Workplace flexibility means taking a different approach to traditional ways of working. Introducing workplace flexibility may involve job redesign, changes in hours of work, or changes in patterns or location of work.

The National Employment Standards and modern award components of the Fair Work Act 2009 include provisions aimed at encouraging flexibility in the workplace. Anti-discrimination legislation also imposes a legal requirement for employers to carefully consider flexible working arrangements. As well as meeting legal obligations, flexible work arrangements may help attract and retain employees.

What are flexible work practices?

Flexible work practices are those which vary from the traditional Monday to Friday, nine to five work pattern. Flexible work practices enable a business to tailor working patterns to suit a particular industry and provide employees with an opportunity to balance their work responsibilities and important life commitments.

Employers who provide flexible work practices create an environment that incorporates choice, versatility and understanding. This means employees can be productive while still being able to meet responsibilities outside of work.

Benefits of flexible work practices

For employers, the benefits of introducing flexible work practices include:

- compliance with anti-discrimination and workplace laws
- increased employee productivity, motivation, commitment and retention
- cost savings
- increased operating hours without increased wage costs
- enhanced morale and a decrease in workplace stress
- improvements in attendance rates and reduced personal leave costs
- a better match between the business and employee needs
- enhanced workforce planning around business peaks and troughs.

For employees, working flexibly can help with:

- improved work/life balance
- better time management and less stress
- more efficient travel options by travelling in non-peak hours
- reduced travel and parking costs.
Legislative provisions

In Australian workplaces, the right to flexibility at work is protected by both federal and some state and territory laws. Under the *Fair Work Act 2009* employers are required to provide ‘reasonable grounds’ if they refuse a request for flexible hours from an employee with responsibility for a child under school age or a disabled child under 18 years of age. There is also a range of state/territory and federal anti-discrimination laws which make it unlawful for an employer to discriminate against an employee based on their marital status, sex, pregnancy, and family or carer’s responsibility.

The table below provides a summary of key federal and NSW state legislation:

### LEGISLATION

<table>
<thead>
<tr>
<th>Commonwealth <em>Fair Work Act 2009</em> National Employment Standards</th>
<th>SUMMARY</th>
</tr>
</thead>
<tbody>
<tr>
<td>Commonwealth <em>Fair Work Act 2009</em> Modern Awards or Enterprise Agreements Individual Flexibility Arrangements</td>
<td>All Modern Awards and Enterprise Agreements enable an employer and employee to vary an award to meet their genuine workplace needs via an ‘individual flexibility arrangement’</td>
</tr>
<tr>
<td>Commonwealth <em>Fair Work Act 2009</em> Unlawful Workplace Discrimination</td>
<td>Protects employees against adverse action on the basis of an employee’s family or carer’s responsibility</td>
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<tr>
<td>Commonwealth <em>Sex Discrimination Act 1984</em></td>
<td>Provides protection against discrimination on the grounds of family and caring responsibilities</td>
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<tr>
<td>New South Wales <em>Anti-Discrimination Act 1977 (NSW)</em></td>
<td>Provides protection for carers if they are treated unfairly or harassed because of caring responsibilities</td>
</tr>
<tr>
<td>New South Wales <em>Occupational Health and Safety Act 2000</em></td>
<td>Protects the health, safety and welfare of people at work including those working from home</td>
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Types of flexible work practices

There are many kinds of flexible working arrangements which could potentially suit both the needs of the employee and the demands of the workplace.

Common flexible work practices include:

1. Flexible working hours
2. Part-time work or job sharing
3. Home-based work.

**1. Flexible working hours**

Flexible working hours enable employees to work an agreed number of hours spread over a set period of time. Some awards and enterprise agreements allow employees, as part of their flexible work arrangements, to accrue hours, take time-in-lieu for overtime worked or accumulate rostered days off.
Introducing Workplace Flexibility

Flexible working hours assist employees to manage their work and personal commitments without losing hours in the workplace as a whole.

Examples of flexible working hours may include:
- flexi-time and banking time
- staggering starting and finishing times
- working more hours over fewer days
- time-in-lieu instead of overtime payments
- rostered days off or a nine-day fortnight
- compressed work weeks, allowing employees to work longer hours per day and fewer days per week.

2. Part-time work or job sharing

Part-time work provides an opportunity to work fewer hours than full-time employees. Job sharing occurs when one full-time permanent job is shared between two part-time employees.

Part-time or job share employees are covered by the same legislation as full-time employees and receive the same entitlements but on a pro-rata basis. Part-time or job share employees are usually entitled to be paid for public holidays, which fall on the day they would normally work. Some awards provide for part-time employees to be paid loading and overtime. Employers should check the relevant award or enterprise agreement.

It is important for employers to note that a failure to consider part-time work arrangements for eligible employees may be in breach of the National Employment Standards or may also be considered a form of discrimination under the Anti-Discrimination Act 1977 or Sex Discrimination Act 1984.

3. Home-based work

Home-based work arrangements enable employees to spend part or all of their working time at home, on a temporary or permanent basis. Some considerations for home-based work include:
- an assessment on whether aspects of the work or a particular task is suitable for home-based work
- workers compensation arrangements
- agreed performance goals and assessment
- secure record keeping
- protection of assets and information
- an assessment of the proposed home-based working environment in relation to occupational health and safety requirements, including:
  - providing or maintaining equipment and systems of work that are safe and without risks to health
  - providing the information, instruction, training and supervision necessary to ensure the health and safety at work of workers
  - making arrangements for ensuring the safe use, handling, storage and transport of equipment and substances.

Leave entitlements

There is also a range of leave entitlements aimed at improving work and family balance or to assist with caring responsibilities, including:

Unpaid and paid parental leave

Unpaid parental leave is available for up to 12 months for eligible employees, plus a right to request an additional 12 months unpaid leave. From 1 January 2011 an eligible person will receive 18 weeks paid parental leave at the Federal Minimum Wage.

Personal/carer’s leave

10 days paid leave and two days unpaid carer’s leave as required and two days compassionate leave for eligible employees.

Annual leave

Annual leave may be taken for a period agreed between an employer and employee.

Flexibility for parents and carers

Under the Fair Work Act 2009 eligible parents and carers of school aged children or a disabled child up to the age of 18 years have a right to request a change in working arrangements to assist with the child’s care. The employee should make a request in writing detailing the change sought and reason. The employer can only refuse the request on reasonable business grounds and is obliged to respond in writing within 21 days.
Considering requests for flexibility

Once you receive a request for a flexible working arrangement you should:

• ask your employee to put their request for flexibility in writing explaining what and why they want to change their current workplace arrangements
• carefully consider the change in relation to the business and employee’s needs
• meet with the employee and other relevant stakeholders to discuss the change, obtain input and gauge the likely workplace impact
• provide your employee with a written response to their request (if the employee is an eligible carer/parent respond within 21 days)

• if a flexible working arrangement is being introduced the employee and employer should take appropriate steps to ensure successful implementation including advising relevant stakeholders
• set a review date to assess the change to working arrangements
• ensure that documentation in relation to the arrangement is appropriately stored.

More information

For further information on workplace flexibility refer to:

• Fair Work Australia
  www.fairwork.gov.au
• NSW Industrial Relations
  www.industrialrelations.nsw.gov.au

Other titles in the Employment Essentials series

• Managing People
• Ending Employment
• Managing Performance
• Workplace Policies and Procedures

To find out information about the NSW Industrial Relations’ workshop and webinar program, contact NSW Industrial Relations Employer Education Services.

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