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MEMO ON THE IMPACT OF THE UNITED KINGDOM'S FLEXIBLE WORKING ACT

Since taking effect in 2003, the United Kingdom's Flexible Working Act has granted parents with children under the age of 6, or with disabled children under the age of 18, the *right to request* flexible working arrangements from their employers if they have been employed for at least 6 months. This legislation's provisions were expanded to include employees with adult caregiving responsibilities beginning in 2007, and the government is in the process of planning formal public consultations to extend the law further to include parents of older children.ⁱ The law was enacted following a process of consultation with employees and employers about the need for flexibility in the workplace. It grew out of a set of recommended policy solutions, as a first step in addressing flexibility with the intent to gradually expand the law to cover additional workers.

The *right to request* has been considered a "soft touch" law in that, while it encourages businesses and individual to pursue family-friendly practices, it does not impose a mandate on employers, who may refuse their employees' requests if the refusal is based on one of nine business reasons that are enumerated in the law. The law lays out a process for employees and employers to negotiate a mutually beneficial arrangement, and it provides a formal appeals process for rejected requests in which the employer did not follow the correct procedures or based the refusal on incorrect facts.

Has the Right to Request Flexible Work Arrangements Created Any Changes?

A. Government Data

The UK's Department of Business, Enterprise, and Regulatory Reform (and the Department of Trade and Industry before it was disbanded in June 2007) has been comprehensively monitoring implementation of the Flexible Working Act and related legislative initiatives through a series of employer and employee surveys on work-life balance. No specific research has illuminated the effects of this particular law, though the Department of Business, Enterprise, and Regulatory Reform has noted a forthcoming report this spring which will "provide an analysis of the impact of the *right to request* flexible working on both employees and employers, drawing upon the large amount of survey data produced by [the Department of Trade and Industry] and others."ⁱⁱ

Concerning the need for the *right to request* law, in addition to its other efforts on work-life flexibility, the government has stated that: some "employers may fail to recognize the full benefits of flexible working because of cultural resistance or lack of awareness."ⁱⁱⁱ Early studies found that the law itself did little to affect the proportion of employees making requests for flexible work (noting that requests were made at similar levels before the law was introduced).^{iv} However, additional research did find that the number of requests that were refused by employers dropped after the passage of the legislation.^v

The third and most recent round of nationally representative surveys of employers was conducted in March through August 2007 with a random sample of 1,462 workplaces with five or more employees. The companion survey of 2,081 employees working in organizations within Great Britain was conducted in early 2006. Prior rounds of both surveys were conducted in 2000 and 2003.

Among other findings, the Third Work-Life Balance Employer Survey^{vi} found increased availability of flexible working arrangements in 2006 compared to 2003. Ninety-five percent of workplaces surveyed offered at least one of six flexible working arrangements to their employees—an increase from 88 percent in 2003. Ninety-two percent of employers reported that they would consider requests from any employee, rather than only those covered by the law's scope. Of the flexible working arrangements offered, part-time work is the most common, available in 92 percent of workplaces (up from 81 percent in 2003). Since 2003, the number of workplaces allowing employees to work reduced hours for a limited period has nearly doubled, from 40 percent to 74 percent, as has the number allowing employees to work compressed hours, from 19 to 41 percent. The availability of both job sharing and flextime^{vii} has also increased, from 39 to 59 percent for job sharing, and 38 to 55 percent for flextime.

The employer survey found that take-up of flexible working time arrangements has also increased, but at a slower rate than availability. Part-time work is the most widely used arrangement and was utilized by employees in 79 percent of workplaces. Flextime is the second most commonly utilized arrangement, with 25 percent of employers in 2007 reporting its usage by their employees.

The results from the Third Work-Life Balance Employee Survey^{viii} paint a similar picture to the companion employer survey described above, albeit a slightly less positive one. Ninety percent of employees reported that at least one flexible working arrangement was available to them if they needed it, up from 85 percent in 2003. Employees agree with employers that part-time work is the most commonly available arrangement, with 69 percent reporting that they could work part-time if needed. Roughly half of employees believed that if needed, the following flexible working arrangements were available to them: reduced hours (54 percent), flextime (53 percent), and job sharing (47 percent).

Fifty-six percent of employees reported that they had taken up at least one flexible work arrangement within the previous 12 months with their current employers, an increase from 51 percent in 2003. Of the 90 percent of employees who believed flexible work arrangements were available to them, 62 percent reported that they currently were utilizing them or had recently utilized them. Of the employees who did not utilize a flexible working arrangement or did not have one available to them, 42 percent would like to work flextime, and 32 percent would like to have a compressed schedule. About a quarter would prefer to work reduced hours for a limited period (27 percent), work annualized hours (26 percent), or work from home (24 percent).

Although the vast majority of workers believed that they could flexibly work, only about half (56 percent) were aware of the law stating that parents have a right to request such arrangements and that their employers have a statutory requirement to consider requests (an improvement from 41 percent in 2003). Parents with children and women were more likely to be aware of the right (65 percent and 60 percent respectively) than other employees and men (53 percent of each group).

As noted above, half of all surveyed employees reported working flexibly currently or in the past year. However, only 17 percent had made a formal request to change their working arrangements in the past 2 years, and just 17 percent of these requests were declined by employers. The government states that, given the high use of flexible work arrangements, despite the lower percentage of “requests,” much of the flexibility being used by employees has been informal or short-term. Another alternative explanation is that some of the workers with flexible schedules have been working these schedules for longer than the period of time surveyed. In addition, employees who have worked flexible schedules since before the law went into effect would not have had to “request” the schedule formally.

Despite these seeming discrepancies, the employee survey results suggest that employees are more content with their current work arrangement than they were in 2003. When asked why they did not utilize flexible work arrangements, 41 percent of employees who were not working flexibly cited being happy with their current work arrangements, as opposed to 34 percent in 2003. Since 2003, there was a decrease in the percentage of employees who stated that their type of job would not permit them to work flexibly (17 percent in 2003 compared to 6 percent in 2006) . There was also a decrease in the percentage of employees who said their employers would not allow them to work flexibly (26 percent in 2003 and 7 percent in 2006). Also, fewer employees stated that financial or workload issues were preventing them from working flexibly (13 percent and 6 percent in 2003, versus 10 percent and 3 percent in 2006).

B. Non-Governmental Perspectives

Evidence gathered by non-governmental organizations generally supports the government data’s positive findings. One such survey conducted by the British Chambers of Commerce^{ix} found that nearly two-thirds of employers offer flexible work arrangements to all employees, even those outside the scope of the statutory requirements. It also found that nearly three-fourths of employers surveyed had noted some or significant improvements in employee relations as a result of offering flexible work arrangements. Moreover, the employers surveyed were far more motivated to offer flexible working arrangements by their own personal convictions that flexibility would be beneficial (39 percent), or as a response to an employee’s request (38 percent), than a desire to be legally compliant (17 percent).

Although the data seem to imply that the Flexible Working Act has thus far helped in opening pathways for parents to balance work and caregiving responsibilities, there are concerns that the law has not fully accomplished its goals and has had unintended consequences that diminish its gains in workplace practice. Because the law allows employers to refuse employees’ requests for changing their work arrangement if specific business justifications exist, certain positions and industries have been unaffected. For example, one union argued that “there is no evidence yet that the right to request flexible working is opening up in more senior jobs. Indeed, managerial employees are the most likely to be excluded from any arrangement.”^x Unions and parent advocacy groups have also argued that many workers who would benefit from flexible arrangements do not ask for them out of fear of being refused, or because of a fear that asking may jeopardize their careers.^{xi} Some analysts have suggested that employees will only ask for flexible work if they believe their requests will be approved.^{xii} Another critique of the Flexible Working Act has been that it lacks “teeth” in that legal recourse is limited: employees

have the right to challenge employers' refusals of their requests, but that right is limited to procedural grounds and not the business reasons for the refusal itself. Finally, some researchers argue that the Flexible Working Act may reinforce gender inequities by linking flexible work and care responsibilities, thus reinforcing a "mommy track" career ladder for women paired with demotions of pay and position.^{xiii}

Can We Attribute These Changes to the Soft Touch Law?

Regardless of these critiques, it is clear that flexible work arrangements are becoming more common and accepted in British workplaces. What is not clear is whether these changes are due to the Flexible Working Act's implementation in and of itself, or whether they are the net effect of this "soft touch" law combined with additional contextual factors.

A. Historical Context

When the flexible working regulations came into force in 2003, they were by no means revolutionary—they were intended to encourage more employers to offer flexible working practices, which was becoming increasingly common, though still rare. As one analyst noted, "rather than forcing a sea change, [the law] strengthened the existing trend among employers to offer flexible working arrangements."^{xiv}

Overall business trends and the law's impacts were shaped, at least in part, by an earlier, continental cultural shift in labor relations—an expectation that part-time work and full-time work be treated equitably.^{xv} A European directive from 1997 (and applied to the UK in 1998)^{xvi} established that part-time employees are entitled to the same compensation and benefits as comparable full-time workers, and it required European member states to implement laws, regulations, and administrative provisions to eliminate discrimination against part-time employees. The directive was also aimed at facilitating the development of part-time and other working time arrangements on a voluntary basis that were flexible and met the needs of workers as well as employers. As a result of the directive, each EU member state has prohibited employers from treating part-time workers less favorably than full-time employees. Several countries, including the UK, have surpassed the directive's requirements: laws in Germany, the Netherlands, France, Sweden, and Belgium go even farther than the UK's right to request flexible arrangements by granting employees the right to change their work schedules to part-time.^{xvii}

In addition to passing and implementing the Flexible Working Act, the government has been engaged in a larger public awareness campaign to promote work life balance since 2000. The government has promoted efforts by employers to inform employees of their right to request and has provided guidance for those wishing to do so. It has also provided financial incentives for businesses and further encouraged employers to adopt flexible arrangements, informed them of best practices and implementation guidelines, and highlighted potential gains to their workforces. Employers themselves were enlisted in a partnership with the government, Employers for Work-Life Balance, to help convince other firms to consider these issues.^{xviii}

B. Additional Policy Context

An analysis of employment tribunal cases found that women have had more success challenging denials of flexible work arrangements than men, because women can file a claim jointly under both the Flexible Working Act and the UK's Sex Discrimination Act.^{xix} The Sex Discrimination Act allows a substantive, and not just procedural, challenge to employer practices. While the tribunal cases won under the Flexible Working Act only require employers to reconsider the request, the Sex Discrimination Act can oblige employers to implement changes and provides higher payments for damages. It appears that the Flexible Working Act is bolstered by the Sex Discrimination Act, but only for those claims filed by women. As some analysts have noted, "in the absence of a reference to sex discrimination, as is the case for most male claims, the right to request flexible work offers at most marginal redress and no real challenge to entrenched working practices."^{xx}

Britain's legislative efforts on work-life balance are not limited to the right to request flexible working arrangements—in fact, the Flexible Working Act is only one part of a package of rights designed to help working parents. Related statutory provisions include improvements to maternity rights, paternity leave, adoption leave, emergency leave to care for dependents, and parental leave entitlements. As it is only one part of a larger policy initiative, the Flexible Working Act cannot be seen as an end all and be all policy model for other nations to emulate by itself—for the *right to request* to make a meaningful impact, it must be implemented as a facet of, or stepping stone to, a more comprehensive work-life policy.

This fact sheet was produced through a non-exhaustive survey of selected websites, journal articles and research reports on the UK's right to request law. We welcome feedback on additional data and information that could be included here.

Prepared for Workplace Flexibility 2010 by Anna Danziger and Shelley Waters Boots on behalf of the Urban Institute. April 30, 2008.

ⁱ See <http://www.berr.gov.uk/employment/workandfamilies/flexible-working/index.html> for updates on this process.

ⁱⁱ Accessed via the Internet on April 21, 2008 at: <http://www.berr.gov.uk/employment/research-evaluation/current-projects/index.html>.

ⁱⁱⁱ Department of Trade and Industry. 2006. *Draft Flexible Working Regulations: Summary of Responses and Government Response to the 2006 Consultation*. London, UK: Department of Trade and Industry.

^{iv} Hooker, Hulya, Fiona Neathey, Jo Casebourne, and Miranda Munro. 2007. *The Third Work-Life Balance Employee Survey: Main Findings*. Employment Relations Research Series No. 58. London, UK: Department of Business, Enterprise, and Regulatory Reform.

^v Holt, H., and Grainger, H. (2005) Results of the Second Flexible Working Employee Survey; DTI Employment Relations Research Series No.39.

^{vi} Hayward, Bruce, Barry Fong, and Alex Thornton. 2007. *The Third Work-Life Balance Employer Survey: Executive Summary*. Employment Relations Research Series No. 86. London, UK: Department Business, Enterprise, and Regulatory Reform.

^{vii} Flextime is defined as when "an employee can vary their start and finish times but have an agreement to work a set number of hours per week or per month" (Hooker et al).

^{viii} Hooker, Hulya, Fiona Neathey, Jo Casebourne, and Miranda Munro. 2007. *The Third Work-Life Balance Employee Survey: Main Findings*. Employment Relations Research Series No. 58. London, UK: Department of Business, Enterprise, and Regulatory Reform.

^{ix} British Chambers of Commerce. 2007. *Work and Life: How Business is Striking the Right Balance*. London, UK: British Chambers of Commerce.

^x Department of Trade and Industry. 2005. *Choice and Flexibility: Government Response to Public Consultation*. London, UK: Department of Trade and Industry, p. 37.

^{xi} Ibid.

^{xii} Workplace Flexibility 2010. 2006. *The United Kingdom Flexible Working Act*. Washington DC: Georgetown University Law Center.

^{xiii} Colette Fagan, Ariane Hegewisch, and Jane Pillinger. 2006. *Out of Time: Why Britain Needs a New Approach to Working-Time Flexibility*. London, UK: Trades Union Congress.

^{xiv} Hegewisch, Ariane. 2005. *Employers and European Flexible Working Rights: When the Floodgates Were Opened*. San Francisco, CA: UC Hastings College of the Law, Center for WorkLife Law, p. 4.

^{xv} Levin-Epstein, Jodie. 2005. "How to Exercise Flexible Work: Take Steps with a 'Soft Touch' Law." *Work-Life Balance Brief No. 3*. Washington DC: Center for Law and Social Policy.

^{xvi} Council Directives 97/81/EC and 98/81/EC.

^{xvii} Kornbluh, Karen. 2005. *Win-Win Flexibility*. Washington DC: New America Foundation.

^{xviii} Levin-Epstein, 2005.

^{xix} Fagan et al 2006.

^{xx} Fagan et al 2006.