

# Comparison of Flexible and Remote Working Entitlements between Ireland and the UK

There are key differences when it comes to entitlements to remote and flexible working in Ireland and the UK and differences in the manner in which requests should be processed. Employers with employees across both jurisdictions should be live to those difference to ensure they issue the appropriate policies and put systems in place to avoid issues and/or claims arising.

We have summarised some of the key differences below:



## Legislation & Guidance

Employment Rights Act, 1996 ("the 1996 Act") as amended by the Employment Relations (Flexible Working) Act, 2023 and the Flexible Working Regulations 2014 (as amended).

ACAS Code of Practice on Requests for Flexible Working.

**Flexible:** Parental Leave Act, 1998 as amended by the Work Life Balance and Miscellaneous Provisions Act, 2023

**Remote:** Work Life Balance and Miscellaneous Provisions Act, 2023

WRC Code of Practice for Employers on the Right to Request Flexible Working and Right to Request Remote Working



## Definition

**Flexible:** Any working arrangement that meets the needs of both the employee and the employer regarding when, where and how an employee works.

**Remote:** Addressed under the category of flexible working not as a separate right (albeit someone could be engaged as a permanent home worker, which will be set out in their contract).

**Flexible:** A working arrangement where an employee's working hours or patterns are adjusted through the use of remote working arrangements, flexible working schedules or reduced working hours.

**Remote:** An arrangement whereby some or all of the work is provided at a location other than at the employer's place of business without change to the employee's ordinary working hours or duties.

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Eligibility

**Flexible:** Every employee has a statutory right to request flexible working from the first day of employment.

**Service for flexible work request:** A day one right

**Flexible:** an individual must be: -

- An employee and parent or acting in loco parentis to a child under 12 years of age, or under 16 if the child has a disability or illness, and who is or will be providing care to the child;

**OR**

- An employee providing personal care or support to one of the following: employee's child, spouse or civil partner, cohabitant parent or grandparent, sibling or a person who lives in the same household as the employee;

**AND**

- is in need of significant care or support for a serious medical reason.

**Service for flexible work**

**request:** A day one right, but an employee must have at least 6 months' continuous service before an approved arrangement can commence.

**Remote:** All employees

**Service for remote work**

**request:** A day one right but must have at least 6 months' continuous service before the arrangement can commence.

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Making a request

## In writing

**Timing:** An employee can make a request from day one of employment. There is no minimum notice they must give an employer. However, the employer has a 2 month decision period (see further below).

### Must include:

- The date of the request;
- State that it is a request made under the statutory procedure;
- The proposed change in relation to their hours, times or place of work;
- The intended commencement date;
- If and when a previous request was made.

**Limits on requests:** An employee may make 2 statutory requests for flexible working to the same employer within a 12-month period.

## In writing & signed

**Timing:** Request should be made as soon as is reasonably practicable, but not later than 8 weeks before the proposed commencement date.

### Must include:

- Details of proposed arrangement (e.g. which days);
- Proposed commencement date;
- Reasons for the request.
- Proposed work location (remote requests only).

**Limits on requests:** There are no limits on requests.

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## Employer obligations

### Timing:

All requests, including appeals, must be decided and communicated within 2 months of receipt of the request. An extension of time can be agreed with the employee.

Employers must agree request unless there is a genuine business reason not to as set out in the 1996 Act. Examples include:

- the burden of additional costs;
- an inability to reorganise work amongst existing staff; and
- an inability to recruit additional staff.

**Discrimination:** UK law states that an employer must not discriminate on any of the protected characteristics as set out in the Equality Act 2010.

Unless the employer decides to agree to the employee's written request in full, they must consult the employee before they make a decision.

### Timing:

As soon as reasonably practicable, but no later than 4 weeks from receipt an employer must:

Approve request in writing outlining arrangement;

Refuse request and outline why in writing; or

Advise employee in writing that more time is needed and extend up to a further 4 weeks.

No statutory timeline for appeals.

**Discrimination:** This is not addressed in the ROI Act or the ROI Code but would be prohibited under ROI equality legislation.

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An employer must not subject an employee to any detriment or dismissal because of any of the following:

- The employee has made or intends to make a request for flexible working; or
- The employee has issued proceedings in relation to the right to their request, or has suggested that there are circumstances which could constitute a ground for them doing so.

An employee cannot be penalised for proposing to or exercising their right to request remote or flexible work. Penalisation means any act or omission by an employer that affects an employee to their detriment regarding any terms or conditions of their employment, for example, suspension, lay-off or dismissal, or a threat of any of the foregoing.



A written record of any meeting in relation to the consideration, acceptance or appeal should be kept. There is no sanction for failing to retain records but it could cause an issue in defending a claim arising from a request.

Adequate records of approved arrangements must be maintained by employers for 3 years. Those who fail to do so could be deemed liable on summary convictions to a fine of up to €2,500. Records of refused arrangements must be maintained for 1 year.



Any change to the arrangement should be discussed and agreed with the employee in advance.

Can be terminated if it would have or is having a substantial adverse effect on the operation of the business, profession or occupation (e.g., because of seasonal variations in the volume of work); or if the employee is abusing the working arrangement.

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Claims

An employee can bring an employment tribunal claim if:

- the request is refused for a reason other than the 8 permitted business reasons;
- the employer refused the request without consulting the employee.
- the refusal is based on incorrect facts;
- the request was not dealt with in a reasonable manner; or
- the employer failed to meet the statutory deadlines and process requirements.

An employee can bring an employment tribunal claim to the Workplace Relations Commission if they feel that their flexible or remote working arrangement has not been considered in line with the legislation and/ or the Code of Practice.

The WRC can only look at the process that led to the employer's decision not the decision itself.



Sanctions

Where an employment tribunal finds a claim for breach of the statutory flexible working regime well founded, it must make a declaration to that effect and may make either or both of the following:

- An order for reconsideration of the request.
- An award of compensation of such amount as the tribunal considers just and equitable, up to a maximum of eight weeks' pay.

The risk of discrimination claims (for example for indirect sex discrimination or failure to make reasonable adjustments) remains the much greater legal risk when turning down a flexible working request.

The WRC may do the following:

- direct the employer to comply with specific sections of the 2023 Act;

and/ or

- award 4 weeks remuneration (remote working) and 20 weeks' remuneration (flexible working).

The risk of discrimination claims (for example for indirect sex discrimination or failure to make reasonable adjustments) remains the much greater legal risk when turning down a flexible or remote working request.



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