



European network of legal experts in gender equality and non-discrimination

NEWS REPORT

Country:	The Netherlands
Title:	Adoption of the Act on Flexible Working
Date:	July 2015
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Update of flash report nr:	-
<u>Context</u>	
Issue at stake:	Changing the provisions on reconciliation of work and family life
Ground of discrimination:	Sex
Source:	Legislation
Field:	Employment; reconciliation of work and life, adjustment of working hours, working schedule and working place
Applicable law:	Act on Flexible Working

Content

Law development: On 14 April 2015 Parliament adopted the Act on Flexible Working.¹ This Act will replace the Act on the Adjustment of Working Hours.² The date of entry into force is 1 January 2016.

The Act on Flexible Working will introduce a number of changes to the Act on the Adjustment of Working Hours. These changes aim to facilitate the combination of employment and private life and to encourage a more flexible way of working in which employees have more control over both their working hours and place of work. The most important change is that the employee will acquire the right not only to request adjustment of working hours –to which the employee is already entitled on the basis of the existing law – but also the right to request adjustment of her/his working schedule (working pattern) and her/his place of work.

An employer may only refuse a request for adjustment of working hours, whether a reduction or an increase in hours, on the ground of compelling (business) reasons (Article 2). This is similar to the present situation.

Similarly, a request for adjustment of the working schedule/pattern may also only be refused for compelling (business) reasons. This regulation is introduced for the first time by the new Act (Article 2). However, the employer may unilaterally change the working schedule, if the interest of the employer outweighs the interest of the employee. The employer must balance the interests of both parties. The right to request an adjustment

¹ As the Act has not entered into force yet, there is no official document available. This is the text as adopted by Parliament.

https://www.eerstekamer.nl/behandeling/20141016/gewijzigd_voorstel_van_wet_8/document3/f=/vjo7otwrnlz_v.pdf.

² http://wetten.overheid.nl/BWBR0011173/geldigheidsdatum_10-06-2015.

of the working schedule (i.e. to work the same number of hours but at different times) is therefore less strong than the right to ask for an adjustment (reduction or increase) of working hours.

The new Act will also give the employee the right to request adjustment of the working place, e.g. to work remotely or from home (Article 2). However, the employer is not legally obliged to grant the request for the change of working place. It is sufficient if the employer seriously considers the request (Article 2 (6)).

Under the Act the employee will have the right to make these three types of requests once she/he has been employed for 26 weeks (Article 2 (1)). This is half of the term required by the present Act on the Adjustment of Working Hours (one year).

The employer must inform the employee when a decision on the request has been made. If the employer does not do this at least one month before the desired starting date of the adjustment, the adjustment will proceed in conformity with the request of the employee (Article 2 (12)).

The Act on Flexible Working applies only to employers with 10 or more employees (Article 2 (16)). Employers with less than 10 employees must create their own arrangements for the adjustment of employees' working hours, working schedule and/or working place. If this is not done, the District Court may rule that the regime of the Act on Flexible Working applies.

Key points of analysis: The legislative changes aim to improve the combination of employment and private life and to encourage a more flexible way of working, in which employees have more control over both their working hours and place of work. This aligns with the phenomenon of the so-called 'new way of working', in which employees no longer have fixed working hours or a fixed working place. However, since the employer has a rather wide margin to refuse a specific distribution of the working hours over the week, or a change of working place; it is not likely that the new Act will improve substantially the reconciliation of work and private life.

Internet link source:

Act on Flexible Working:

https://www.eerstekamer.nl/behandeling/20141016/gewijzigd_voorstel_van_wet_8/document3/f=vjo7otwrnlzv.pdf