

How to Exercise Flexible Work: Take Steps with a "Soft Touch" Law

By Jodie Levin-Epstein

Most people think of a flexible work schedule as a perk for the worker. However, businesses benefit, too. That's because flexible schedules help with employee retention, recruitment, and absenteeism—all of which can add up to a better "bottom line." Employers also benefit because flexibility, along with a sense of control on the job, leads to healthier workers.

In the U.S., employees are spending more hours on the job, which leaves less time to care for children, elders, and other family members. Workers with caring responsibilities are torn. The tension between time on the job and time for home can result in palpable problems: poor performance or absenteeism at work; poor outcomes as a parent; or less care for loved ones. Flexible scheduling provides a pragmatic solution.

In the U.K., a new "soft touch" law gives some employ-

ees the right to ask their employers for a change in work arrangements (e.g., start and stop time, a change to part-time). This soft touch law encourages flexible scheduling without imposing a mandate on employers. Employers in the U.K. are supportive.

Work schedules are no less an issue in the U.S., yet there is no similar federal or state law. While many U.S. businesses offer flexible working arrangements, this benefit is typically concentrated among those with higher incomes. In our aging society, worker shortages and skills gaps are increasing challenges. Thus, every worker is a needed worker and work schedules matter. In fact, flexible work schedules were ranked the third most effective strategy (of 13 strategies) for retaining employees in a recent Society for Human Resource Management members' poll.

Along with employers, government has a role in fostering flexible work—if only to safeguard its own investments in such arenas as health care, job

training, family stability, and early childhood education.

ABOUT THIS BRIEF

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An annotated version of this policy brief, which includes an appendix of related research, is available on the CLASP website at www.clasp.org.

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This brief describes how U.K. employers partnered with government on work-life balance, highlights findings about flexible work, and identifies issues to explore in any U.S. adaptation.

WHAT IS THE U.K. RIGHT TO REQUEST?

Background

A new law in the U.K. gives some working parents the right to request a flexible work arrangement. The right, implemented in 2003, enables a parent of a young child (under age six) or a disabled child (under

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age 18) to ask an employer for a range of different work arrangements. It does not obligate the employer to accept the request. According to the government:

The right is designed to meet the needs of both parents and employers, especially small employers, and aims to facilitate discussion and encourage both the employee and the employer to consider flexible working patterns and to find a solution that suits them both.

The Department of Trade and Industry (DTI) is responsible for implementing the law; its website provides not only a basic summary of the provisions but also offers guidance materials to employers and employees.

Business Involvement

A work-life balance campaign was initiated by the government in 2000 to encourage employers to consider a full range of work-life issues. Interested employers then made the case to other employers through a partnership with government, Employers for Work-Life Balance. The government created a challenge fund for employers interested in achieving better work-life balance. It also established a Work and Parents Taskforce, which recommended that parents of young and disabled children in any size or type of business should be covered under a right to request policy. The government moved ahead with these recommendations and estimated

that 13 percent of its working population, 3.8 million parents, would be entitled to request a flexible work arrangement.

As early as 2004, a government survey found that 68 percent of employers believed that the opportunity to work flexibly had a positive effect on employee attitudes and morale. A government official suggested that this business support could help fuel a work culture change since it might “give more parents the confidence to raise the issue with their boss either informally or through the new right.”

Provisions of the Law

Key provisions of the law stipulate:

Who is eligible? To be entitled to the right to request, a worker must have been employed at the same place for at least a half year. The worker must be the parent/guardian/foster parent (or the workers’ partner, including a same-sex partner) of a child under the age of 6 or under age 18 if the child is disabled (applications may be made any time up to two weeks before these birth-dates). The worker must have responsibility for the child’s upbringing and use the flexible working arrangement to care for the child (including such functions as dropping a child off at school).

What kinds of flexibility must be considered? Any type of flexibility may be requested.

Changes in the total hours of work, times of work, or place of work can be proposed. This covers such arrangements as annualized hours (total hours set by year rather than week), compressed hours (working more hours in a day in exchange for time off on other days), working from home, job-sharing, etc.

How does the process work?

The employee applies for a permanent change in the terms and conditions for work. This means the employee has no right to revert back to the former work arrangement unless the employer and employee specifically agree that the change is not permanent. The employer must arrange to meet with the employee within 28 days of the request to discuss the request, and then the employer must respond in writing within 14 days of the meeting. If the employee wants to appeal, the first step is to appeal in writing within 14 days, and if an internal resolution is not possible, third party resolutions are available through an employment tribunal, arbiter, or other mechanism.

What must be included? The employee is responsible for providing an employer with a carefully thought-out application. This must include the working pattern that is being sought, an explanation of how this change affects the employer—if at all—

and how that could be addressed, as well as the proposed date for implementing the change. The employer is expected to consider the request and if the request is refused must identify the business reasons for doing so. Businesses have eight established reasons for refusing a request, ranging from a burden of additional costs to an inability to reorganize among existing staff to planned structural changes.

How do appeals work? If an employer rejects a request, the notification must provide details on the employee's right to an appeal. If the issue is not resolved within the workplace a third party can be involved. There are two bases for a formal complaint: the employer failed to follow the procedures or the employer based the rejection of the request on incorrect facts. The third party cannot question the employer's business grounds; the facts that were used can be the basis for the appeal. An employment tribunal that agrees with an employee's appeal can make a compensatory award to an employee capped at up to eight weeks' pay for a maximum of £260 per week.

WHAT HAS THE RIGHT TO REQUEST ACHIEVED?

The right to request flexible work went into effect in the U.K. in April 2003. Already, a variety of governmental and non-governmental surveys have

looked at awareness of the law, take-up, and reasons for the refusal of requests. (A summary of key surveys on the right to request is part of the annotated policy brief available on the CLASP website at www.clasp.org.)

The surveys do not definitively establish whether the law itself deserves "credit" for a flexible work arrangement. This is because the flexible work could be caused by the formal process established in the statute, or it could be achieved informally, independent of the law's procedures. From the perspective of the law's proponents, it is not particularly important to distinguish what allows for flexible work; what is important is the growth in such arrangements over time. The gestalt of work is the goal of the soft touch legislation. Indeed, the very act of informing employers and employees of the right to request, of surveying, of reporting on survey findings, and of highlighting the growth of flexibility—whether or not limited to eligible workers under the right to request—could all help expand access to flexibility.

Employee Issues

The following offers highlights from the government's Second Flexible Working Employee Survey and, for some topics, compares those findings to employee responses from other surveys. The 2005 report

included questions for employees generally and also analyzed responses by those groups eligible for the right to request.

Awareness. Of all employees (not just those eligible for the right to request) nearly two-thirds (65 percent) were aware of the law. This represents a jump in awareness from 52 percent in the previous year. Employees with children under age six (71 percent) were more aware than employees without dependent children (63 percent). A very small, non-governmental survey done in the first months of implementation found that one-quarter of parents who said they knew about the law did not understand, however, that they had a right to request.

Requests and Refusals. Of all employees (not just those eligible for the right to request), 14 percent requested flexible work sometime over the prior two years. Of these requests, 35 percent were because of child care needs; other reasons ranged from a person's health problems to spending more time with family.

- Among all employees, 22 percent with children under age six asked to change their work patterns.
- Among employees with children under age six who requested flexible work, 75 percent received full approval.

In a 2003 report on work-life balance, the government established that “supporting low-income parents is particularly important. Low-skilled workers and their families are particularly at risk of parental and family stress, because their earnings are lower and they tend to have less choice over how they balance their work and family responsibilities.” While the 2005 report provides information by industry and occupation, it does not include data by income (or race, educational status, etc.).

Employer Issues

The Chartered Institute of Personnel and Development (CIPD), the leading organization representing human resources professionals in the U.K. (akin to the Society for Human Resource Management in the U.S.), surveyed employers’ on the new right to request six months into implementation. The organization finds numerous reasons to support flexibility. Rebecca Clake of CIPD notes that, “The introduction of flexible working allows employees to gain more control over their work-life balance and can act as an important tool in the organisation’s recruitment and retention process.” She further found that, “The new working arrangements also help attract underused groups, such as par-

ents and students, allowing organisations to compete in the war for talent.” The following highlights the 2003 CIPD findings, except where noted:

Awareness and Perceptions.

Most businesses are attuned to the new rules, and few have big concerns about the right to request:

- Over two-thirds (71 percent) were aware, prior to implementation of the law, that employees would have a right to request to work flexibly, according to the government’s second work-life balance study.
- Business benefits are perceived evenly in a three-way split: 32 percent agree that the right to request benefits business; 34 percent disagree; and 34 percent don’t know.
- Ninety percent of businesses felt that compliance has not been a significant problem, 7 percent perceived a problem, 3 percent did not know.

Requests and Refusals. Any growth in employees’ requests for flexible work as a result of the statute is difficult to ascertain; most organizations wholly or partially approve the majority of requests:

- Twenty-eight percent of organizations reported increases in flexible working requests compared to recent

years. This includes not just those eligible under the right to request statute, but other employees as well.

- In the first six months of implementation, statutory requests per organization ranged from none (35 percent of organizations) to one to five (50 percent) to more than five (15 percent).
- Part-time and late/early hour changes are the most common requests.
- While clerical workers are the largest group to exercise the right (44 percent), professional and managerial positions together account for nearly the same amount (48 percent). Some organizations attribute professional and managerial requests to the new law.
- The most common reasons for refusal of statutory requests are an inability to reorganize among existing staff and the inability to meet customer demand.

Appeals. The government anticipated approximately 4,000 employment tribunals in the first year of implementation, however; six months into implementation, appeals had not reached anywhere close to this number according to a Price Waterhouse report:

- One percent of employers who turned down requests report tribunal proceedings brought against them.

FUTURE U.K. DIRECTIONS

The U.K. government recently proposed extending the right to request to more workers who have carer responsibilities. The public was invited to comment on whether and how parents of older children and carers of adult relatives might be provided the statutory right. About three million workers are informal carers of parents or loved ones.

The human resources organization CIPD has called for an even greater extension—to all employees, not just carers. CIPD believes that:

Once there is a critical mass of people wishing to work flexibly—not only parents—this increases the chances of finding a workable solution for the team.

The enthusiasm for an extension of the right to request flexible work is tempered by a worry about inequity. The most common type of request for flexible work is a change to part-time work. Yet, part-time workers are sometimes stigmatized and their part-time status results not only in a loss of wages but often in a loss of earning power over time. Fathers, often the higher wage earner, may want to be carers,

but the stigma and salary issues make such a choice difficult if not impossible.

U.S. - U.K. DIFFERENCES

In the U.S., work-life balance issues are not yet on the forefront of political discourse. In the U.K., not only is work-life at the forefront of political discourse but “family-friendly issues such as childcare places and paid paternity leave are becoming battle issues for the major political parties,” according to the leading human resources association. The current Labour government, for example, proposed that by 2010 paid maternity leave extend a full year and that mothers have new rights to transfer pay and leave to fathers. The opposition Tory party proposed that mothers who return to work sooner would get higher payments, receiving 90 percent of pay for their first six weeks.

In the U.S., working time issues are rarely the subject of legislation. In contrast, in the U.K., a variety of policies, many driven by directives of the European Union, establish minimum standards for paid and unpaid time off. These include:

Annual Leave. All employees are entitled to a minimum of 20 days paid annual leave.

Working Time. Workers receive minimum rest periods, special provisions for night work, and a maximum averaged

48 hours of weekly work. However, an “opt out” of the 48 hours has affected employee coverage.

Unpaid Time Off for Dependant Care. Workers have a right to deal with family emergencies.

Unpaid Parental Leave. Workers have a right to 13 weeks unpaid parental leave if they have been with an employer for 12 months. The time may be taken up to the child’s fifth birthday. The U.S. Family Medical Leave Act (FMLA) provides for 12 weeks of unpaid leave but only when an infant or child joins the family.

Paid Paternity and Maternity Leave. Fathers are provided two weeks of paid paternity leave. For adoption and maternity leave, workers receive 26 weeks of leave regardless of length of service and 26 additional weeks for employees with at least six months of service. The government reimburses employers for 92 percent of employees’ weekly earnings for six weeks of maternity leave. For the next 26 weeks, employers are reimbursed either that amount or a lesser level determined by a formula.

In the U.S., there is no expectation that part-time and full-time work be treated equitably. In the U.K., a European Union directive establishes that part-time workers are entitled to the same hourly rate of pay

and the same entitlements to annual, maternity, and parental leave on a pro rata basis as full-timers. In addition, part-timers are supposed to have the same entitlement to contractual sick pay and access to training. However, in practice, a gulf remains between part-time and full-time workers. This is largely because of the difficulty in ascribing comparable pay.

In the critical area of health insurance, U.K. workers have equal access independent of whether they work part time or full time. This is because the U.K. provides government-funded universal health coverage. In contrast, in the U.S., coverage is often secured through employers who have the discretion not to cover anyone or not to cover groups of employees, such as part-time workers. U.S. employers provided coverage for only 16 percent of their part-time workers compared to 62 percent of full-time workers.

U.S. CONSIDERATIONS

A soft touch law is an appropriate initial step towards more flexible work. Because we lag behind the U.K. on a range of work-life policies, a law that essentially “signals” the value of flexible work rather than mandates it is an important way to introduce the concept where it is not already practiced. The very “gentleness” of the legisla-

tion carries a political advantage—it is hard to object to.

A soft touch law, while gentle, can accomplish change. The U.S. already uses one kind of soft touch approach: “transparency” laws, which can change behavior through the provision of information. For example, a restaurant grading system in Los Angeles displays a hygiene score; while the restaurant is not mandated to change its practices, the transparency of the information provides an incentive to improve hygiene. Similarly, without mandating flexible work schedules, the public awareness about the right to request, the request itself, implementation surveys and reports, any articles about “best practices,” government awards, and other efforts could all contribute to change.

A soft touch law could help put other work-life balance policies into sharper focus. By making workplace flexibility a “kitchen table” topic for employees and employers, the surrounding work-life policy issues, such as access to quality child and elder care, could come into sharper focus. (See forthcoming *Win-Win Flexibility* from the New America Foundation.)

A soft touch law could help build a bridge between employers and employees. In making a request, employees are required to propose how the change in

schedule will be managed. This, in essence, requires the employee to think like a manager. This might have the unintended consequence of building a bridge between employer and employee that could span other issues.

A soft touch law would be appropriate at different levels of government. It makes sense for Congress to pursue an adaptation of the U.K. soft touch law since the functioning of the workforce determines the nation’s economic prospects. This does not preclude, however, local or state jurisdictions from building upon any federal law or from moving on a faster track.

A soft touch debate should focus on eligibility. There are three broad groups of employees: those with caring responsibilities for children; those with caring responsibilities for adults; and those without caring responsibilities. The U.K. is already moving to expand its law to include all carers—whether of children or adults. If a right to request is established, U.S. human resources professionals might well prefer that it apply to all employees, not just carers. This might seem surprising in light of opposition to expansion of the unpaid FMLA by the Society for Human Resources Management. However, when researchers asked a group of human resources professionals how best to structure a

theoretical paid leave program in the future, they preferred an approach that applied to all workers because it “would avoid divisions within the workforce between those with heavy parental or elder-care responsibilities and those with other needs or concerns....”

The U.S. could copy the U.K. law and restrict eligibility for the right to request flexible work to those workers who have been at the job for at least six months. Alternatively, eligibility could be determined based on time frames used in related U.S. laws. For example, FMLA applies to workers with one year of service. To the extent that a flexible working arrangement reduces absenteeism, a shorter time frame is advantageous to both employee and employer. A disadvantage of a shorter time frame is that scheduling accommodations may be made for an employee not yet fully integrated into the company.

A U.S. law could cover firms of all sizes, like the U.K. law. Employee need for flexible working is independent of size of the employer; the issue is universal. Smaller employers without HR departments might argue they do not have the time to consider such requests. Many smaller operations, however, already make accommodations informally. The law could propose to include firms in only certain sectors. However, since the need for flexible working is

universal it is not apparent why one sector would be chosen over another, except as a means to phase in the law.

A soft touch proposal could fund business supports around workplace flexibility. A federally funded center for best practices on work flexibility would help employers implement the right to request and could go beyond the law to collect and disseminate strategies regarding flexibility generally. A government center (and accessible website) could be established in partnership with the private sector. For example, the Families and Work Institute has launched When Work Works, a privately funded initiative that highlights the importance of “flexibility in the workplace as a strategy to enhance businesses’ competitive advantage in the global economy.” Further, as in the U.K., the government could work with a group of employers to reach out to other employers regarding the rationale for, and alternative ways to implement, flexible work, including the right to request.

In addition, the law could include a national award for a state and/or employers that most effectively used the right to request to undertake an examination of broader work-life issues in the state and/or companies. This could be modeled after the local Sloan Awards for Business Excellence in Workplace Flexibility or

could be a joint public-private awards program in concert with the Sloan Awards.

A soft touch law should be evaluated to assess how flexibility helps or hinders business and workers. Any evaluation should examine whether the law’s procedures (e.g., the application, time frames, and appeals) need to be tweaked to address burdens for either party in the negotiation. If a U.S. soft touch law required that the employee describe how the employer can manage the schedule change, this would provide an opportunity to research an important question. Did employee participation in the management dilemma of how to rearrange the workplace result in some unintended benefits; for example, a better mutual understanding of the constraints each party faces? An issue to investigate is whether all workers access the right or whether women more than men, higher income more than lower income, certain sectors over others take up the right. The implications of disparate take-up should be addressed. While new research indicates that choosing a work schedule to meet caring needs does not in and of itself lower mothers’ wages, part-time employment does have a negative effect. Finally, an evaluation should assess the advantages that accrue to both businesses and workers due to the new law.

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ABOUT CLASP

The Center for Law and Social Policy (CLASP), a national nonprofit organization founded in 1968, conducts research, legal and policy analysis, technical assistance, and advocacy related to

economic security for low-income families with children.

CLASP studies and addresses the impact of family friendly policies, such as sick leave and parental leave, on both workers and businesses.

While family friendly

policies are important for all parents, CLASP focuses particularly on low-wage working parents whose jobs generally provide less flexibility and time off to meet the needs for family time and family caring.

CLASP POLICY BRIEF

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