and did not directly refuse, instead suggesting a compromise level of office attendance of around 10 or 20 per cent, explaining why that was proposed.

This shows a clear, reasoned response to the request for flexibility, which is vital.

"As the judge said in this case, no one solution applies to all organisations or roles within one company. Employers need to be up to date on the latest legislation, too, as employees will have the statutory right to request flexible working arrangements from day one of their employment from 6 April 2024.

"Blanket approaches to office attendance requirements will not work: there can be a policy, but companies must recognise they can't refuse to deviate from it without giving due consideration to individual cases and being prepared to consider alternatives if the initial request is not practical."

A sage note in this case is that Miss Walker did receive one week's pay as compensation because the FCA did not deal with her request within the statutory timeframe. Complying with statutory timeframes and taking a documented, balanced, and considered approach to any request are crucial.

For advice on navigating flexible working applications, contact Karen Cole.

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