

## Managing Requests for Flexible Working Arrangements

These guidelines have been developed to help supervisors understand their obligations when considering a request for workplace flexibility. Griffith University has a range of workplace flexibility arrangements available, and such flexibility remains an important attraction, retention and inclusion measure that supports diversity. Employees who do not receive a response to their request within 21 days or who have had a request refused and are dissatisfied with the outcome are now able to seek the intervention of the Fair Work Commission to conciliate or arbitrate an outcome, and it is therefore important to understand your obligations in managing such requests.

Successful flexible working arrangements require both the employee and the supervisor to be satisfied that the arrangements can be accommodated without adversely impacting colleagues and the University. Both the employee and the manager need to be prepared to be open to alternative options – this may take time to work out which option assists the employee balance personal and/or family commitments with work commitments.

While the legislation does not compel the University to support every flexible working request, there is a requirement that any refusal must be based on reasonable business grounds and communicated in writing to the employee.

### Who can make a request for flexible working arrangements?

All employees may request flexible working arrangements. In some circumstances, employees have a right to request flexible working arrangements under the *Fair Work Act 2009* (Cth), which creates legal obligations on supervisors to formally consider such requests and respond **within 21 days**.

	Requests made under the <i>Fair Work Act 2009</i>	Request made under the relevant Griffith University enterprise agreement
<b>Who is entitled to make a request?</b>	<p>An employee has a legal right to request a change in their working arrangements if they require flexibility because they:</p> <ul style="list-style-type: none"> <li>• are the parent, or have responsibility for the care, of a child who is of school age or younger</li> <li>• are a carer (within the meaning of the Carer Recognition Act 2010)</li> <li>• have a disability</li> <li>• are 55 or older</li> <li>• are experiencing family and domestic violence</li> <li>• provide care or support to a member of their immediate family or household, who requires care or support because they are experiencing family and domestic violence</li> <li>• are pregnant</li> </ul>	<p>All employees may request a change in their working arrangements from their employer if they require flexibility.</p> <p>Priority consideration should be given to requests made in accordance with the <i>Fair Work Act 2009</i>.</p> <p>Employees may request flexibility for a range of personal reasons including to:</p> <ul style="list-style-type: none"> <li>• pursue study;</li> <li>• transition to retirement;</li> <li>• engage in sports or other recreational activities;</li> <li>• care for children or ageing relatives;</li> <li>• focus on personal health and well-being; or</li> <li>• undertake volunteering or charity work.</li> </ul>

	<p>The request must be in writing and include:</p> <ul style="list-style-type: none"> <li>• the reason for the request; and</li> <li>• the requested changes to their working arrangements, including the proposed commencement date and period of the arrangement.</li> </ul>	<p>Such requests should be supported where they can be balanced against the operational needs of the work area, while taking into consideration fairness, equity and reasons the employee has made the request.</p> <p>Requests relating to family or caring responsibilities would normally take precedent over requests made on the basis of personal convenience.</p>
<p><b>Eligibility criteria – full-time or part-time employees</b></p>	<p>Full time or part-time employees are legally entitled to request flexible work arrangements if they have at least 12 months of continuous service with the University immediately before making the request.</p>	<p><b>Flexible Work Year</b> –for family responsibilities OR personal reasons – full-time and part-time employees only.</p> <p><b>Reversible Part-time Appointment for Care Of Dependents</b> – must have responsibility for the care of dependants at the time of application. Full-time and part-time employees only.</p> <p><b>All other flexible work requests</b> - For all other requests, there is no specific eligibility criteria, and all employees may make a request regardless of length of service. However, each request should be considered on its own merits and balanced against the operational requirements of the work area.</p>
<p><b>Eligibility criteria - casual employees</b></p>	<p>Casual employees are entitled to make a request if:</p> <ul style="list-style-type: none"> <li>• they have been employed by the University on a regular and systematic basis for a sequence of periods of employment of at least 12 months immediately before making the request; and</li> <li>• there is a reasonable expectation of further employment on a regular and systematic basis.</li> </ul>	<p>Casual employees may make a request, (except for flexible work year and reversible part-time appointments for the care of dependants).</p> <p>Each request should be considered on its own merits and balanced against the operational requirements of the work area.</p>
<p><b>Requirement to discuss request with employee</b></p>	<p>If intending to refuse the request, the University must first:</p> <ul style="list-style-type: none"> <li>• discuss the request with the employee, including the consequences for the employee if the request is refused;</li> <li>• explore alternative arrangements; and</li> <li>• genuinely attempt to reach agreement about changes to their working arrangements to</li> </ul>	<p>Required to consult with the employee before implementing some flexible work requests (such as Variable Hours Arrangements). Recommended as best practice in relation to all flexibility requests.</p>

	reasonably accommodate their circumstances,	
<b>Requirement to provide a response in writing</b>	<p>There is a legislative obligation to respond to a request in writing, within 21 days, and include:</p> <ul style="list-style-type: none"> <li>• if the request is granted or refused; or</li> <li>• any agreed change to the initial request as a result of the discussion with the employee.</li> </ul>	<p>There is no formal obligation to provide a written response. However, it is recommended that requests made in writing are responded to in writing within 21 days and a rationale for any decision is provided to the employee.</p>

**Practical Tip:** As a best practice employer, all employees can request flexible working arrangements, regardless of how long they have been employed and their personal circumstances.

## Responding to a request

If an employee who is entitled to request a flexible working arrangement makes the request in writing, you must:

- **Consider the request.** It is important to consider:
  - What are the employee's key duties?
  - Do any of these duties need to be done at set times or locations?
  - Who does the employee interact with in the normal course of their work? Will the proposed arrangement affect these interactions?
  - Are there any technology solutions, which could help?
  - Why is the employee requesting this new arrangement? Is the request made on the basis of personal convenience or is the request made in relation to the statutory rights under the *Fair Work Act 2009*?
  - What are the consequences for the employee if the request is refused?
- **Discuss the request with the employee** to try reach an agreement about changes to their working conditions. Having an open conversation with your employee can build trust and avoid confusion and uncertainty. Conversations with staff help to manage expectations and encourage a supportive work environment.
- **Think creatively.** Not all arrangements cost money. Think creatively about things you can do that don't add cost, such as flexible start and finish times.
- **Respond in writing within 21 days.** As part of the response, you must state whether the request is granted or refused, or whether an alternative arrangement has been agreed to. You must provide reasons if the request is refused.

### Practical Tip - Before refusing a request, have you considered alternative arrangements?

It is important that you have explored all options before refusing a request. You may even wish to trial a flexible working arrangement for three to six months. That way, you can get a better idea of what will or won't work for the employee and your team, and how it can be adjusted if necessary.

## Supporting a request

Where a supervisor has made a decision to support the initial request, or through further discussion has negotiated an alternative suitable flexible working arrangement:

- The supervisor is required to put the terms of the flexible working arrangement in writing back to the employee.

- If the terms are different to that which the employee originally requested, this must be specified in writing to the employee.
- The arrangement should include regular review dates and an end date. This allows the arrangement to be ended if personal, operational or business circumstances change.
- The employee should respond, indicating their acceptance prior to the arrangement being established.
- A copy of the e-mail should be retained by the supervisor and employee at the local level.

## Refusing a request

If an employee has a statutory right to make a request for flexible arrangements under the *Fair Work Act 2009*, the University may only refuse the request if it has complied with the following:

- the supervisor has discussed the matter with the employee;
- genuinely tried to reach an agreement with the employee about making changes to their working arrangements to accommodate their circumstances;
- no agreement has been reached;
- the University has considered the consequences of the refusal for the employee; and
- the refusal is made on reasonable business grounds.

### **Refusal must be based on reasonable business grounds**

Reasonable business grounds for refusing a request could include:

- cost – the requested arrangements would be too costly for the University;
- capacity – there's no capacity to change the working arrangements of other employees to accommodate the request;
- practicality – it would be impractical to change the working arrangements of other employees, or take on new employees, to accommodate the request;
- inefficiency or productivity – the requested arrangement is likely to result in significant loss of efficiency or productivity;
- customer service - the request may have a significant negative impact on customer services.

### **Providing a written outcome if refusing the request**

Regardless of whether the request is made in accordance with the *Fair Work Act 2009*, if the request is unable to be accommodated, a response must be communicated to the employee in writing, outlining:

- details of the reasons for the refusal;
- an explanation of the reasonable business grounds for refusing the request;
- an explanation of how those grounds apply to the request;
- any alternative arrangements that the University would be willing to make to support the employee's circumstances OR state that there are no alternative changes that could be made.
- explain the dispute resolution and arbitration options available to the employee, including through the Fair Work Commission

## Requests that impact staff availability for teaching commitments

In accordance with clause 14.4.7 of the *Griffith University Academic Staff Enterprise Agreement 2017-2021*, it is expected that academic staff with a teaching allocation are available to be timetabled between 8:00am and 10:00pm Monday to Friday.

While requests for flexible working arrangements can be considered, priority needs to be given to those requests that are made on the basis of the employee having a statutory right under the *Fair Work Act 2009*, including where there are genuine family or caring responsibilities that would preclude the employee from being available during particular periods.

Such cases can only be refused based on reasonable business grounds, and in the absence of reasonable grounds for refusal the University risks being in breach of the *Fair Work Act 2009* and exposed to potential discrimination or general protections claims. It is therefore recommended that in such situations, further advice is sought from the relevant HR Business Partner.

## Examples

### ***Example 1: Approving a request to accommodate family responsibilities***

A single parent has requested a flexible working arrangement with the University to move his standard start and finish working time earlier so that he could care for his child in the evening until he can find a suitable caring arrangement in the evening. Through open discussions, the supervisor and employee agreed to trial the flexible arrangements for 6 months. During this 6 month period, the employee was able to find a carer in the evening for two nights of the week. This arrangement was suitable for the employee, supervisor, other employees and clients.

### ***Example 2: Declining a request to accommodate family responsibilities***

An employee requested to start her working and finishing times later. This was so she could take her child to school. When considering her request, the supervisor closely examined the operational issues if her request was approved. The employee would be working alone for the last hour of each workday without adequate supervision or support in the event of an incident. Special arrangements would need to be made to transport the employee to the required work site during and after work. The employee would also miss out on tool box meetings in the morning, which usually dealt with administrative and other occupational health and safety matters. In light of this, the supervisor declined the request for operational and occupational health and safety reasons. Before declining the request, the supervisor met with the employee to explore any alternative changes that may have accommodated the employee's circumstances.

### ***Example 3: Approving a request for medical reasons***

An employee with a long-term neck injury is required to undergo physio three times a week. The employee has requested not to be assigned any classes in the evening so she can attend her physio appointment. This created difficulties in ensuring that there was fairness in timetabling, as some employees were finding they worked later and missed time with their family. The supervisor and employee explored her request in an open discussion. During this discussion, the employee advised she was able to attend her appointment in the morning, she was under the impression that it was more suitable for her colleagues if she attended in the evenings. The supervisor, employee and physio worked together to move the employee's appointments to the morning. This arrangement, although different to the employee's original request, was suitable for the employee, supervisor and fellow employees.