



BACKGROUND PAPER 2

Fair Work Act 2009
s.156–4 yearly review of modern awards

4 Yearly Review of Modern Awards – Family Friendly Work Arrangements (AM2015/2)

Note: This is a background document only and does not represent the concluded view of the Commission on any issue.

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1. Introduction

[1] This background paper provides information on statutory rights, and rights to request, reduced-hours arrangements and flexibility in scheduling work hours in OECD countries. It focuses on provisions for parents and other carers, but also discusses more general flexibility entitlements not reserved for those with caring responsibilities.

[2] Some OECD countries provide the entitlement to work reduced hours through (sometimes national) collective agreements, so fall beyond the scope of this paper as there is no statutory provision. These countries include Japan¹ and Greece.² Other OECD countries provide access to reduced hours through taking parental leave on a part time basis (for example Poland).³

[3] Although Iceland does not provide statutory rights to employees for flexibility (and is therefore considered out of scope), Icelandic employers are legally required by the *Act on Equal Status and Equal Rights of Women and Men*⁴ to provide measures that allow men and women to balance work-family responsibilities, including the arrangement of work in a flexible manner.⁵

[4] In Canada, Italy and Korea there have been recent developments in introducing flexible work arrangements, but are not further discussed in the body of the background paper:

- In Canada, following a national consultation process, the 2017 Budget provided for federally regulated employees to have a right to request flexible working arrangements including flexible start and finish times.⁶ However as of December 2017, the enacting legislation (an amendment to Part III of the *Canada Labour Code*) does not appear to have been passed.
- Italy passed Law 81/2017 on 14 June 2017, which deals with ‘Smart Working’, a new way for employees to work flexibly both in terms of work location and hours.⁷ A smart working arrangement is a written agreement between the employee and employer,⁸ and must include, among other matters, hours of work.⁹ The only limit to these hours is that they must be within legally established maximum limits.¹⁰
- In Korea, the government elected in May 2017, led by President Moon Jae-In, has proposed a series of measures related to flexible working arrangements. This includes a new proposal for parents of children under 8 years that would reduce their working hours from the regular 8 hours to 6 hours per day, without any reduction in pay, for up to 24 months.¹¹ At the time of publication these proposals had not been legislated. In 2017, various subsidy incentive schemes have been introduced to encourage companies to support flexible work arrangements, targeted at small and medium enterprises.¹²

[5] The remainder of this paper is structured in alphabetical order by country. **Appendix 1** provides a summary table ordered by countries’ provision of rights/rights to request reduced hours for those with parental responsibilities.

[6] Provision for specific rights/rights to request flexibility for non-child caring responsibilities (in Austria, Czech Republic, France, Germany, Italy and Spain) are discussed in the body of the paper but are not covered in the table.

2. Austria

Right to reduced hours and flexible scheduling of hours for parents

[7] Parents, including adoptive or foster parents,¹³ have a statutory right to work part time until their child turns 7 years old or (enters school at a later date), where the employee:

- works in a business with *more* than 20 employees, and
- has been continuously employed there for at least 3 years at the time of taking up the leave.¹⁴

[8] Apprentices are excluded from this entitlement.¹⁵

[9] The commencement and duration of the part-time arrangement, as well as the number and scheduling of the working hours, is agreed between the employer and employee, factoring in the interests of the business and the interests of the employee.¹⁶

[10] If an employee requests, the employer must provide a written statement on the commencement and duration of the arrangement, that the employee co-signs.¹⁷ The terms of the original employment contract apply once the period for which any change was agreed has ended.¹⁸ The employee can also alter or cancel the arrangement before the end of its agreed duration, however the employer has a right to appeal to the Labour and Social Court to determine if the ‘requirements of the business outweigh the employee’s interests.’¹⁹ The *Maternity Protection Act* includes a provision for parents who have no right to work part time (because they work in a company with *fewer* than 20 employees, or do not meet the minimum tenure requirement). Under the ‘Agreed part-time employment’ provision, these employees may enter into a reduced hours agreement with the employer up until the child turns 4 years old. The agreement must specify its beginning and duration as well as the number and scheduling of the working hours.²⁰

[11] Both where this is a statutory right, and where there is not, the part-time arrangement:

- must reduce the hours in the standard working week hours by at least 20 per cent,
- must not be for less than 12 hours per week,²¹
- must be for a minimum duration of 2 months,²² and
- may be granted only once for each child.²³

Where agreement cannot be reached on a flexible arrangement

[12] Where a statutory right exists, the employer may agree or submit a counter-proposal to the employee’s written proposal for a change to working arrangements.²⁴ Employees may commence their proposed arrangement (with respect to commencement, duration, number and scheduling of working hours) unless the employer files a motion for amicable settlement with the appropriate Labour and Social Court.²⁵

[13] If no amicable settlement can be reached within 4 weeks from receipt of the motion by the appropriate Labour and Social Court, the employer has a further week to file an action seeking the employee’s consent to the conditions of the employer’s proposed arrangement. If the employer does not take this action, the employee may commence their proposed part-time arrangement. If the Court finds the requirements of the business outweigh the employee’s interests, it must find in favour of the employer. Should the Court find in favour of the employee, the employee’s proposed arrangement takes effect from the date the judgment becomes final.²⁶

[14] Where the employee has no statutory right (i.e. works for a business with 20 or fewer workers and has less than 3 years of service) to a flexible arrangement, and agreement cannot be reached on an arrangement 2 weeks following the employer's notification to the employee that their request has not been granted, the employee may file a legal claim. The appropriate Labour and Social Court 'shall dismiss the action, if the employer has refused consent to the requested part-time employment for objective reasons'.²⁷ The employer still has the burden of proof but with a lower threshold of evidence required.²⁸

Right to flexibility for other carers

[15] Two forms of reduced-hours arrangements exist for those caring for frail or sick dependants or family members. These caregivers are entitled to work part time (family hospice leave) or agree on a part-time arrangement with their employer (long-term care leave). A minimum of 10 working hours applies for the long-term care leave model. Earnings are calculated on a pro-rata basis for both care leave models (with a minimum income threshold).²⁹

3. Czech Republic

Right to request flexibility for parents and other carers

[16] The *Czech Labour Code 2012*³⁰ provides that the following classes of employees have a right to request part-time work or 'some other suitable adjustment to her or his weekly working hours':³¹

- a pregnant employee
- a female employee caring for a child under 15
- an employee who can prove that he or she is mostly on their own providing long-term care for another person who is classified as a medium, serious or full dependent under the *Social Services Act*.³²

[17] The employer is obliged to comply with such a request unless this is 'prevented by serious operational reasons'.³³ In the event of a refusal, the employee may attempt an internal dispute resolution and if that is unsuccessful, may make a challenge under normal civil-law procedures.¹ The onus is on the employee to disprove the existence of serious operational reasons.³⁴

[18] Changes in working hours are permanent subject to the employee's right at a subsequent date to make a new request.³⁵

[19] The *Czech Labour Code 2012* prohibits employing pregnant employees on overtime work, and employees who take care of a child younger than one year may not be ordered by their employer to perform overtime work.³⁶ In assigning employees to shifts, employers must consider the needs of employees who are responsible for the care of children.³⁷ There was limited information found in the *Labour Code* or elsewhere on how employees make these requests.

¹ The civil procedures of the Czech Republic are covered by the *Civil Procedure Code 1963* (Czech Republic).

4. Denmark

Right to request flexibility for parents

[20] In Denmark the *Equal Treatment Act 2006*³⁸ was amended in 2013 to include the right to request flexible working arrangements after parental leave,³⁹ and to protect those workers who may ask for flexibility from less favourable treatment.⁴⁰ These amendments were aimed to promote the Revised Framework Agreement between European social partners on parental leave (Council Directive 2010/18/EU).⁴¹

[21] The amended *Equal Treatment Act* provides that when an employee returns from parental leave, they have the right to request changes to their working hours and work patterns for a specified period, in writing.⁴² The employer must consider and respond to the request in writing, taking into account both the needs of the employer and employee.⁴³

[22] There was limited information found regarding whether there is an opportunity for employees to challenge their employer's decisions, and whether following the conclusion of the arrangement there is a right to return to full-time work.

5. Finland

Right to reduced hours for parents

[23] 'Partial child-care leave' provides that at the end of the Parental leave period, parents with 6 months' service of the previous 12 months, have the right to work reduced hours until the end of the child's second year at school.⁴⁴ This right is extended for a parent of 'a disabled child or a child with a long-term illness in need of particular care and support' until the child turns 18 years.⁴⁵ Both parents can take partial child-care leave during the same calendar period, but cannot take it simultaneously (during the same time in the day).⁴⁶

[24] The employee must submit a proposal on part-time work at least 2 months before the proposed changes commence.⁴⁷ The employee and employer negotiate the reduction in hours and the employer 'cannot refuse to agree on or grant such leave unless the leave causes serious inconvenience to production or service operations that cannot be avoided through reasonable rearrangements of work.'⁴⁸

[25] In cases where agreement cannot be reached, 'the employee shall be granted one period of partial child-care leave in a calendar year. The duration and timing of the leave shall be according to the employee's proposal. In such cases, the partial child-care leave shall be granted by reducing the regular working hours to six hours per day. The reduced working hours shall cover a continuous period, notwithstanding rest periods.'⁴⁹

[26] The employer can refuse to allow working hours to be reduced to fewer than 30 hours per week, if the proposal would lead to serious disadvantage for the employer.⁵⁰ Any changes in partial child-care leave shall be agreed on. If it is not possible to reach an agreement, the employee has a right to interrupt partial child care leave with a minimum of one months' notice.⁵¹

[27] Part-time workers who wish to increase their working hours are entitled to preferential access to any additional hours available.⁵² At the end of the leave period employees are entitled to return to their former duties, or equivalent or other work in accordance with their employment contract.⁵³

[28] Depending on the age of the child, employees on partial child-care leave working reduced hours are entitled to a government allowance.⁵⁴ It can be paid to both parents at the same time if they take care of the child in different hours of the day or different days of the week.⁵⁵

6. France

Right to reduced hours for parents and other carers

[29] In France, employees who have worked for the employer for at least one year before a child's birth or adoption are entitled to part-time work of between 16 to 32 hours per week during the 3 year parental leave entitlement period.⁵⁶ Parents working part-time during this period are eligible for a partial income-tested rate of the shared child education benefit.⁵⁷

[30] Employers can refuse to allow part-time work for parents if justifiable on business grounds.⁵⁸ In cases of a serious disability or illness of a child under 20 years, every employee with at least one year of employment with an employer is entitled to work part time for a period of up to 3 years.⁵⁹ A similar period of leave is possible for employees who need to care for a relative at the end of life (a child or a parent living in the same house).⁶⁰

Right to request reduced hours and flexible scheduling of hours

[31] In France, a 'right to request' flexible work arrangements is granted to all employees in firms with 10 employees or more, irrespective of their reasons for seeking change.⁶¹ Such a right to request can be effected through negotiated collective agreements⁶² or by the *Labour Code*. The *Labour Code* provides that the worker should make the request 6 months before the desired start date, and the employer has 3 months to reply.⁶³

[32] The request can be refused if the employer can demonstrate that the request will have harmful consequences for the company's operation. The decision of an employer to refuse the request can be challenged in court.⁶⁴

[33] The move to part-time work is indefinite if the request is accepted but part-time workers have a priority right to full-time jobs available in the company (and vice versa).⁶⁵ Since 1 January 2014, minimum part-time hours are set at 24 hours a week subject to workers' entitlement to request shorter hours. The 24-hour minimum can be overridden if a reasoned written request for lower hours is granted. (Students aged under 26 are automatically granted this right).⁶⁶ Workers with family responsibilities also have a legal right to turn down work schedules or overtime if they interfere with family responsibilities.⁶⁷

7. Germany

[34] In Germany, labour provisions are not codified in one act but spread over several, including the *Law on Parental Allowance and Parental Leave*,⁶⁸ and the *Law on Part-Time Work*.⁶⁹ New German family policy aims to promote a more equal sharing of work and family responsibilities—'Partnerschaftlichkeit'.⁷⁰

[35] Parents are entitled to take 3 years of parental leave for their natural, foster or adopted child;⁷¹ to be taken before the child's eighth birthday. This time off can be claimed by the mother and father simultaneously or individually.⁷² Employers can reject the request for 'urgent operational reasons',⁷³ however reports indicate through German case law that this has been narrowly interpreted and 'will rarely apply.'⁷⁴ Employees who take Parental Leave are permitted to work up to 30 hours per week during this period.⁷⁵

Right to reduced hours and flexible scheduling of hours for parents

[36] The provision for an entitlement to reduced full-time working hours⁷⁶ applies if:

- the employer has more than 15 employees,
- the employee has at least 6 months' service with the employer,
- the agreed working time is reduced to an average of not less than 15 and no more than 30 hours per week (calculated on a monthly average),
- the agreed working time is reduced for a minimum of 2 months,
- there are no conflicting 'urgent operational reasons' of the enterprise, and
- the employee gives written notice to the employer requesting these reduced work hours to care for a child.^{2 77}

[37] The application must include the beginning and duration of the reduced working hours, as well as the desired distribution of these hours.⁷⁸ The timeframe for the employer to make a decision depends on the age of the employee's child.^{3 79}

[38] If the employer does not reject, in writing, the application to reduce working time, then 'consent shall be deemed to have been granted and the reduction of working time is determined by the wishes of the employee.'⁸⁰ If the employer refuses the application for reduction or distribution of working time, the employee may bring an action before the Labor Court.⁸¹

[39] Government transfers provide a financial incentive for both parents to work part time: the parental allowance ('ElterngeldPlus', implemented in 2015) comes with a premium whereby each parent can receive up to 4 additional months of payments if both work part-time simultaneously for at least 4 months.⁸²

Right to request reduced hours for other employees

[40] A more general right to part-time work (i.e. not reserved for those with caring responsibilities for children) is provided by the *Law on Part-Time Work*. Employees have an entitlement to reduction of working time, if they have worked with the employer for more than 6 months,⁸³ and are working in a company with more than 15 employees.⁸⁴

[41] This request must be filed 3 months prior to the requested start of the reduced working hours, stating the employee's preferred schedule for their working time.⁸⁵ The employer and employee must negotiate and agree on the reduction of working hours.⁸⁶

² For a child of up to 3 years old, 7 weeks' notice must be given. For a child between 3 and 8 years old, it is 13 weeks' notice. See "Law on Parental Allowance and Parental Leave 2014 (Germany), s.15(7)(1).

³ For an employee request involving a child under 3 years, the employer must make a decision within 4 weeks after receiving the application. In the case of an employee with a child from the ages of 3 to 8, the employer must make a decision within 8 weeks after receiving the application. See *Law on Parental Allowance and Parental Leave 2014 (Germany)*, s.15(7)(1).

[42] The employer is expected to consent to the proposed reduction in the working time and its distribution, unless there are operational reasons standing in the way of such reduction.⁸⁷ Unlike *The Law on Parental Allowance and Parental Leave*, specific operational reasons that may apply are provided in *The Law on Part-time Work*. These include the reduction of the working time ‘fundamentally impairing the establishment's organization, working process or safety’ or incurring ‘unreasonable costs.’⁸⁸

[43] The employer must inform the employee of their decision in writing at least one month before the desired commencement date.⁸⁹ If agreement has not been reached on the distribution of working time, and the employer has not provided a written refusal, the employee’s desired distribution of working hours will prevail.⁹⁰ There is no provision for an appeal.

[44] The employer may change the division of the working time ‘if the interests of the establishment in doing so substantially outweighs the employee's interests’ and the employer has given notice of the change at least one month in advance.⁹¹

[45] The employee may not request another reduction in working time until at least 2 years after the employer agreed to the reduction, or rejected it for justifiable reasons.⁹²

[46] Part-time workers have preferential access to available full-time positions with the same employer,⁹³ but no statutory entitlement to this. A reform to provide a legal right to part-time workers to return to full-time work was defeated in mid-2017.⁴

Right to flexibility for other caring responsibilities

[47] Since January 2015, employees have a statutory entitlement to reduce their working hours to care for a dependent relative if they continue to work for at least 15 hours per week.

[48] Through this ‘Family caring time’ provision (Familienpflegezeit) employees receive a reduction in earnings, although this does not fully correspond to the reduction in hours—employees repay the difference by receiving the same reduced earnings for an equivalent period after re-commencing on a full-time basis. As an example, if employees reduce their working time from 100 to 50 per cent for a 2 year period, they would receive 75 per cent of their regular earnings for that period and for a further 2 years after returning to full-time work again.⁹⁴

8. Hungary

Right to reduced hours for parents

[49] In the Hungarian *Labour Code*, employers are obliged to comply with requests to transfer from full-time to half-time work from parents returning to work from unpaid leave before the child turns 3⁹⁵ (when the right to parental leave ends), or before the child turns 5 if the employee has 3 or more children.⁹⁶

⁴ The proposal had come from the Social Democratic Party side of the ruling coalition, however was not agreed to by their coalition partner, the Christian Democratic Party. The parties could not agree on the size of firms this law would apply to. See Vogel S (2017), ‘Germany: Failure of proposal to allow part-time workers claim full-time position’, 25 August. Accessed at: <http://www.eurofound.europa.eu/observatories/eurwork/articles/germany-q1-2017-quarterly-reporting-deliverable-article-0>

[50] Limited information is available from the *Labour Code* or was found elsewhere regarding how to apply for the right and whether employers have a right to refuse on any particular grounds. However, employers are required to respond in writing to an employee's proposal to amend their employment contracts within 15 days.⁹⁷

9. Ireland

Right to request reduced hours and flexible scheduling of hours for parents

[51] Employees in Ireland have a right to request a change in their working hours, work patterns, or both, to apply for a set period of time following their return to work from parental leave.⁹⁸ The *European Union (Parental Leave) Regulations 2013*, adopted into Irish law on 15 March 2013, amended the *Parental Leave Act 1998* to include this employee entitlement.⁹⁹

[52] The employee is required to provide their proposed arrangement in writing no later than 6 weeks before the proposed commencement of the set period concerned. The request must be signed, and detail the changes requested and the date of commencement and duration of the set period requested.¹⁰⁰

[53] Employers must consider such a request 'having regard to his or her needs and the employee's needs'¹⁰¹ but are not required to grant it.¹⁰² There is no legal burden on the employer (other than in the context of a discrimination claim) to justify the refusal.¹⁰³ The employer must respond in writing within 4 weeks of receiving the request.¹⁰⁴

[54] Where agreements are made, they must be signed and set out the changes agreed to work hours or patterns and the date of commencement and duration of the agreement.¹⁰⁵

[55] Any changes in working hours are permanent unless agreed to the contrary, and subject to the employee's right at a subsequent date.¹⁰⁶ Employers must consider requests to transfer from part-time work to full-time work (and vice versa) and must provide information on the availability of these positions in order to facilitate transfers.¹⁰⁷

[56] The *Protection of Employees (Part-Time Work) Act*¹⁰⁸ provides that an employer cannot penalise an employee for refusing to accede to the employer's request to transfer from full-time to part-time work or vice versa,¹⁰⁹ nor can the employer penalise the employee for giving notice of his or her intention to transfer from full-time or part-time work.¹¹⁰

[57] This Act makes provision for the Labour Relations Commission, at the request of the Minister, to conduct studies to identify obstacles to, and make recommendations to improve, access to part-time work in particular industries or sectors.¹¹¹

10. Italy

Right to request reduced hours and flexible scheduling of hours

[58] Under *Legislative Decree n. 81*, employees may request a change from full-time employment to part-time employment. This change be agreed upon by both the employee and employer, and be in a written agreement.¹¹²

[59] Employees who have parental responsibility for a child under 6 years or a disabled child under 18 years have a legal right to apply to their employers to work flexibly (e.g. to reduce their working hours). Employers have a legal duty to consider these requests and may

refuse them only ‘where there is a clear business ground for doing so [and must give] a written explanation explaining why’.¹¹³

[60] Employees whose spouse, children or parents have an oncological pathology or serious chronic degenerative disease and employees who are for a person in their household with a ‘complete and permanent work inability needing constant assistance’ have a priority in having their employment relationship transformed from full-time to part-time.¹¹⁴

[61] An employee who has changed from full-time to part-time work has a right of priority to full-time work if a full-time work contract becomes available.¹¹⁵

[62] There was limited information found regarding how employees make these requests, and whether there is an opportunity for employees to challenge their employer’s decisions.

11. The Netherlands

Right to request reduced hours and flexible scheduling of hours

[63] The *Flexible Working Act*,¹¹⁶ applicable from 1 January 2016, grants a right to adjustment of working hours, work place and working time.¹¹⁷ This right is granted to all employees who have worked for at least 26 weeks with the employer, before the start of the requested adjustment.¹¹⁸ It does not apply to businesses with less than 10 employees.¹¹⁹

[64] The request must be submitted in writing at least 2 months before the intended commencement of the arrangement.¹²⁰ It must identify the time of commencement, the desired adjustment to working hours per week, the desired job or the desired spread of working hours.¹²¹ The employee may resubmit a request one year after the employer has granted or refused a request for adjustment.¹²²

[65] The employer is required to decide on the request within 5 working days.¹²³ If the employer has not decided on the request one month before the intended time of commencement of the adjustment, the working hours, working time (or work place) will be in accordance with the employee’s request.¹²⁴

[66] The employer must grant the request unless it conflicts with serious business or service interests.¹²⁵ The employer must set the scheduling of work hours according to the employee’s wishes, but may change the spread of hours if the employee’s request is not reasonable or fair and is inconsistent with the interests of the employer.¹²⁶ In relation to altering working hours, there is a substantial business or service interest if the adjustment leads to serious issues in relation to safety, technical, financial or organisational issues.¹²⁷

[67] If the employer does not grant the request or deviates from the request, the employer must consult with the employee,¹²⁸ and provide written reasons for their decision.¹²⁹ The employer can revise their decision on the adjustment in relation to flexible working time, in the event of serious business or service interests that arise after their initial decision.¹³⁰

[68] The employer cannot terminate the employment of an employee due to the fact that the employee has requested an adjustment, in or out of court.¹³¹

[69] Where an employee requests to increase working hours, these may only be refused if this increase leads to serious issues of a financial or organisational nature, for example, due to lack of sufficient work, or the staff budget is inadequate for this purpose.¹³²

[70] Every 5 years, the Minister of Social Affairs and Employment must prepare an evaluation report on the operation of the *Flexible Working Act*.¹³³

12. New Zealand

Right to request reduced hours and flexible scheduling of hours

[71] Under the *Employment Relations Act 2000*, employees have a right to request flexible working arrangements at any time.¹³⁴ Flexible working arrangements encompass changes to hours of work, days of work or location of work.¹³⁵ This right to request was extended in 2014 to all workers and not just those with caring responsibilities.¹³⁶

[72] Requests must be in writing and state the employee's name, the date on which the request is made and would take effect and detail the requested variation of working arrangements. The written request must also specify whether the proposed change is permanent or the specific period of time it would operate, and explain what changes, if any, the employee considers the employer may need to make if the employee's request is approved.¹³⁷

[73] There is no requirement for the employee to provide a reason for the request, and there is no restriction on the number of requests that may be made by an employee in any period.¹³⁸

[74] An employer must respond to a request within one month of receiving it, and must notify the employee in writing whether the request has been approved or refused.¹³⁹

[75] An employer may refuse a request only if it cannot be accommodated on specified grounds.¹⁴⁰ In their refusal, the employer must state the grounds on which the request is refused and explain the reasons for the ground(s).¹⁴¹ The business grounds for not accommodating a request are:

- 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
- planned structural changes
- burden of additional costs
- detrimental effect on ability to meet customer demand.¹⁴²

[76] Employers can also refuse a request if there is inconsistency with an applicable collective agreement.¹⁴³

[77] An employee may challenge an employer's refusal if the employee believes the employer has not complied with the prescribed process for considering a request and notifying of the outcome. The employee may refer the matter to a Labour Inspector who, as far as practicable, must assist the employee and employer to resolve the matter. If the employee is dissatisfied with the outcome, the employee may refer the matter to mediation.¹⁴⁴

[78] Where mediation has not resolved the matter, the employee may apply to the Employment Relations Authority for a determination regarding the employer's compliance with the process for considering a request. This application must be made within 12 months of the employer's notification of the refusal (or 12 months from the one month after which the

employer received the request).¹⁴⁵ The Employment Relations Authority may impose a penalty of up to \$2000 NZD on an employer found not to have complied. The fine is payable to the affected employee.¹⁴⁶

13. Norway

Right to reduced hours

[79] The *Working Environment Act*¹⁴⁷ provides that an employee who is 62 years or older, or who for ‘health, social or other weighty welfare reasons’, has the right to reduced working hours if this can be arranged ‘without major inconvenience to the business’.¹⁴⁸

[80] When the agreed period of reduced hours has expired, the employee has the right to resume their previous working hours. An employee working reduced hours has the preferential right to increase their working hours if there is a vacancy in the enterprise, provided that they are essentially working in the same position.⁵

[81] Disputes between the employer and employee about working hour arrangements (including flexible scheduling of hours, below) shall be resolved by the Dispute Resolution Board.¹⁴⁹

Right to flexible scheduling of work hours for parents

[82] The *Working Environment Act* provides that ‘work shall be organised and arranged with regard for the individual employee’s capacity for work, proficiency, age and other conditions’,¹⁵⁰ and ‘emphasis shall be placed on giving employees the opportunity for self-determination, influence and professional responsibility.’¹⁵¹

[83] The Act provides that an employee shall be entitled to flexible working hours if this may be arranged ‘without major inconvenience’ to the business.¹⁵²

[84] The business will generally establish ‘core working hours’, for example between 9am and 3pm, with employees having the flexibility to work the remaining two hours of the working day before or after these hours.¹⁵³

[85] Workers with family responsibilities have a legal right to turn down work schedules or overtime if they interfere with those family responsibilities.¹⁵⁴

14. Portugal

Right to reduced hours for parents

[86] In Portugal parents with a child aged under 12 are entitled to work reduced hours. This right is available for a maximum period of 2 years, or 3 years in case of 3 or more children.¹⁵⁵ One parent (or both for alternative periods of time) may utilise this right.¹⁵⁶

[87] Where the child has a disability or is chronically ill, there is no age limit associated with the child, and the right is available for a period of 4 years.¹⁵⁷

⁵ However, this preferential right is overridden by the preferential right of employees who have been made redundant: *Working Environment Act 1977* (Norway), s.10-2(4).

[88] The default arrangement for reduced working hours is half-time for 5 days, or 3 full days, per week. Parties may agree on other solutions.¹⁵⁸

[89] The right is not absolute and a reduced-hours arrangement may be refused on the grounds of business interests and where the worker is indispensable. An employee has a right to appeal to the Commission for Equality in Employment, and from there to the Labour Court. The burden of proof is on the employer with respect to the ‘imperative entrepreneurial reasons’.¹⁵⁹

[90] Following the time limits for reduced working hour arrangements, there is a right to return to full-time work.¹⁶⁰

[91] Parents working reduced hours on a half-time basis or in a flexible working regime, cannot be ‘penalized in their evaluation and career progression’.¹⁶¹

Right to flexible scheduling of work hours for parents

[92] In Portugal, parents with children younger than 12 years (again with no age limit where the child has a disability or is chronically ill and living in the same household) are entitled to a flexible working schedule.¹⁶²

[93] The employee can elect, within certain limits, when to start and finish work each day.¹⁶³ Employees may work up to 6 consecutive hours, and up to a maximum of 10 hours per day as long as the normal weekly hours of work are fulfilled.¹⁶⁴

[94] Parents with a child under one year of age are entitled to refuse to work overtime.¹⁶⁵

15. Slovakia

Right to request reduced or flexible work hours for parents

[95] If a pregnant employee, or a parent caring for a child under 15 requests a reduction in working time or other arrangement to the fixed weekly working time, ‘the employer shall be obliged to accommodate their request if such is not prevented by substantive operational reasons.’¹⁶⁶

[96] There was limited information from the *Labour Code* or other sources found regarding how employees make these requests, whether there is an opportunity for employees to challenge their employer’s decisions, and whether following the conclusion of the arrangement there is a right to return to full-time work.

16. Slovenia

Right to reduced hours for parents

[97] In Slovenia a parent who cares for a child under 3 years of age (or a child under 18 years with a severe physical disability or a moderate or severe mental disability) has the right to work part time.¹⁶⁷ Parents caring for 2 children may work part time until the youngest child finishes the first year of school.¹⁶⁸ In couple families, one year of this right is granted on a non-transferable basis to each of the parents.¹⁶⁹ This right also applies to single-parent employees (both single parents and employees who are co-parenting).¹⁷⁰

[98] The hours worked must be equal to or longer than half full-time working hours.¹⁷¹

[99] After a part-time employment contract, the employee has the right to return to full-time work.¹⁷²

[100] Under reduced-hours arrangements, the government contributes the difference in the social security contributions (e.g. pension contributions) made and those that would have been made had the employee not worked reduced hours.¹⁷³

Right to request flexible scheduling of hours for parents

[101] The *Employment Relationships Act* provides that: ‘[i]f a worker proposes a different distribution of working time during his employment relationship for the purposes of reconciliation of professional and family life, the employer must justify his decision in writing, taking into consideration the needs of the working process.’¹⁷⁴ ‘In writing’ also permits correspondence by e-mail.¹⁷⁵

[102] Full-time work hours may be compressed to 4 days, but not fewer,¹⁷⁶ and on a temporary basis to a maximum of 56 hours a week, averaged over 6 months.¹⁷⁷

17. Spain

Right to reduced hours and flexible scheduling of work hours for parents

[103] In Spain, parents may reduce their working day by between 12.5 per cent (one-eighth) and 50 per cent of its regular duration until the child turns 12 years (or older for a child with a disability).¹⁷⁸ Employees choose the extent and period of the working time reduction,¹⁷⁹ however since 2012 the reductions are to daily hours of work, rather than on a weekly or monthly basis.¹⁸⁰

[104] Employers are able to refuse on compelling business grounds.¹⁸¹

[105] The *Labour Procedure Law* sets out the following process in determining ‘shorter working hours for family reasons’:

‘a) The worker shall have a term of twenty days, following notification from the employer of its non-acceptance of the working schedule and period of enjoyed proposed by the worker, in which to file a claim before the Industrial Court.

b) The procedure shall be processed with urgency and shall be given preferential treatment. The trial act must be scheduled within five days following acceptance of the claim. A non-appealable judgment must be delivered within a term of three days.’¹⁸²

[106] Should they wish to work more hours, those on reduced-hours arrangements are entitled to preferential access to any additional hours available.¹⁸³

[107] While no direct transfers are provided by government for reduced-hours arrangements, those taking this ‘part-time leave’ are credited with up to 2 years full-time social security contributions (which affect pension accounts, unemployment benefits and new leave entitlements).¹⁸⁴

[108] Where an employee has exercised a right to work reduced hours, they may choose their work patterns.¹⁸⁵

[109] The *Act Regulating Social Jurisdiction* highlights the mutual responsibility of both employees and employers ‘to bring proposals and alternatives to the table.’ In order to successfully challenge an application to change working patterns the employer would need to ‘show evidence of lack of entitlement on the part of the worker to ask for a working-time reduction, the existence of two workers in the same company applying for a reduction in relation to the same child, or that the employee’s proposal requires a change in schedule or abuse of law.’¹⁸⁶

Right to flexibility for other caring responsibilities

[110] Employees may take up to 2 years of leave or reduce working hours by 12.5 per cent to 50 per cent to take care of a dependent relative due to severe illness, disability, accident or old age.¹⁸⁷

[111] There is no limit on the duration of these reduced-hours working arrangements, but the employee must give the employer 15 days’ notice of the date on which they shall return to their ordinary work schedule.¹⁸⁸

18. Sweden

Right to reduced hours for parents

[112] Parents or legal guardians have the right to reduce their normal working time by up to 25 per cent of the full-time norm until the child in their care reaches the age of 8, or finishes the first grade of school.¹⁸⁹ The period that this right applies may be extended if parents retain some entitlement under the Parental Benefits Scheme.^{6 190}

[113] The right to reduced hours is restricted to those who have worked for at least 6 months with the same employer, or for not less than 12 months in the previous 2 years.¹⁹¹

[114] The employee must provide notice to their employer of their intention to take leave a minimum of 2 months before the commencement date. They must also provide notice of the duration of the leave.¹⁹²

[115] The employee is expected to discuss the distribution of the leave and any other issues concerning the leave with their employer. If an agreement cannot be reached regarding the reduced working hours, the employer distributes the leave according to the wishes of the employee if this ‘does not cause substantial disturbance to the employer’s activity’.¹⁹³ Furthermore, ‘[t]he employer may not without the employee’s consent, distribute the leave in any manner other than spreading it over all days of the working week, dividing the leave during the working day or distribute it to any other time other than the beginning or end of the working day.’¹⁹⁴ If the employee’s wishes cannot be accommodated the employer is required to inform the employee and the employee’s union regarding the decision.¹⁹⁵

[116] Employees have the right to return to their previous hours following the reduced-hours period.¹⁹⁶

⁶ The Parental Benefits Scheme provides generous parental benefits including up to 96 days (of a total of 480, 390 of which are at income-replacement level) after the child turns 4. This may subsidise periods of reduced-hours working; they can be taken at 25 per cent, 50 per cent, 75 per cent or 100 per cent with a corresponding right to work part-time while benefit entitlement continues.

Right to flexible scheduling of work hours for parents

[117] The *Working Hours Act* does not provide a general entitlement to working time flexibility,¹⁹⁷ although flexibility of work hours is provided in the following circumstances:

- while a worker is entitled to maternity, paternity or parental benefit, the proportion of the working day which can be taken as leave is flexible;¹⁹⁸ and
- while an employee is working reduced hours, they are entitled to organise those hours in any daily or weekly pattern, if the arrangement would not create ‘substantial disturbance to the employer’s activity’. If an employer does not agree to the employee’s proposed arrangement of hours, the default position is that the employee’s daily hours must be shortened (i.e. by a later start and/or earlier finish) and the employee’s union must be informed.¹⁹⁹

[118] Employees are entitled to resume their original working patterns at any time.²⁰⁰

19. United Kingdom

Right to request reduced hours and flexible scheduling of hours

[119] In June 2014 the United Kingdom passed the *Flexible Working Regulations*, granting all employees with 26 weeks’ service with the same employer the right to request flexible working arrangements.²⁰¹ This was an extension of the ‘right to request’ that took effect in 2003 under the *Flexible Working Act* that was restricted to those with caring responsibilities for children, and later in 2007 was expanded to those caring for adults.²⁰²

[120] UK employees have a statutory right to request a change in their hours, time and place of work.²⁰³ An employee must state in their application ‘what effect, if any, the employee things making the change applied for would have on his employer and how, in his opinion, any such effect might be dealt with.’²⁰⁴ A flexible working application must be made in writing, and state whether the employee has previously made any such application.²⁰⁵

[121] If an employee has made an application to request a change in their hours, time and place of work, they may not make any further application to the same employer until after 12 months from the date of their previous application.²⁰⁶ Any changes in working hours are permanent subject to the employee’s right at a subsequent date to make a fresh request.²⁰⁷

[122] Employers are obliged to reasonably consider the request,²⁰⁸ and to inform the employee of its decision within 3 months, or a longer period agreed between the parties.²⁰⁹

[123] Employers can only refuse the application on specified grounds listed in the *Employment Rights Act*. These include: ‘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; planned structural changes’ and any further grounds specified by regulations.²¹⁰

[124] Many of the requirements relating to employer consideration of requests (for example, the requirement for a meeting to be held and an appeal allowed) were removed when the right to request was extended to all groups.²¹¹ Employees can challenge an employer’s decision where it has been made based on incorrect information or the employer has provided a non-allowable reason.²¹² Employees may also make an application to an employment tribunal if the employer has not provided reasonable consideration or within the statutory time frames, or

the employer has persecuted the employee in conjunction with the request. Typically these complaints also allege sex discrimination.²¹³

[125] If an employee makes a complaint to an employment tribunal about their employer's decision in relation to a request for flexible work arrangements and the complaint is 'well-founded', the maximum amount of compensation that may be awarded is 8 weeks' pay.²¹⁴

20. Appendix: Summary of statutory provisions for flexible working related to caring for children

Country	Right to reduced hours	Description and conditions of reduced hours entitlement	Employer refusal/right of appeal	Right to return	Right to flexible scheduling of hours?
Hungary	Right	Parents returning to work from unpaid leave have the right to reduced hours (until child turn 3 or, until child turns 5 if employee has 3+ children). Transfer is from full-time to half-time work.	—	?	No.
Slovenia	Right	Parents with a child under 3 (or under 18 years with a disability) has the right to reduced work hours. Parents caring for 2 children may work part time until the youngest finishes the first year of school. Hours must be a minimum of 50% of full-time hours.	—	Yes	Right to request specific distribution of working time for ‘reconciliation of professional and family life’. Employer must justify their decision in writing, factoring in business needs.
Sweden	Right	Parents with 6 months’ service have the right to reduce normal working time until child reaches age of 8 or completes first grade of school.	—	Right to return to previous hours	Employees may schedule reduced hours on a daily or weekly pattern, if it does not cause ‘substantial disturbance’ to the employer. If employer and employee cannot agree, the default position is a

Country	Right to reduced hours	Description and conditions of reduced hours entitlement	Employer refusal/right of appeal	Right to return	Right to flexible scheduling of hours?
		Number of working hours is flexible while parent is on maternity/paternity/parental benefit, otherwise minimum is 75% of the full-time standard.			shorter working day and employee's union is informed.
Austria	Conditional right ⁷	<p>Parents have a right to work part-time hours until child's 7th birthday (or at school entry at a later date) if parent has worked continuously for 3 years with a larger employer (more than 20 employees).</p> <p>Where parents do not meet the conditions (tenure and employer size) they may enter an arrangement with employer until child's 4th birthday.</p> <p>In both cases, reduction must amount to at least 20% of previous working time, 12 hours minimum.</p>	Yes, different avenues for those with a statutory right and those without, however in both cases burden of proof is on employer.	<p>Right to return to full-time employment at conclusion of agreement.</p> <p>Employee can also terminate arrangement or alter while it is in effect, but employer may appeal this.</p>	As per right to reduced hours entitlement.
Finland	Conditional	'Partial child-care leave' provides	Where agreement can't	Part-time workers have	No.

⁷ The 'conditional right' category sits between a clear statutory right and a right to request. Typically a conditional right allows an employer to refuse and an employee an avenue to challenge the refusal.

Country	Right to reduced hours	Description and conditions of reduced hours entitlement	Employer refusal/right of appeal	Right to return	Right to flexible scheduling of hours?
	right	<p>a right to reduce hours for parents have worked with the employer for at least 6 months during previous 12 months.</p> <p>The right applies until the end of the child's second year at school, or until the child is 18 if child has a disability or is chronically ill.</p> <p>Employee and employer negotiate the reduction in hours.</p>	<p>be reached the employee is granted one period of partial child-care leave in a calendar year, according to the employee's proposed duration and timing. In these cases, the partial child-care leave involves a reduction to 6 work hours per day. Employer can require a minimum of 30 hours.</p>	<p>preferential access to additional available hours, and a right to return to their previous hours following the reduced-hours period.</p>	<p>Access to flexible work hours is provided by collective agreement.</p>
France	<p>Conditional right for those with specific caring responsibilities</p> <p>Right to request (general)</p>	<p>Employees who have worked for the employer for at least one year before a child's birth or adoption are entitled to part time work of between 16 to 32 hours per week during the 3 year parental leave entitlement period.</p> <p>A <i>right</i> to reduced hours for up to 3 years, is given to those with one years' service caring for children under 20 years with a serious disability or illness, or to care for a relative at the end of life.</p>	<p>Employers can refuse to allow part-time work for parents if justifiable on business grounds.</p>	<p>Preferential right to full-time positions available.</p>	<p>All employees working in in firms with 10+ employees, irrespective of their reasons for seeking change, have right to request flexible working.</p>

Country	Right to reduced hours	Description and conditions of reduced hours entitlement	Employer refusal/right of appeal	Right to return	Right to flexible scheduling of hours?
		All employees working in in firms with 10+ employees, irrespective of their reasons, have <i>right to request</i> flexible working, including part-time work hours.			
Germany	Conditional right for parents Right to request for other employees	For those with 6 months' service with employer with more than 15 employees: <ul style="list-style-type: none"> • Parents entitled to reduction to between 15 and 30 hours until child is 8 years. • Other employees have a right to request part-time work. 	Employees' proposals will prevail if employer does not refuse in writing. Parents have right to appeal to Labor Court if employer refuses due to 'urgent operational reasons'. Other employees do not have right of appeal.	Part-time workers have preferential access to available full-time positions.	When parents apply for part-time work they also include their preferred distribution of hours. For other workers there is no right/right to request flexible work hours, however many employees have access to this via collective agreement.
Norway	Conditional right	Employees 62 years or older, or who for 'health, social or other weighty welfare reasons', have the right to reduced working hours where the arrangement does not cause 'major inconvenience' to the employer.	Employers can refuse for serious business reasons. Employees have right to apply to the Dispute Resolution Board in the event of a refusal.	Right to return to previous hours.	Employees are entitled to flexible working hours if it does not cause major inconvenience to the business (not reserved for those with children). Again the Dispute Resolution Board resolves matters where parties cannot agree.
Portugal	Conditional right	Parents with a child aged under 12 are entitled to work reduced	Right to appeal to the Commission for Equality	Yes	Parents (child age thresholds as per right to reduced hours) have right to

Country	Right to reduced hours	Description and conditions of reduced hours entitlement	Employer refusal/right of appeal	Right to return	Right to flexible scheduling of hours?
		<p>hours. (No age limit where child has a disability or is chronically ill.)</p> <p>Right is available for a maximum of 2 years, 3 years in case of 3+ children, or 4 years where child has a disability or is chronically ill.</p> <p>Default is half-time for 5 days, or 3 full days per week.</p>	<p>in Employment, and from there to the Labour Court, with burden of proof on the employer they have refused on 'imperative entrepreneurial reasons'.</p>		<p>choose when to start and finish work each day.</p> <p>Maximum 6 consecutive hours and maximum 10 hours per day.</p>
Spain	Conditional right	<p>Parents with children under 12 (longer if child has a disability) can reduce daily hours by 12.5%–50%.</p>	<p>Employers can refuse on compelling business reasons. Employee can challenge via Industrial Court.</p>	<p>Part-time workers have preferential access to additional hours available.</p>	<p>Those with reduced hours arrangements have a right to choose their work patterns.</p>
Czech Republic	Right to request	<p>Female employees who are pregnant or caring for a child under 15 have a right to request part-time work.</p> <p>This is also available to employees who are primarily responsible for providing long-term care for a dependent.</p>	<p>Employer is obliged to accommodate requests unless 'prevented by serious operational reasons'.</p> <p>If internal dispute resolution fails, employees can challenge</p>	<p>Changes to work arrangements are permanent subject to employees' right to make a subsequent request</p>	<p>As per reduced hours entitlement, right to request 'other suitable adjustment to her or his weekly working hours'.</p>

Country	Right to reduced hours	Description and conditions of reduced hours entitlement	Employer refusal/right of appeal	Right to return	Right to flexible scheduling of hours?
			a refusal under civil law procedures. Burden of proof is on the employee to show there are no serious operational reasons for the refusal.		
Denmark	Right to request	Employees returning from parental leave have a right to request flexible working arrangements (including changes to working hours).	An employer must consider a request and respond in writing.	?	As per request for reduced hours.
Ireland	Right to request	Employees returning from parental leave, are entitled to request a change in their working hours, work patterns, or both.	An employer must consider a request and respond in writing within 4 weeks. No legal burden on the employer in refusing a request (other than in a discrimination claim).	Employers are to consider requests to return to full-time work and provide information on availability of positions.	As per request for reduced hours.
Italy	Right to request	Parents with a child under 6 years, or child with a disability under 18 years, have a right to apply to work flexibly (e.g. to reduce their working hours).	Employers can only refuse a parent's application where there is a 'clear business ground', and must give written notice of reasons for	An employee who has changed from full-time to part-time employment has a priority right to return to available full-time work.	As per conditional right for reduced hours.

Country	Right to reduced hours	Description and conditions of reduced hours entitlement	Employer refusal/right of appeal	Right to return	Right to flexible scheduling of hours?
		Employees who care for a dependant or ill household member have priority in converting their hours from full-time to part-time.	refusal.		
The Netherlands	Right to request	<p>Employees with 26 weeks' service and working for employers with 10+ employees, have a right to apply to reduce their hours.</p> <p>This is not specific to those with parental responsibilities.</p>	Employees must grant the request unless 'serious business or service interests' prevent it. If the employer does not agree or deviates from the request, they are required to consult with the employee and provide written reasons for their decision.	<p>Right to request an increase in hours.</p> <p>Request may only be denied, e.g. for serious financial reasons, if insufficient work.</p>	<p>Employees with 6 months' service and working for employers with 10+ employees, have right to 'adjust working time'.</p> <p>Distribution of hours is 'in accordance with wishes of the employee' but employer can refuse if serious business grounds.</p>
New Zealand	Right to request	All employees have the right to request flexible working arrangements, including reduced hours arrangements.	<p>Employer can only refuse on business grounds specified in relevant legislation, or conflict with a collective agreement.</p> <p>Where employee considers employer has not complied with the</p>	Request specifies duration of proposed arrangement, or whether it's permanent.	As per request for reduced hours.

Country	Right to reduced hours	Description and conditions of reduced hours entitlement	Employer refusal/right of appeal	Right to return	Right to flexible scheduling of hours?
			prescribed process, they can access mediation from Labour Inspector, with further option for determination by Employment Relations Authority.		
Slovakia	Right to request	A pregnant employee or parent caring for a child under 15 can request a reduction in working time or other arrangement to the fixed weekly working time.	The employer is required to accommodate these requests if not prevented by substantive operational reasons.	?	As per request for reduced hours.
United Kingdom	Right to request	All employees have the right to request flexible working arrangements, including reduced hours arrangements. Restricted to those with 26 weeks' service with the same employer.	Employers may refuse for specified business reasons. Employees can challenge in specific circumstances (e.g. decision based on incorrect information or employer has provided non-allowable reason).	Changes are permanent subject to employee's right to make a new request.	As per request for reduced hours.

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- ²¹² *Employment Rights Act 1996* (UK), s.80H(1).
- ²¹³ McColgan A (2015), *Measures to address the challenges of work-life balance in the EU Member States, Iceland, Liechtenstein and Norway*, Publications Office of the European Commission, Brussels at p. 44.
- ²¹⁴ *Employment Rights Act 1996* (UK), s.80I; *Flexible Working Regulations 2014* (UK), Reg. 6.