

Building eQuality in the workplace

Family Responsibilities –
Guidelines for Employers and Employees



Introduction

From 1 September 2008, changes to the *Equal Opportunity Act 1995* (Vic) (by the *Equal Opportunity Amendment (Family Responsibilities) Act 2008* (Vic)) will protect working parents and carers from discrimination when trying to balance their work and family responsibilities.

The Victorian Equal Opportunity & Human Rights Commission and Industrial Relations Victoria have published these guidelines to provide practical information to employers and employees about the new rights and responsibilities under the Equal Opportunity Act.

The guidelines provide details of the amendments, offer answers to common questions asked by employers and employees, and include a model process that employees and employers can use to make and consider requests for changes to work arrangements.

The guidelines were developed in consultation with employer organisations, unions and community organisations.

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Victorian Equal Opportunity & Human Rights Commission

3/380 Lonsdale Street Melbourne Victoria 3000

Advice Line: **(03) 9281 7100**
Phone: **(03) 9281 7111**
Fax: **(03) 9281 7171**
TTY: **(03) 9281 7110**
Toll Free: **1800 134 142** (country callers)
Interpreters: **(03) 9280 1995**

Email: information@veohrc.vic.gov.au
www.humanrightscommission.vic.gov.au

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Authorised by the Victorian Equal Opportunity & Human Rights Commission, 3/380 Lonsdale St, Melbourne, Victoria, 3000

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This information can also be obtained from Industrial Relations Victoria at the Business Victoria website and is also available from the Victorian Business Line (VBL) on Tel 13 22 15

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1. Getting the balance right

Sometimes people experience difficulties in managing their work and family responsibilities effectively. While they know how important it is to get the job done, they also know they need to look out for the people they care for. This is a challenge that many Victorians face daily whether they are employers or employees.

In Victoria, around 60 per cent of families with children under the age of 12 with at least one parent employed use work arrangements such as flexible working hours, shift work, part-time work, working from home, or job sharing to help them care for their children.¹

More than 2.5 million Australians (13 percent of all households) care for someone with a disability or long-term condition or for someone who is elderly.² In 2006, there were an estimated 2.7 million Australian residents aged 65 years or older. This means more spouses or partners, and adult children will need to provide long-term care for family members and may have to balance this caring role with paid employment and other family responsibilities.³

The structure of households is also changing. The number of single parent and double income families is growing. Families are more mobile, which means there is less access to support from extended family. In addition, technological advances that enable working from home are changing the nature of work. There are also more part-time and casual workers, and more women than ever before are joining the workforce.

Employers also face new challenges in striking a balance between building their business and effectively managing and supporting their workforce.

These guidelines aim to assist employers and employees to meet these challenges.



1 Child Care Survey, Australian Bureau of Statistics, 2005

2 Survey of Disability, Ageing and Carers, Australian Bureau of Statistics, 2003

3 Australia's Welfare, Australian Institute of Health and Welfare, 2007

2. A little perspective

For many years, it has been against the law under the Equal Opportunity Act for an employer to discriminate against someone because they are a parent or a carer, for example, in determining who should be offered a job or given a promotion.

It is also against the law for employers to discriminate against a person because of age, breastfeeding, impairment, pregnancy, race, sexual orientation among other protected characteristics. Information about all protected characteristics are available from the Commission's website.

The recent family responsibilities amendments to the Equal Opportunity Act were introduced to provide workers with parental or carer responsibilities further protection from discrimination in the workplace.

Flexible work arrangements benefit employers, employees and their families. Improving work life balance helps retain skilled staff, especially people with parental or carer responsibilities. This saves on recruitment and training costs and ultimately boosts productivity.

Industrial Relations Victoria has estimated that replacing an employee on an annual salary of \$45,000 could cost an organisation \$17,000. Apart from the recruiting and training costs, when an employee leaves a job their knowledge and networks are lost to the organisation. Any reduction to these business costs can make a major contribution to profitability.⁴

3. What's new

What are the key changes?

The changes provide that an employer should not unreasonably refuse to accommodate an employee's parental or carer responsibilities, in relation to their work arrangements. This means that an employer should not refuse flexible work arrangements for workers with family responsibilities, without considering all of the circumstances. Requests should be seriously considered.

In these guidelines, references to an employer include a principal or firm, and references to an employee include a person offered employment, a contract worker, a partner or person invited to be a partner.

⁴ For further information, see Industrial Relations Victoria's **Work and Family Balance Manual – Better practices for better businesses** at www.business.vic.gov.au > Industrial Relations > Helpful Publications > Work and Family Balance Manual (pdf).

What do the changes mean?

An employer is required to consider all relevant facts and circumstances in determining whether he or she should agree to flexible work arrangements for an employee with parental or carer responsibilities. This does not mean that an employer must agree to every request for changes to existing work arrangements, but it means an employer must not refuse a request unless it is reasonable to do so under the circumstances. Each situation will depend on the facts and circumstances.

In coming to a decision, employers should consider a number of factors such as:

- the nature of the employee's work and parental or carer responsibilities
- the nature and cost of the arrangements required for an employee to fulfil their parental or carer responsibilities
- the effect of the flexible work arrangement on the workplace, including the financial impact on the business.

For a list of other relevant factors and more information about what employers should consider under the changes, refer to **What you should know** on page 8.

How this works in practice

Balancing work and parental or carer responsibilities is about making reasonable attempts to create a more flexible workplace.

Flexible work arrangements that may help employees balance their parental or carer responsibilities include:

- working part-time or working agreed hours over fewer days
- job sharing
- working from home
- starting and finishing earlier or later
- changing hours of work, break times, rosters or timing of meetings
- extending unpaid leave where paid leave entitlements have been exhausted
- changing the need for work travel and the need for overnight stays
- allowing an employee to work additional hours to make up for time taken for parental or carer reasons without loss of pay.

Employers might also consider other arrangements to assist employees balance work and family responsibilities such as providing access to an office phone for calls relating to parental or carer responsibilities.

4. Key terms

Q What are parental or carer responsibilities?

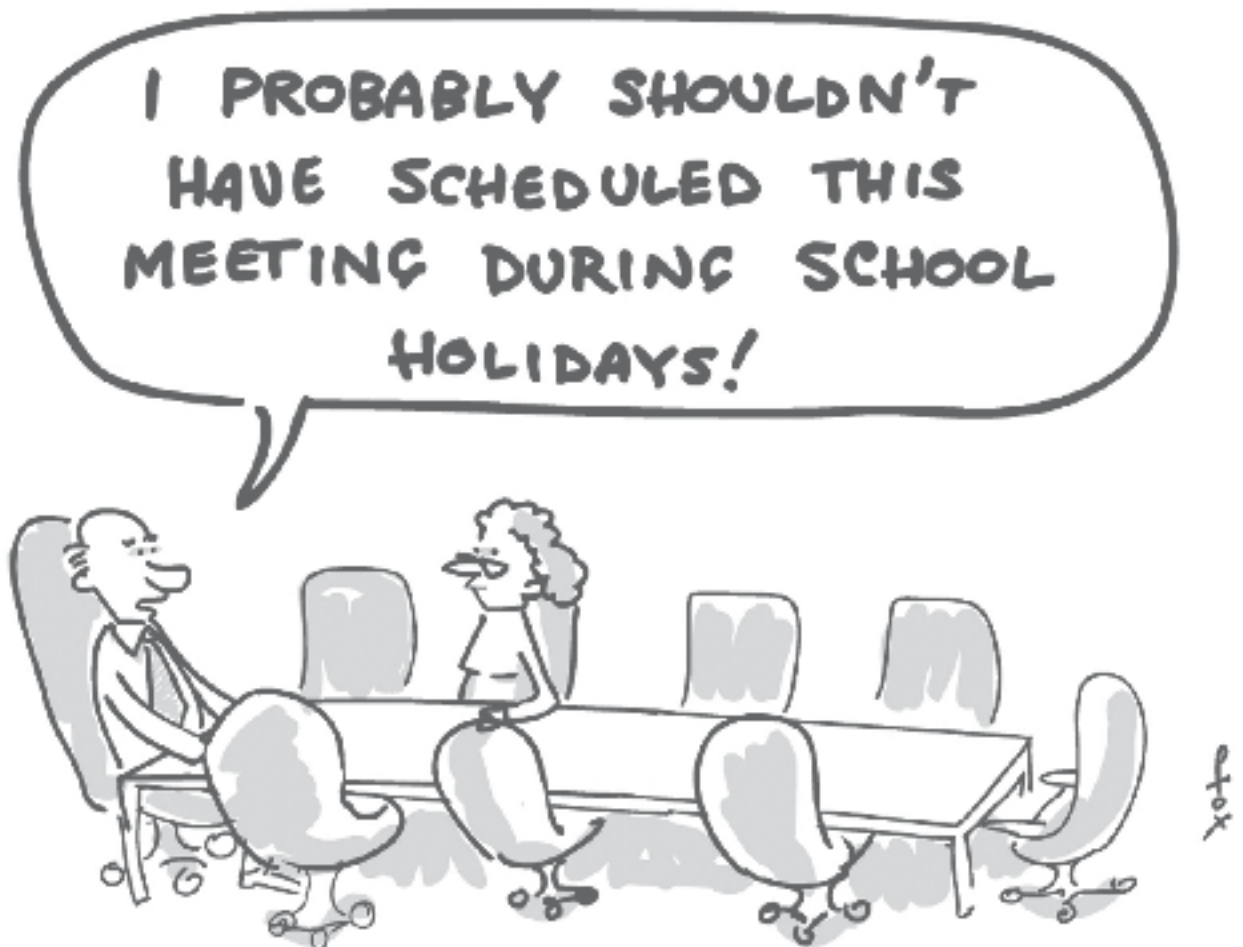
These responsibilities relate to the employee's role as a parent or carer - to their care and attention of a child, or of another person (such as a parent, spouse, domestic partner, relative or friend) who is totally or substantially dependent on the employee for care.

Q Who is a "parent"?

A parent may be a biological parent, a step-parent, adoptive parent, foster parent, guardian, or the spouse or domestic partner of a parent.

Q Who is a "carer"?

A carer is a person on whom another person is totally or substantially dependent for ongoing care and attention. This does not include paid care. Carers provide care and support to family members and friends with a disability, mental illness or disorder, chronic condition, terminal illness or who are frail. Care giving may occur occasionally, continuously, in the short-term or over the long-term.



Q Who is a “domestic partner”?

A domestic partner is a person with whom the person lives as a couple on a genuine domestic basis (regardless of sexual orientation), but to whom they are not married.

Employers are not entitled to question staff about details of their domestic partner or the status of their domestic relationship, for example the length of the relationship or the gender of the partner.

Q What is meant by “work arrangements”?

Work arrangements may include arrangements around working time, work organisation, and the work environment. This includes hours of work, break times, rosters, overtime, leave arrangements, the scheduling of staff meetings, work travel, location of work, and access to other workplace areas.

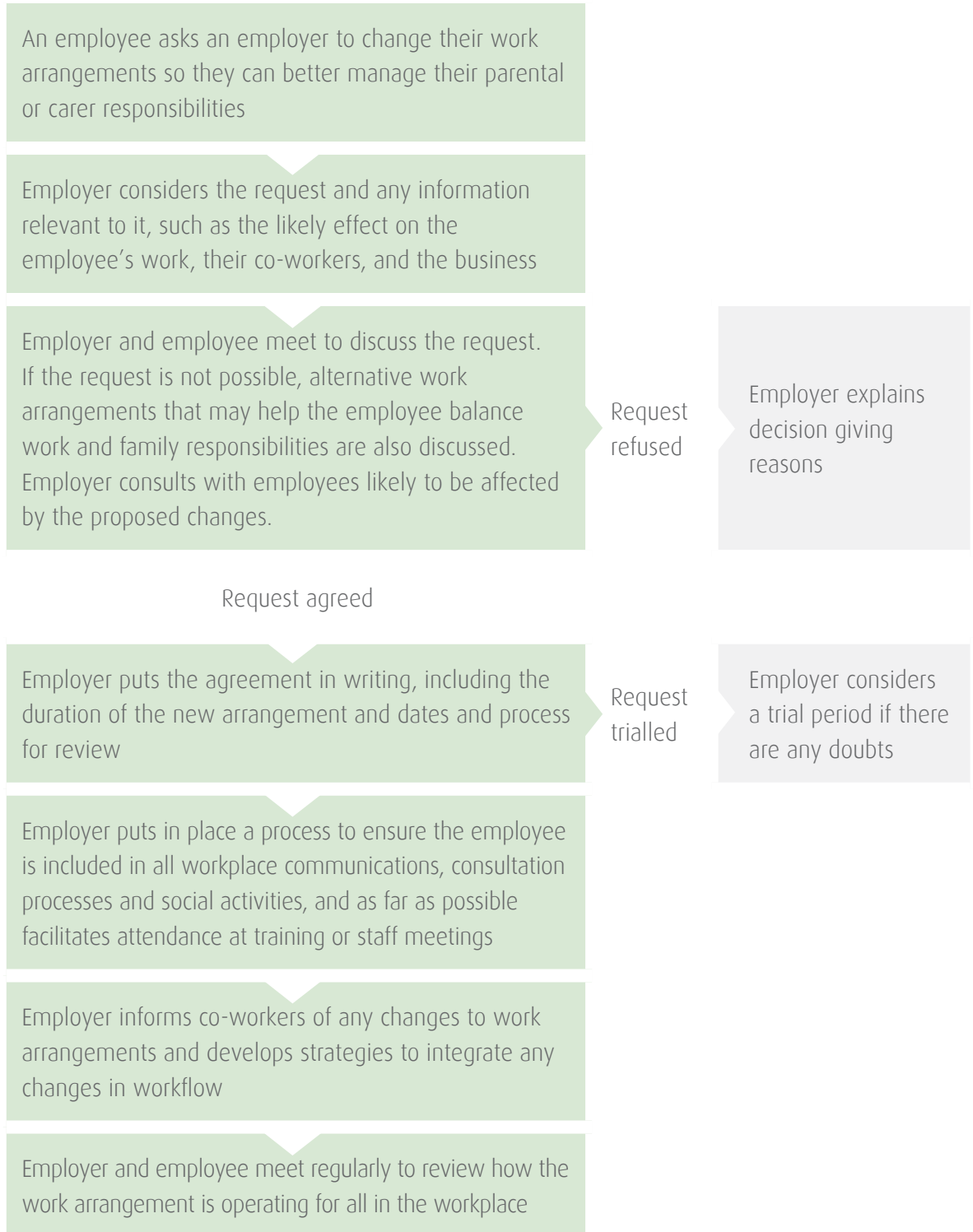
An employee may need to change work arrangements because of their personal circumstances. Changing work arrangements may occur just once or be ongoing (for a fixed or indefinite time).



5. The process explained

The model outlined below is one example of a best practice response by an employer to a request from an employee. It can be adapted to any circumstance or workplace.

What happens when a request for flexible arrangements is made?



6. What you should know

It makes good business sense for employers to consider their employees' work life balance without a specific employee request being made, for example by avoiding scheduling meetings before 9am as parents may need to drop their children off at school.

Receiving a request

An employee may raise their need for changed work arrangements because of their parental or carer responsibilities in any number of ways - informally or formally, verbally or in writing.

Employers can be prepared to respond to employee requests or concerns by establishing equal opportunity workplace policies and practices. Employers should ensure that all employees are familiar with these policies.

Remember to be sensitive about the receipt and storage of personal information disclosed by an employee in the course of making a request.

A record could be kept of discussions along with any other materials that form the basis of the decision.

Considering a request

An employee's request for flexible work arrangements because of their parental or carer responsibilities should be seriously considered.

When considering whether to agree to a request to change work arrangements, employers should think about the request and any other options that might be suitable. For example, working from home may not be possible but changing start and finish times to allow a parent to attend to family care needs after school hours may be possible in your workplace. Consider each request individually. Each will have different facts and circumstances. What may work in one situation may not work in another.

Factors employers should consider when assessing a request include:

- the nature of the employee's work and parental or carer responsibilities
- the nature and cost of the arrangements required for an employee to fulfil their parental or carer responsibilities
- the financial circumstances of the employer
- the size and nature of the workplace and the employer's business
- the effect of the flexible work arrangements on the workplace, including the financial impact on the business
- the consequences for the employer of having the flexible work arrangements
- the consequences for the employee of not having the flexible work arrangements.

Other considerations that might be relevant in a particular case include:

- the workload of other employees
- the occupational requirements of the job
- the impact on the budget, for example whether penalty or additional overtime rates would be payable
- the impact on customer service
- the physical layout of the building
- the need for additional equipment, such as providing a laptop to assist an employee to work from home
- when the arrangements would start and how long they would be needed
- the accrued entitlements of the employee, such as personal leave or annual leave
- whether any legal or other constraints affect the feasibility of the request, such as occupational health and safety laws.

Agreeing to a request

Employers might consider having a trial period for the proposed flexible work arrangement and scheduling regular meetings with the employee to assess how the new arrangement is working. For example, any effect the new work arrangement may have on the employee, co-workers and business operations.

Refusing a request

Employers do not have to agree to every request. However, each request should be seriously considered.

It is not sufficient for an employer to refuse a request for flexible work arrangements simply because it has not been done before or because it does not fit in with current practice.

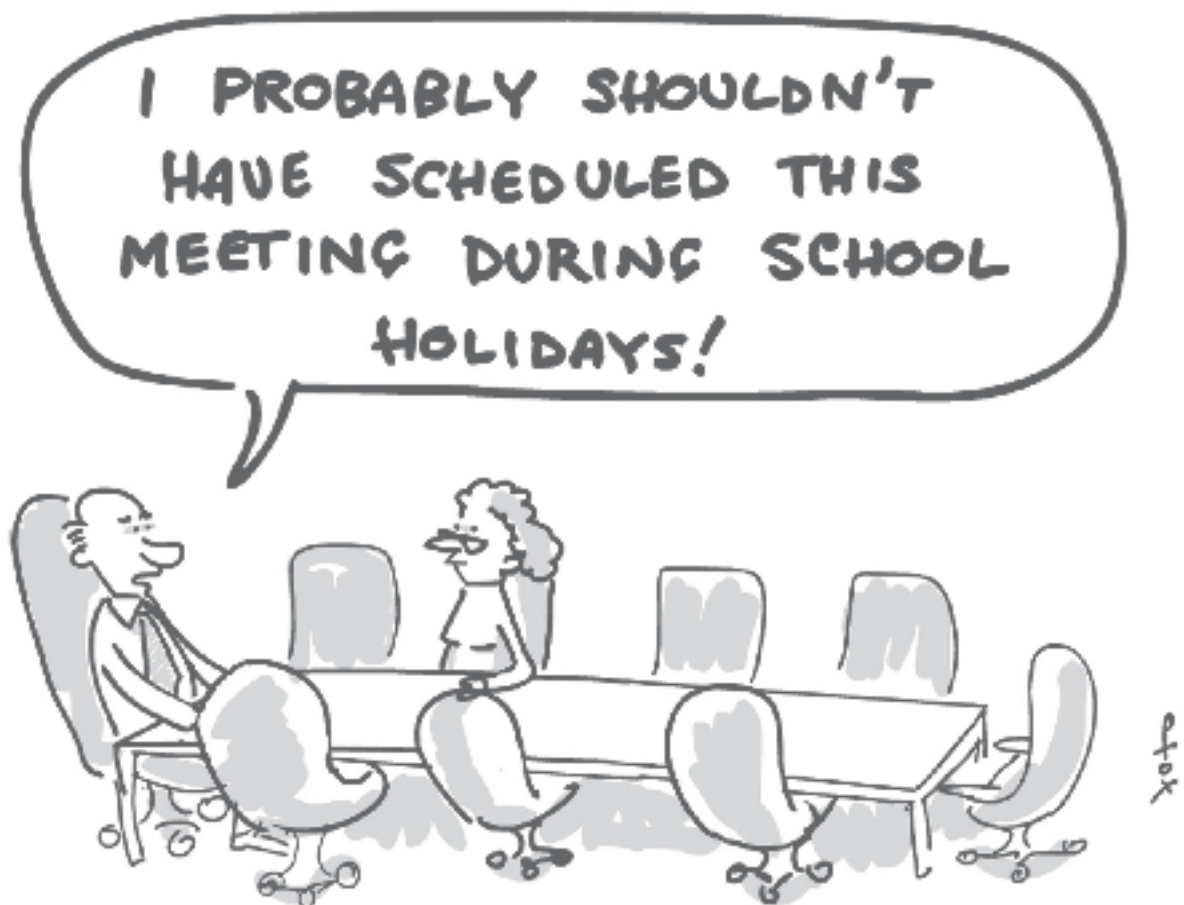
Whether it is reasonable for an employer to refuse flexible work arrangements for an employee with parental or carer responsibilities will depend on consideration of all the circumstances. If an employer decides to refuse the request it is good practice to meet with the employee and explain the reasons. You can both also explore other possible arrangements.

A scenario for employers considering a request for flexible work

Victor is unable to find childcare on Thursday afternoons. He asks his employer if he can work Thursday mornings in the office, look after his child at home in the afternoons, and then complete his work once his child has gone to bed.

When responding to this request his employer considers:

- Can Victor's work be conducted from home?
- If Victor can work from home, will other employees' work be directly affected?
- Will any of Victor's customers or clients be affected?
- How much will it cost the organisation to enable Victor to work from home? Will there be a need for additional equipment such as a laptop? Can the organisation afford this?
- Are there other alternatives if it is not possible to let Victor work from home? For example, Victor might work an additional hour four days a week so that on Thursdays he can take the afternoon off as time in lieu.
- Are there any other relevant considerations such as occupational health and safety issues?



7. Examples of best practice responses

The following examples illustrate best practice approaches to considering and managing requests from an employee to change work arrangements.

A practical example of how this process can work in an office

Fatima is the office manager at Synk Office Services. She works full-time five days a week and supervises three other administrative staff. Her primary school age son is diagnosed with a medical condition that requires weekly hospital visits.

His weekly hospital appointments are on a Monday and Fatima needs to accompany him to the hospital. This means she is unable to be in the office on Mondays. Fatima currently meets with her staff on a Monday morning. She also meets with the company's senior managers on Monday afternoons. In order to attend these meetings, Fatima will need to request a change of meeting day. She will also need to delegate office management responsibilities to other staff when she is not in the office.

Fatima notifies Chris, her manager, of her need to attend medical appointments with her son every Monday until he recovers. She proposes to work part-time four days a week instead of five during this period, and to change the Monday meetings to another day. She also lets Chris know she has confidence in her staff's ability to manage the office in her absence on Mondays.

Chris recognises that this will affect the weekly senior management meetings. He considers the impact of Fatima delegating office management responsibilities to her staff and the effect on other senior managers of changing the weekly management meetings to another day. He consults Fatima's staff about their willingness to accept administrative responsibilities. He also discusses the proposed changes with the senior managers, taking into account their meeting schedules and administrative support requirements.

Following these consultations, Fatima and Chris meet to consider her proposal. Chris asks Fatima to provide her staff with extra training so there will be no need to contact her on Mondays. They mutually agree to the new work arrangements and to a review after three months. These new arrangements are put in writing and Chris informs other senior managers and administrative staff of Fatima's changed work arrangements and asks them to let him know if any difficulties arise.

Chris and Fatima meet after three months to discuss how the arrangement is working for everyone. The new arrangement also gives Fatima's staff an opportunity to develop and broaden their administrative skills.

A practical example of how this process can work in a production company

Geoff works as a supervisor with Creamy Desserts Pty Ltd, a small food production company. He works morning and afternoon shifts in weekly rotation with a second supervisor, Gita.

Geoff and his wife have a 27-year-old daughter, Louise, who lives alone. When Louise falls off a ladder at home, she has to undergo emergency surgery for a serious head injury.

Geoff and his wife inform their respective employers about what has happened and take all carer leave available to them so that they can stay with their daughter while she is in hospital. They keep their managers informed and take their remaining annual leave. They decide that Louise must live with them while she needs 24-hour supervision. It is important to Geoff and his wife that they share the care of their daughter.

Geoff approaches his manager, Boris, and asks to take a month's leave without pay so that he can care for his daughter and take her to morning hospital appointments. Boris considers Geoff's request. It has already been difficult for the food production company to cover Geoff's absences because a supervisor is required around the clock. The company had employed a temporary shift supervisor through a labour hire agency to cover Geoff's earlier absences; however, it is not financially viable to extend this arrangement beyond Geoff's period of annual leave.

After consideration, Boris declines Geoff's request and explains his reasons. They discuss other options for Geoff to arrange his work to meet his caring responsibilities. Boris approaches Gita, the second supervisor, with a proposal that she work only the morning shift for a time instead of the weekly rotation. There are no wage differences associated with working the two different shift times. Gita agrees and Geoff works the 3pm to 11pm shift, with a review after two months. These changes are put in writing and co-workers are informed.

After two months, Geoff has a meeting with Boris to review his work arrangements. It has become clear that Louise has a permanent disability and will need to remain with her parents for the near future. Care and work arrangements have been working well for Geoff and his family so he expresses a wish for the current shift arrangements to continue. Boris discusses this possibility with Gita, who agrees to the proposal.

A practical example where a request is considered and then refused

Paper Products Pty Ltd manufactures stationery. The factory operates 24 hours, seven days a week. The day shift is from 8am to 4pm. Susan has worked on the day shift as a production line operator for the past nine years.

When Susan's children reach school age she asks for reduced hours, from 10am to 2pm so that she can drop off and pick up her children from school. She is unable to work afternoon or night shifts because she must look after her children.

The company considers Susan's request. On the production line, it is essential that there is a production operator in Susan's position throughout the eight-hour shift. The company looks at the feasibility of splitting the day shift in the way Susan requests and consults her co-workers on their willingness to adapt their shifts. However, none is prepared to work 8am to 10am and then 2pm to 4pm to fill the gap.

The company also calculates that if existing employees were utilised on night and afternoon shifts to cover the hours, then overtime rates would need to be paid. There would also be health and safety concerns about working longer shifts. The company considers whether there are any other positions available that would enable Susan to meet her family commitments, however there are none. It also tries hiring new staff to fill the shifts but an employment advertisement generates no interest.

Susan and her manager Luisa meet to discuss her request to shorten her shift. Luisa explains the impact of the request on production operations and other options they considered to meet Susan's needs. Luisa asks if Susan has any suggestions to manage her request. Susan does not. Having considered all the issues, Luisa informs Susan that the company cannot meet her request. The company is not obliged to create a new position for Susan.

These examples illustrate best practice approaches to considering and managing requests from an employee to change work arrangements.

FAQs for employers

Q Do I have to change my business operations for employees with parental or carer responsibilities?

You are not obliged to restructure your business for employees who are parents or carers. You are also not obliged to agree automatically to all requests from employees to change their work arrangements because of their parental or carer responsibilities. You need to consider each request separately, and make a decision based on individual facts and circumstances.

It may be helpful to establish policies about how you will consider requests for flexible work arrangements and to inform employees about the process.

Q If I have an ongoing flexible work arrangement with one employee with family responsibilities, am I also required to provide the same arrangement to other employees?

Each case should be assessed individually. Depending on the circumstances it may be reasonable to accept one person's request for a changed work arrangement and refuse another person.

Explain to employees the reasons behind any decisions, and address any concerns about equity in work arrangements.

Having a policy in place that sets out the decision-making process will help employees understand the process and guide managers in making fair and consistent decisions.

Q Do all my employees have an automatic right to return to work on a part-time basis following a period of parental leave?

No. A request to change to part-time work should be considered in the same way as any other request for changed work arrangements.

Q Can both parents seek changes in work arrangements, for example following the birth of a child?

Both parents may seek to change (temporarily or permanently) their work arrangements following the birth of a child. There is no requirement for a family to nominate a primary caregiver and some parents share caring responsibilities for a child.

The question for employers is whether it is reasonable to refuse the request for changes to work arrangements. The focus should be on the nature of the employee's parental or carer responsibilities and on what would help fulfil those responsibilities. A decision can then be made that takes into account all the facts and circumstances.

Example

Juan Carlos is a senior landscape gardener with a large regional nursery. When he unexpectedly needed to assist with the care of his terminally ill mother, he approached his employer with a request for a more flexible work arrangement. After discussion and consideration, they agreed that he would work half time for a period. A work colleague received training to take up some of his landscaping responsibilities. His work team kept Juan Carlos informed about developments in the workplace. Juan Carlos resumed full-time work following his mother's death.

Example

Gary was working as General Counsel for an IT company when his son was born with disabilities. Gary approached his manager with the idea of a more flexible arrangement to balance his family needs while continuing to provide in-house legal services. After discussion, a flexible arrangement was agreed to meet everyone's needs. Gary is now on a flexible retainer of three days per week. His hours are not set but he is in the office as required (generally no less than two days per week) and works from home the rest of the time.

Example

Carla is a supervisor in a factory in the northern suburbs of Melbourne where she has worked for 25 years. After her father became anxious and confused with age, Carla and her employer met to discuss how she might be able to provide assistance and continue in employment. Following discussion and consideration of the available options, Carla's employer installed a phone and allowed Carla to call her father during the day. An 'emergency flexitime' system was also implemented and a substitute supervisor trained up to cover any absences Carla might require to care for her father. Carla is now able to balance her work with her caring responsibilities and her employer has kept a valuable employee.

How much information about employees' parental and carer responsibilities am I entitled to ask for?

Information about a person's parental or carer responsibilities and the health of those they may care for is personal and often sensitive. A best practice approach for all employers would be to ask only for the information required to help you make a decision about whether these responsibilities can be met through changed work arrangements.

For example, an employer might have a genuine need to know whether the request is a result of the employee's parental or carer responsibilities and the nature of those responsibilities, what sort of work arrangements would help meet these responsibilities, and for how long. It is unlikely to be either necessary or appropriate to seek further information, such as why an employee is caring for another person or the nature of any illness the other person might have.

Organisations should treat any information they receive about parental or carer responsibilities as confidential, and securely store any records of this information.

In addition, if you ask employees for personal information, do so in a way that is consistent with privacy principles:

- tell them why you are asking for it
- allow them access to their information
- tell them who will receive copies of their information.

Can I verify the nature of the parental or carer responsibilities that an employee may have?

Usually it will be sufficient for employees to inform their employers that they have parental or carer responsibilities and how these needs can be met. In most situations, no further verification would be necessary.

However, if you are concerned that the employee may not have the parental or carer responsibilities they have told you about, you might consider seeking a written declaration from the employee that they have the responsibilities claimed.

It may be helpful to include advice on when additional information may be required in your workplace policies.

What about privacy laws?

Organisations also need to be aware of the legal obligations regarding privacy of information. Commonwealth and State privacy laws set out minimum standards for how some organisations can collect, use and disclose personal and health-related information. This could also include personal and health information of job applicants, employees, and contractors. Failure to properly collect and protect personal information and/or health information may leave an organisation open to complaints of discrimination and/or privacy complaints.

It is also against the law under the Equal Opportunity Act to ask another person for information that could be used as a basis to discriminate against that person, unless the information is reasonably requested or required for a non-discriminatory purpose.

Organisations can find out more about their privacy obligations by contacting their organisation's privacy officers, legal advisers or either the Commonwealth or Victorian Privacy Commissioner.

What happens if the employee is not satisfied with the outcome of our discussions?

In most cases, changes to work arrangements occur in workplaces through mutual agreement and are therefore acceptable to both the employer and employee.

However if there is no agreement reached, an employee who believes that their employer has unreasonably refused flexible work arrangements because of parental or carer responsibilities can make a complaint of discrimination to the Victorian Equal Opportunity & Human Rights Commission.

What do I do if a person accepts a job offer and only later informs me of the need to vary work arrangements?

You may not be aware of a person's parental or carer responsibilities when they start work and responsibilities may change at any time. If you receive a request to change work arrangements from an employee with parental or carer responsibilities, you should consider all relevant facts and circumstances.

It is also a good idea to give potential employees full details about of particular job so that they can make informed decisions about their ability to perform that role. As well as a job description, you should consider providing information about particular work locations, any travel requirements, and whether work on public holidays or weekends is a critical component of what is required.

Example

Miranda was working in the public service in an administrative role when her partner Jacinta developed Multiple Sclerosis. They have three teenage children. Miranda requested flexible working hours in order to combine regular in-home care services (meal preparation, cleaning and personal care) with care for Jacinta. After consultation and consideration, Miranda's manager agreed she could take a longer lunch break and leave work early to prepare the family meal. Miranda agreed to work 2.5 hours from home each week day evening using remote access to her office email account.

Example

Katrina and Suzie work as graphic designers at a medium-sized advertising company and are both on maternity leave. Katrina is due to return to work in October and Suzie in February the following year. Katrina cannot obtain full-time childcare until January and asks their manager Monica if she can extend her maternity leave beyond 12 months. Monica refuses because they have a major project scheduled that needs a full-time graphic designer from October. However, Monica is aware that Suzie wants a gradual return to work before resuming her full-time role in February. Monica suggests that Katrina and Suzie job share for six months starting from October. Through the job share arrangement both Katrina and Suzie are able to manage work and childcare responsibilities and their employer has the equivalent of a full-time graphic designer to work on the major project.

When can complaints be made about this type of discrimination?

Complaints about conduct occurring after 1 September 2008 can be made to the Victorian Equal Opportunity & Human Rights Commission. As these guidelines were prepared before 1 September 2008, the courts have not yet dealt with any complaints under the new provisions. Like all Victorian legislation, these new provisions need to be interpreted in a way that is consistent with the Victorian Charter of Human Rights and Responsibilities.

Are there exceptions to this type of discrimination?

The Equal Opportunity Act includes some exceptions that mean that discrimination may not be against the law in particular cases. The exceptions in the Act are specific and employers should look carefully at the exceptions and the particular facts and circumstances before relying on them. Even if an exception may apply, this will not prevent a person making a complaint to the Victorian Equal Opportunity & Human Rights Commission.

What about other workplace laws?

Consider all relevant facts and circumstances when assessing whether modifying work arrangements is reasonable. This includes whether granting the request would interfere with another legal right or obligation. For instance, refusing a request may be reasonable if granting it would put you in breach of occupational health and safety laws.

You may wish to seek legal advice if it appears granting a request may be inconsistent with federal workplace laws.

Is there anything else I need to do?

Best practice employers will:

- ensure that equal opportunity policies and training are updated to include these changes to the Equal Opportunity Act, to assist consideration of requests for flexible work arrangements
- provide training for managers and supervisors to appropriately respond to requests about changing work arrangements, without discrimination
- consider the impact of procedures, policies and practices on staff with parental or carer responsibilities; for example, calling a meeting at 7am when normal working hours start at 9am might prevent employees who are parents from attending.

FAQs for employees

Who can seek flexible work arrangements to meet their parental or carer responsibilities?

Under the Equal Opportunity Act, a person offered employment, an employee, a contract worker, a person invited to become a partner in a firm, or a partner in a firm will be able to request flexible work arrangements because of their parental or carer responsibilities but not if you are being paid for providing that care.

When can I make a request?

You can request to change your work arrangements for matters relating to the care and attention of a child, or of another person (such as a parent, domestic partner, relative or friend) who is totally or substantially dependent on you for ongoing care and attention. Give your employer as much notice as possible of the need for a change in work arrangements as this can make it easier to meet your request.

How do I make my employer aware of my parental or carer responsibilities?

The Equal Opportunity Act does not require that a request to accommodate family responsibilities be made in a particular way. Discussions with your employer regarding your parental or carer responsibilities may be informal or formal, verbal or in writing. You might request a one-off change to work arrangements or the change could be ongoing. You may wish to consider putting your request in writing, along with any agreed changes to work arrangements. Be aware of any workplace policies or practices that are in place for making requests.

What can my employer ask me?

Information about a person's parental or carer responsibilities and the health of those they may care for is personal and often sensitive.

The amendments do not mean you, as an employee, have to disclose detailed information about yourself or your family to your employer. If you request a change in work arrangements, your employer might need to know whether the request is a result of your parental or carer responsibilities, what sort of work arrangements would help fulfil these responsibilities, and the period of time over which you will need the changed arrangements. Generally, it will be unnecessary to provide further information, such as why you are caring for another person or the nature of any illness this other person might have.

What about my privacy?

Commonwealth and State privacy laws set out minimum standards for how some organisations can collect, use and disclose personal and health-related information. This includes personal and health information of job applicants, employees and contractors.

Example

Mei is a qualified barista at a small coffee shop. The shop is open from 7am to 4pm. The peak time for coffee sales is from 7am to 11am and 12.30pm to 2pm. Mei asks her employer whether she can start at 9am so that she can care for her son before his babysitter arrives at their home. Mei's employer considers her request. If Mei changes her work arrangements there will be no-one skilled enough to make the coffees from 7am to 9am. The cost to train another employee to qualify as a barista would be \$20,000 and the annual profit for the business is \$180,000. Mei's employer calculates that Mei's request is not financially viable. He explains to Mei the reasons for being unable to meet her request and they discuss other options. Mei suggests that she can train another employee to cover the 7am to 9am period. Her employer agrees to a trial period reviewed after three months.

Example

Rajiv works as a spray painter for a large company on a permanent full-time basis. When his wife became ill, Rajiv became the primary carer for his seven-year-old daughter and three-year-old son. After using all his personal leave entitlements, his employer asks him how much more time he needs to support his wife and care for his children. Rajiv was unsure how long his wife will take to recuperate and asks if he could take a further six weeks of unpaid leave and if a temporary worker can be hired to cover his absence. After consideration and discussion, Rajiv's employer agrees to the proposal and they mutually agree to review the situation after six weeks.

Generally, employers should treat any information they receive about parental or carer responsibilities as confidential, and securely store any records of this information. If an employer asks for personal information they should do so in a way that is consistent with privacy principles, and should:

- tell you why they are asking for personal information
- allow you access to your information
- tell you who will receive copies of your information.

It is also unlawful under the Equal Opportunity Act to ask another person for information that could be used as a basis to discriminate against that person, unless the information is reasonably requested or required for a non-discriminatory purpose.

You can find out more about privacy laws or make a complaint about breaches of privacy by contacting either the Commonwealth or Victorian Privacy Commissioner.

When can complaints be made about this type of discrimination?

Complaints about conduct that occurred after 1 September 2008 can be made to the Victorian Equal Opportunity & Human Rights Commission. A person will not have to prove direct or indirect discrimination (as defined in the Equal Opportunity Act) to make a complaint. These guidelines were prepared before 1 September 2008, meaning that the courts had not yet dealt with any complaints under the new provisions. Like all Victorian legislation, these new provisions need to be interpreted in a way that is consistent with the Victorian Charter of Human Rights and Responsibilities.

What is required for me to make a complaint?

If you believe your employer has unreasonably refused to accommodate your parental or carer responsibilities, you may wish to consider lodging a complaint with the Victorian Equal Opportunity & Human Rights Commission. Alternatively, you may wish to be part of a representative complaint. Victoria's equal opportunity laws allow for a person or representative body to lodge a complaint with the Commission on behalf of a named person or people who believe they have been discriminated. A representative must be either a person with the same complaint or an organisation with sufficient interest in the complaint.

More information about making a complaint and the Commission's complaint-handling processes can be accessed on the Commission's website www.humanrightscommission.vic.gov.au or by calling the Commission's enquiry line on (03) 9281 7100.

Are there exceptions to this type of discrimination?

The Equal Opportunity Act includes some exceptions that mean that discrimination may not be against the law in particular circumstances. However, even if an exception may apply, this will not prevent you making a complaint to the Victorian Equal Opportunity & Human Rights Commission (but it may affect the outcome of your complaint).

READY REFERENCE GUIDE

For employers

- You are not obliged to agree automatically to all requests from employees for changes to their work arrangements. Consider requests individually as each will have different facts and circumstances. What may work in one situation may not work in another.
- Consider the request and any other options that might be suitable to the organisation and the employee when considering whether it is reasonable to refuse a request to change work arrangements.
- Factors you might consider when assessing the impact of a request include:
 - the nature of the employee's work and parental or carer responsibilities
 - the workload of other employees
 - genuine occupational requirements of the job
 - impact on customer service
 - costs, for example additional penalty rates or overtime
 - the provision of equipment, such as a laptop
 - the consequences of refusing the request.
- Consider the consequences for the employee if you do not change work arrangements.
- Consider a trial period for the proposed flexible work arrangement and schedule regular meetings with the employee to assess how the new arrangement is working.
- Be considerate and fair in responding to requests. Ask only for the minimum of personal or health information required for a decision.
- Information you receive from an employee should be stored securely and kept confidential.

For employees

- There is no particular way that you must make a request for flexible work arrangements because of your parental or carer responsibilities. Discussions with your employer regarding these responsibilities may be informal or formal, verbal or in writing. However, you may wish to consider putting your request in writing, along with any agreed changes to work arrangements.
- Be aware of any workplace policies or practices that will assist with developing your request.
- Try to give your employer plenty of notice of your need to change work arrangements.
- Give your employer more than one option if possible and consider how these options may change workflow, and any impact they may have on team members.
- You do not have to disclose to your employer any information about yourself or your family that is not relevant to your specific request. However, if you request a change in work arrangements, your employer might need to know whether the request is a result of your parental or carer responsibilities, what sort of work arrangements would fulfil these responsibilities, and for how long you need the change to your work arrangements. It will not usually be necessary to provide further information, such as why you are caring for another person or the nature of any illness the person you are caring for might have.
- Your request to change work arrangements should be in good faith.
- Your employer should store securely and keep confidential any information you provide.

Resources and contact details

Victorian Equal Opportunity & Human Rights Commission

Level 3, 380 Lonsdale St, Melbourne 3000

Advice Line 03 9281 7100
Telephone 03 9281 7111
Fax 03 9281 7171
TTY 03 9281 7110
Interpreters 03 9280 1995
Toll Free 1800 134 142 (country callers)
Email information@veohrc.vic.gov.au
Website www.humanrightscommission.vic.gov.au

Industrial Relations Victoria

For more information on how to make workplaces more family-friendly visit www.irv.vic.gov.au

Victorian Privacy Commissioner

The key body in a system regulating the way Victorian government agencies and local councils collect and handle personal information.

Level 11, 10-16 Queen Street. Melbourne Victoria 3000
GPO Box 5057, Melbourne Victoria 3001

Telephone 1300 666 444
Fax 1300 666 445
Email enquiries@privacy.vic.gov.au
Website www.privacy.vic.gov.au

Federal Privacy Commissioner

This is an independent office that has responsibilities under the federal Privacy Act 1988 (Cwlth).

GPO Box 5218, Sydney NSW 2001

Telephone 1300 363 992
Fax 02 9284 9666
TTY 1800 620 241
Interpreters 131 450
Email privacy@privacy.gov.au
Website www.privacy.gov.au

JobWatch

A telephone advice service providing advice and / or referrals for employees about employment law or industrial relation problems.

Telephone 03 9662 1933 (Melbourne callers)
1800 331 617 (Country Victorian callers)



**Victorian Equal Opportunity
& Human Rights Commission**

3/380 Lonsdale Street Melbourne Victoria 3000

Advice Line: **(03) 9281 7100** · Phone: **(03) 9281 7111** · Fax: **(03) 9281 7171**
TTY: **(03) 9281 7110** · Toll Free: **1800 134 142** (country callers) · Interpreters: **(03) 9280 1995**
Email: **information@veohrc.vic.gov.au** · Website: **www.humanrightscommission.vic.gov.au**