



IP INCLUSIVE

Working for diversity and inclusion in IP



7 - 13 June 2021
Make Caring
Visible and Valued

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CARERS AND SOLO PARENTS AT WORK

<https://ipinclusive.org.uk/community/ip-ability/>

<https://www.linkedin.com/groups/13756630/>



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This webinar is a collaboration between [IP Ability](#) and IP Inclusive's newest community, the [IP Non-traditional Family Network](#). It's been organised to mark [Carers Week](#), the theme for which is "Make Caring Visible and Valued".

Caring impacts on all aspects of life and work, and carers currently face especially difficult circumstances

- Normally around 6.5 million people are carers - this increased to around 13.6 million people during the pandemic.
- Carers lost, on average, 25 hours of support a month that they previously had from services or family and friends.¹
- 72% of carers have not had any breaks from their caring role during the pandemic.¹
- Solo parents were twice as likely to have poor mental health as other family types during the pandemic.²

¹ "Breaks or breakdown" Carers Week 2021 research report

² "Caring Without Sharing" Gingerbread's 2020 research report



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An employer's legal obligations

- Rhys Wyborn (employment lawyer, Shakespeare Martineau)

Practical examples of accommodating and supporting carers and solo parents

- Karen Genuardi (Head of People, AA Thornton)

Experiences of carers and solo parents working in the IP sector

- Marianne Privett (IP Ability co-lead and Partner at AA Thornton)
- Beth Marshall (IP Ability committee member and Patent Attorney at Murgitroyd)
- Janine Swarbrick (IP Non-traditional Family Network co-lead and Senior Patent Attorney at HGF)

Opportunity to ask questions and share experiences

CARERS AND SOLO PARENTS EVENT

LEGAL ISSUES – 11 June 2021

Employment Rights of Carers and Flexible Working Requests

Welcome

 SHAKESPEAREMARTINEAU

Legal advice for life and business



Employment Rights of Carers

Introduction

The rights of carers and solo parents are an important area of employment law and something the Government continues to consult over. This webinar will consider:

- The key legal rights and protections of carers
- Consultation and future changes expected
- Flexible working requests – do's and don'ts

Throughout, we will think about the legal implications for employers and potential claims that employees with caring responsibilities may be able to bring, together with practical tips on reducing the risk of such issues arising.

Legal issues arising for carers

What are the key legal issues arising when considering the position of carers?

- Employment status – is a carer a worker or employee?
- Identity of the employer – who employs the carer?
- Protection under the Working Time Regulations 1998
- National Minimum Wage considerations
- Time off for dependents?
- Protection from Discrimination
- Flexible working requests

Employment Rights of Carers

What requests can carers make?

Employees with caring responsibilities may be able to seek support in accordance with the following rights: -

- Time off to look after dependants
 - Employees only
 - No minimum length of service
 - Applies to all employees (regardless of sex, part-time/full-time, etc.)
- When can such time off be taken?
- What is “reasonable time off”?
- Does the employee have any obligations in connection with such a request?

Employment Rights of Carers

Discrimination risks

Employers will need to keep in mind the risk of Discrimination claims from employees with care responsibilities and where they are subjected to less favourable treatment.

Employers could face the risk of the following claims from disgruntled employees who feel unfairly treated because of their requirement to provide care: -

- Direct discrimination
- Indirect discrimination
- Harassment
- Victimisation

What about the question of “reasonable adjustments”?

Employment Rights of Carers

Government consultations

The Government continues to look at the rights of carers and creating additional rights and protections, as follows: -

- 6 March 2020, the government opened a consultation on its proposal to give employees who are also unpaid carers a week of unpaid leave each year to provide care
- A right to five days' carer's leave each year - contained in the EU Directive on work-life balance for parents and carers, which must be transposed into national law by 1 August 2022
- The House of Commons Library also published a briefing paper, Carers, on 12 June 2019, covering carers' employment rights.

Employment Rights of Carers

Flexible working requests

- Flexible working legislation
 - No automatic right to change their existing working arrangements. Instead, all qualifying employees have the right to request flexible working arrangements.
 - A request could involve changing the number of hours they work, the times they work or the location, or a combination of all three.
 - Requirements: -
 - an employee
 - 26 weeks' continuous employment
 - Only one request in any 12-month period.
 - Requests cannot be made by agency workers.

How to make a request?

How do employees make a request for flexible working?

An employee's application must:

- Be in writing.
- Be dated.
- State that it is an application made under the statutory procedure.
- Specify the change that the employee is seeking and when they wish the change to take effect.
- Explain what effect, if any, the employee thinks the change would have on the employer and how any such effect could be dealt with.
- State whether the employee has previously made an application to the employer and, if so, when.

Employment Rights of Carers

How should an employer deal with a request?

What do employers do upon receiving a request?

Under the statutory scheme, employers must:

- Deal with the request in a reasonable manner.
- Notify the employee of their decision within 3 months.
- Only refuse a request on one or more of **8 specified grounds**

On what basis can a request be refused?

What are the reasons an employer can rely upon to refuse a request for Flexible Working?

- **the burden of additional costs;**
- **detrimental effect on ability to meet customer demand;**
- **inability to reorganise work among existing staff;**
- **inability to recruit additional staff;**
- **detrimental impact on quality;**
- **detrimental impact on performance;**
- **insufficiency of work during the periods the employee proposes to work; or**
- **planned structural changes.**

What if you get it wrong?

What can an employee do if you don't deal with a flexible working request fairly: -

An employee who has made an application under the statutory procedure may bring a Tribunal claim on the basis that:

- The employer failed to deal with their application in a reasonable manner.
- The employer failed to notify them of the decision on their application within the decision period.
- The employer rejected the application for a reason other than one of the statutory grounds.
- The employer's decision to reject the application was based on incorrect facts.
- The employer treated the application as withdrawn but neither of the grounds entitling the employer to do so applied.

What if you get it wrong....

Employment Tribunal claims...

The Employment Tribunal cannot question the commercial rationale or business reasons behind an employer's decision to refuse a request.

Neither can a tribunal substitute its own decision as to whether the request should or should not have been granted.

Essentially, the Tribunal's role is restricted to:

- Reviewing the procedure followed by the employer.
- Considering whether the request was taken seriously.
- Considering whether the decision was based on correct facts.
- Considering whether the reason given falls within the permitted grounds.

Employment Rights of Carers

What if you get it wrong....

An employee has 3 months to bring an Employment Tribunal claim from the day they say any procedural breach took place

Remedies

Where a tribunal finds a claim well founded, it **must** make a declaration to that effect and **may** make either or both of the following:

- An order for reconsideration of the request.
- An award of compensation.

The maximum amount of compensation is **eight weeks' pay** (capped at the statutory rate – currently **£538** per week)

Concluding thoughts...

Practical guidance for dealing with Flexible working request: -

- Meet the statutory requirements.
- Avoid “technicality” points.
- Demonstrate serious consideration of the request
- Start from a “positive” perspective
- Consider alternatives
- Consider any refusal carefully and how it falls in one of the permitted grounds.
- Explain the decision clearly
- Ensure consistency
- Maintain records and evidence of decision making process.

Employment Rights of Carers

Questions....?

Thank you & Questions



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Legal advice for life and business



Karen Genuardi

IP Ability Committee Member



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Introduction

- **6.5 million people** in the UK juggling work with caring responsibilities
- The need to provide care is likely to affect most of us at some point in our working lives
- Post pandemic there is a **real opportunity for employers** to build on what we have learned from the enforced period of remote working and to build carer friendly working environments.

CIPD Stats:¹

- Almost **one third** of working carers have not discussed their caring role with anyone at their workplace, most commonly because they believed that nothing would change as a result
- **A quarter** of working carers were also considering giving up their job entirely because of the difficulty they experience in combining work and care

¹ “Supporting working parents – how employers and employees can benefit” CIPD June 2020

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Different Perspectives



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Business Success



The Legal Framework

It's the right thing to do



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What can employers do?

- Provide information, policy information and resources for carers and managers
- Open up the discussion – be proactive
- It's often the small things
- Dealing with more fundamental changes
- Flexibility for all supports inclusion

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Creating a Culture of Support

- Policies aren't going to be of much value if people don't feel able to use them
- Senior leaders and line managers have an important role to play in creating inclusive and supporting workplaces
- Sharing caring experiences breaks down barriers
- Aim to be as transparent about your flexible working policies as possible
- It's about getting to know your people
- Support and train line managers to have good conversations about caring responsibilities and wellbeing

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Resource Suggestions



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<https://www.cipd.co.uk/knowledge/culture/well-being/supporting-working-carers#gref>

<https://www.mind.org.uk/workplace/mental-health-at-work/taking-care-of-your-staff/employer-resources/wellness-action-plan-download/>

https://www.carersuk.org/news-and-campaigns/campaigns/carer-passport-scheme?gclid=EAIaIQobChMI_PCsteK8QIV34BQBh2XRAtiEAAYAiAAEgLwdPD_BwE

<https://www.mind.org.uk/information-support/helping-someone-else/carers-friends-family-coping-support/your-mental-health/>

https://www.carersuk.org/search/carers-trust-ehhr?gclid=EAIaIQobChMIyILz-fiK8QIVh6ztCh0w6gukEAAYAiAAEgKEjPD_BwE

<https://carers.org/>

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Marianne Privett

IP Ability Co-lead



“Daddy back ow?”



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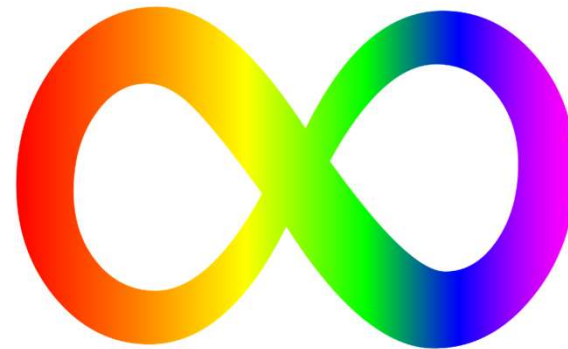


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Beth Marshall

IP Ability Committee Member



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<https://ipinclusive.org.uk/community/ip-non-traditional-family-network/>
<https://www.linkedin.com/groups/12523213/>



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THANK YOU AND QUESTIONS

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