



HM Government

## 1. Transparency: Flexible working and family related leave and pay policies

The consultation is available at: <https://www.gov.uk/government/consultations/good-work-plan-proposals-to-support-families>

The closing date for responses is: 11 October 2019

Please return completed forms to:

Team: Family-related Leave and Pay Team  
Department for Business, Energy and Industrial Strategy  
Postal address: 1<sup>st</sup> Floor Spur, 1 Victoria Street, Westminster, London, SE24 0DN

Tel: 020 7215 5000

Email: [supportingfamiliesconsultation@beis.gov.uk](mailto:supportingfamiliesconsultation@beis.gov.uk)

### Personal / Confidential information

Please be aware that we intend to publish a summary of all responses to this consultation.

Information provided in response to this consultation, including personal information, may be subject to publication or release to other parties or to disclosure in accordance with the access to information regimes. Please see the consultation document for further information.

If you want information, including personal data, that you provide to be treated as confidential, please explain to us below why you regard the information you have provided as confidential. If we receive a request for disclosure of the information, we shall take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on the department.

I want my response to be treated as confidential

Comments: [Click here to enter text.](#)

## About You

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	<b>Respondent type</b>
<input type="checkbox"/>	Business representative organisation/trade body
<input type="checkbox"/>	Individual
<input type="checkbox"/>	Legal representative
<input type="checkbox"/>	Large business (over 250 staff)
<input type="checkbox"/>	Medium business (50 to 250 staff)
<input type="checkbox"/>	Micro business (up to 9 staff)
<input type="checkbox"/>	Small business (10 to 49 staff)
<input checked="" type="checkbox"/>	Trade union or staff association
<input type="checkbox"/>	Other (please describe)

	<b>If you are an individual, are you:</b>
<input type="checkbox"/>	Employed
<input type="checkbox"/>	Self-employed
<input type="checkbox"/>	Unemployed
<input type="checkbox"/>	Retired
<input type="checkbox"/>	Not looking for work
<input type="checkbox"/>	Other

	<b>If you are an employer, how would you classify your organisation?</b>
<input type="checkbox"/>	Private sector
<input type="checkbox"/>	Public sector
<input type="checkbox"/>	Charity/Voluntary sector
<input type="checkbox"/>	Other (please specify)

## Section 1: Publishing family related leave and pay and flexible working policies

If a requirement to publish family-related leave and pay and flexible working policies was introduced, large organisations might be required to provide a link to the relevant policies on their website. As the purpose of the requirement is to achieve greater transparency, we believe that this should be the case whether their offer exceeded the statutory minima or not. Where the offer does not exceed the statutory, a simple statement should suffice.

### Question 1

**Do you agree that large employers (250+ employees) should publish their family related leave and pay policies on their website?**

Strongly agree	<input checked="" type="checkbox"/>
Agree	<input type="checkbox"/>
Neither agree nor disagree	<input type="checkbox"/>
Disagree	<input type="checkbox"/>
Strongly disagree	<input type="checkbox"/>
Don't know	<input type="checkbox"/>

**Please provide reasons for your answer.**

**Comments:** *Unite agrees with the introduction of a requirement on employers to publish their family-related leave and pay policies to achieve greater transparency. However, we have been calling for publishing and reporting to be required of all employers with 50 or more employees in the public and private sectors. This is in line with the European Commission Recommendation on strengthening the principle of equal pay between men and women through transparency. Government should require employers to provide a link to the relevant policies on their website whether their offer exceeded the statutory minima or not. Where the offer does not exceed the statutory requirement, there should be a statement outlining the reasons why, and future actions and timelines for achieving this. Furthermore, the information published should be clear, understandable and accessible to existing and potential employees.*

**Question 2:**

**Do you agree that large employers (250+ employees) should publish their flexible working policies on their website?**

Strongly agree	<input checked="" type="checkbox"/>
Agree	<input type="checkbox"/>
Neither agree nor disagree	<input type="checkbox"/>
Disagree	<input type="checkbox"/>
Strongly disagree	<input type="checkbox"/>
Don't know	<input type="checkbox"/>

**Please provide reasons for your answer.**

**Comments:** *Unite agrees with the introduction of a requirement on employers to publish their flexible working policies to achieve greater transparency. However, we have been calling for publishing and reporting to be required of all employers with 50 or more employees in the public and private sectors. This is in line with the European Commission Recommendation on strengthening the principle of equal pay between men and women through transparency. Therefore, the government should require employers with at least 50 employees to publish detailed data on flexible working in the past 12 months, and also inform trade union representatives. We believe transparency is part of the solution and does not address the full problem. For many workers access to flexible working means that they can get into and remain in work. To ensure flexible working there should be more and stronger requirements on employers to ensure flexible working are offered to ALL staff from day one. This is vital for equality as it will give families a greater opportunity to fulfil and share their caring responsibilities. It would also help to address some of the barriers disabled workers face in the workplace. Unite will also continue to call for the right to flexible working instead of the right to request it. Additionally, the current right should include a requirement on employers to objectively justify any refusal, as without this, flexible working opportunities can be denied on a generalised basis. The right should also be extended to all workers with the use of one definition for all who are engaged in work. This will eliminate the existing divisions within the workforce and would encourage an equal and fair environment where everyone is respected and treated equally. Government should require employers to provide a link to the relevant policies on their website whether their offer exceeded the statutory minima or not. Where the offer does not exceed the statutory requirement, there should be a statement outlining the reasons why, and future actions and timelines for achieving this. Furthermore, the information published should be clear, understandable and accessible to existing and potential employees. Government*

*should also require employers to develop a policy in consultation with trade unions. This should ensure a commitment to consider flexible working positively, and only refuse in exceptional circumstances; to consider request for flexible working more than once a year; flexible working for short periods of time; and not make the change into a permanent working arrangement unless it is specifically asked by the employee.*

**Question 3:**

**Do you agree that transparency of these policies will help employers to recruit and retain staff?**

Strongly Agree	<input checked="" type="checkbox"/>
Agree	<input type="checkbox"/>
Neither Agree nor disagree	<input type="checkbox"/>
Disagree	<input type="checkbox"/>
Neither agree nor disagree	<input type="checkbox"/>
Strongly disagree	<input type="checkbox"/>
Don't know	<input type="checkbox"/>

**Please provide reasons for your answer.**

**Comments:** *Current and potential employees will be encouraged to apply for jobs that are offered on a flexible basis. It will encourage loyalty as well as efficiency. Keeping people particularly, parents in work means better chances for children and can help tackle women's pay and employment status, progression and child poverty. Flexible working is a step towards this. However, our experience shows that although some requests are granted, far more are refused, including on a blanket basis which tends to underestimate the true number of requests that are not agreed to. This is particularly true with shift work where some employers refuse all request as it is easier. Employers should look at the organisation of work for the whole workforce and consider making changes to shift patterns for all, to make it more family friendly, as well as making changes to individual arrangements. This will help to avoid universal refusals of requests. For example, in one food factory with a mainly female workforce, while all administrative workers were provided with the opportunity to request flexible working, all workers on the production line were issued with a blanket refusal. This example contrasts very poorly with a car factory with a mainly male workforce where all workers, including those on the production line are given the opportunity to request flexible working, and none suffer a blanket refusal. We have*

*also found that some employers either use annual reviews to change agreed existing flexible working arrangements or refuse changes when requested by the employee. This creates a great deal of uncertainty and nervousness among these workers who are usually women with caring responsibilities and/or work part time. This also undermines the position of these workers as it suggests that their employer does not value part-time workers or those with other 'non-standard' working times as much as others. Unite also has experience of working with employers to agree a "win-win-win" approach on flexible working for workers, greater flexibility in the organisation of work for employers, meeting new or changed service delivery, and business needs such as weekend working, just-in-time working methods. The Local Government NJC Unions and Employers Organisation joint guidance on Work-Life Balance, and the TUC-Bristol City Council major project on Working Time and flexible working demonstrate the practical success of this approach. We also have experience from the private sector, eg in the food industry when cook-chill production methods were introduced or in Nestle we have negotiated a shift pattern working 3 on 3 off 12 hour days & nights, it is a 24/7 operation. There are two people on the same shift pattern that requested flexible working to due family commitments and their age was another factor. Flexible working was granted so one person continuously works the day shift only and the other the night shift only. This means in between each of the shifts rotation the person has nine days off. Additionally, government should require employers to send the information to trade union representatives for consultation on actions for creating a positive culture in the workplace as well as removing barriers particularly faced by parents and carers. Furthermore, the information published should be clear, understandable and accessible to existing and potential employees.*

**Question 4:**

**Do you agree that, where the employer has a policy on family related leave and pay which extends the statutory minima, reworking and publishing your internal policy document on a public-facing website would not be a significant or expensive task?**

Strongly agree	<input checked="" type="checkbox"/>
Agree	<input type="checkbox"/>
Neither agree nor disagree	<input type="checkbox"/>
Disagree	<input type="checkbox"/>
Strongly disagree	<input type="checkbox"/>
Don't know	<input type="checkbox"/>



<b>B. Approach to place, hours and times of work</b>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>C. Approach to informal flexible working (such as later starts to accommodate health and other appointments)</b>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>D. Enhancements to different types of family related leave and pay, for example:</b> <ul style="list-style-type: none"> <li>• Maternity Leave and Pay;</li> <li>• Paternity Leave and Pay;</li> <li>• Adoption Leave and Pay;</li> <li>• Shared Parental Leave and Pay;</li> <li>• parental leave taken in respect of older children;</li> <li>• or, any other contractual enhancements to family related leave and pay.</li> </ul>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

**E. Please provide reasons for your answers.**

**Comments:** *Unite believes that employers should be required to publish data on the Gender Pay Gap Reporting Portal. Also, in addition to the list above, employers should be required to publish flexible working data on: the type of flexible working available and offered; the number of formal and informal requests; the number of approvals, refusals and appeals with reasons and outcomes; whether the right applies to ALL workers and is it a day-one right; whether requests are offered more than once a year; whether flexible working patterns are offered on a temporary basis when requested; whether flexible working is offered as a default for all job adverts; the proportion of workers appointed on a flexible basis; proportion of staff promoted on a flexible basis; the frequency in which flexible working patterns are reviewed and their outcome; details of flexible working policy and its link to other entitlements such as family leave and carers leave; plans of future action and actions taken to encourage and provide flexible working to ALL workers; employment status eg. zero hours contract, agency worker, self-employed, fixed term and permanent contract; and pay quartile. All this data should be broken down by sex, race, disability, sexual orientation, age and gender identity. In the case of informal requests, they are more likely to be turned down, as there is no obligation on the employer to consider the request and hence the status quo often prevails. Even in organisations where Unite has a national agreement, this policy is not always implemented at local level since local managers find it easier to turn down informal requests rather than look into making the necessary changes. For example, in one sector, most requests were around childcare and/or homeworking. With these employers when members asked their managers their request for flexible working were declined. However, once the request was put into writing,*

hence made formal, it mostly got a favourable response. Furthermore, our experience shows that the role of Union Equality Representative has been particularly important in supporting implementation of flexible working, both in terms of supporting individual workers to identify their needs appropriately, and in raising awareness with the employer and other workers on the issue in general. For example, in one manufacturing workplace a Union Equality Representative who has agreed time off from the employer supported a number of male colleagues who had non-resident parental responsibilities following divorce. The divorce settlement has led to the time they spend with their children being restricted to specific hours and days which do not readily fit with their shift pattern, and the support provided by the Union Equality Representative very important to assist in finding an effective solution with the employer. In the civil aviation industry, for example, a Union Equality Representative who did not receive agreed time off from the employer in this role has raised awareness of flexible working amongst union members and representatives and did her best to support individuals in her own time, and through using her annual leave. However, she felt the lack of support from the employer for this role has meant missed opportunities to resolve difficult issues, and generally to support workers balancing their home and family responsibilities. Unite believes that the role of Union Equality Representatives should be included in the flexible working regulations. Additionally, Unite will continue to call for statutory rights for Union Equality Representatives recognising their importance to support flexible working in particular.

**Question 7:**

**To what extent do you believe that a job applicant’s decision on whether to apply for a job depend on the publication of the information mentioned above?**

A lot	<input type="checkbox"/>
Somewhat	<input checked="" type="checkbox"/>
Not at all	<input type="checkbox"/>

**Please provide reasons for your answers**

**Comments:** *This information will be useful to applicants who are “reluctant to ask for this information for fear of discrimination”. However, publishing data does not address discrimination faced by workers, particularly women and it certainly does not eliminate or even reduce it. In addition to publishing of data, government must take further action to tackle and eliminate this illegal and widespread discriminatory behaviour at recruitment level. For example, Unite’s recent experience with members at an airline company who were made redundant and had flexible working arrangements means that they are now extremely anxious about finding a job with similar arrangements as they organised their lives around*

these patterns. Therefore, requiring employers to advertise all jobs as flexible would make a difference between staying at work or becoming unemployed.

## Section 2: A requirement to report or a voluntary approach?

There are already a number of mandatory reporting regimes in place, including gender pay gap reporting (mandatory for all large businesses, i.e. those with 250+ employees). These provide incentives on businesses to take action to improve their performance, so we are mindful of introducing additional regulation without testing a voluntary approach in the first instance – particularly given the impact the reporting requirement alone appears to be having in raising the profile of these issues.

However, the potential for change to be driven by greater transparency around existing policies should also be weighed against the potential stimulus for change which an action plan might provide. Around 50% of large employers already voluntarily supplement their gender pay gap information with a narrative or an action plan, which sets out the steps they are taking to narrow the gap. It may be that a dynamic action plan is a more effective way of driving cultural change also on this issue.

### Question 8:

**How effective do you believe a voluntary approach to encourage greater transparency about an organisation's approach to flexible working and family related leave and pay (e.g. through the Gender Pay Gap Reporting Portal) might be in providing information about employers' policies?**

Very effective	<input type="checkbox"/>
Fairly effective	<input type="checkbox"/>
Not very effective	<input type="checkbox"/>
Not at all effective	<input checked="" type="checkbox"/>
Don't know	<input type="checkbox"/>

**Please provide reasons for your answer.**

**Comments:** *Unite supports a mandatory requirement on employers to publish information. The voluntary approach has proven largely ineffective over the years, namely, in the case of the gender pay gap reporting where after nearly 6 years only 5% of*

employers published their pay gap data whereas when the mandatory reporting was introduced in 2017 this figure went up to almost 100%. Government should introduce mandatory reporting with action plans for the next 12 months.

**Question 9: How effective do you believe creating a facility on the Gender Pay Gap Reporting Portal on GOV.UK to record details about an organisation’s policies on flexible working and family related leave and pay would be:**

	Very effective	Fairly effective	Not very effective	Not at all effective	Don't know
A. To provide a central point of information for employees or prospective employees?	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
B. To let employers record the information as a part of the annual cycle of Gender Pay Gap Reporting?	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

**Please provide reasons for your answer**

**Comments:** *Information Gender Pay Gap Reporting Portal can provide current and prospective employees with more information about the organisation’s policies and approach to flexible working and family leave. However, for this to be effective the government should require employers to publish detailed information as stated in our answer to Question 6. There should also be a mandatory requirement for detailed narratives and action plans to address shortcomings. For example, in the case of gender pay gap reporting shortcomings are exposed hence, remedies can be found when organisations provide this detailed information.*

**Question 10:**

**How effective do you believe it might be to encourage employers to set out how they are using greater transparency about their employment policies as part of their gender pay gap action plans?**

Very effective	<input checked="" type="checkbox"/>
Fairly effective	<input type="checkbox"/>
Not very effective	<input type="checkbox"/>

Not at all effective	<input type="checkbox"/>
Don't know	<input type="checkbox"/>

**Please provide reasons for your answer**

Comments: *Greater transparency should include not only gender pay and employment gaps and action plans but also racial, disability and age gaps and action plans. The weakness in gender pay gap reporting is its lack of narratives and action plans. Measuring the gender pay gap is, on its own, insufficient. Employers should investigate the reasons for the gap and take action to close it. Therefore, information about flexible working and family leave policies will be relevant to any narrative explaining a gap particularly, how a gap has been narrowed. There should be a requirement on employers for a mandatory narrative explaining how recruiting and promoting more staff on a part-time and/or flexible basis, and a focus on offering secure employment contracts by default, is supporting them to address their gender pay gap, through their gender pay gap action plan. .Government should require employers to put in action plans, monitor and publish their monitoring report with information on details stated in our answer to Question 6.*

**Question 11:**

**Do you agree that it would make sense to enforce a reporting requirement of this kind in the same way as gender pay gap reporting (i.e. a requirement to provide this information as part of the gender pay gap reporting process)?**

Strongly agree	<input checked="" type="checkbox"/>
Agree	<input type="checkbox"/>
Neither agree nor disagree	<input type="checkbox"/>
Disagree	<input type="checkbox"/>
Strongly disagree	<input type="checkbox"/>
Don't know	<input type="checkbox"/>

**Please provide reasons for your answer**

Comments: We agree that the reporting requirement should to be enforced in the same way as gender pay gap reporting. However, the government should introduce a requirement for more detailed information, narrative, action plans and monitoring as stated in our answers throughout this response.

### **Section 3: A requirement to say whether jobs may be open to flexible working in an advert**

If employers were to be required to say in a job advert whether flexible working was available, there would be a need to strike a balance between what information it was practical to provide, and what a candidate would find helpful.

#### **Question 12:**

**Thinking about the balance between what it is practical to provide in a short job advert and what is useful to a candidate, which of the following is the best option (please select one)?**

A simple statement (such as “Happy to Talk Flexible Working”)	<input type="checkbox"/>
A short statement covering the organisation’s approach to place, hours and times (e.g. “core hours”) of work	<input type="checkbox"/>
A simple statement and a link to a published policy	<input type="checkbox"/>
A short statement covering the organisation’s approach to place, hours and times of work and a link to a published policy	<input checked="" type="checkbox"/>
Other	<input type="checkbox"/>

**If Other, please set out below**

Comments: [Click here to enter text.](#)

**Please provide reasons for your answer**

Comments: *Unite supports a simple statement such as the ‘Happy to Talk Flexible Working’ strapline which was co-created with government, and has been promoted by the Flexible Working Taskforce a partnership across government departments, business groups, trade unions and charities. This should be accompanied by the*

*requirement to publish family-friendly leave and pay and flexible working policies. Government should require employers to advertise all jobs on flexible working basis, as a default. For example, when Happy Computers stated in its job adverts that they offer flexible working for all jobs, they were inundated with applications. If employers absolutely cannot offer a job on flexible working then they should be required to clearly justify these exceptional circumstances.*

**Question 13: If a requirement was introduced to state in job adverts whether flexible working may be available or not:**

**A. Who might the enforcement power sit with? Please describe.**

*Comments: As with all legislations enforcement is paramount since without enforcement action even a mandatory requirement would not be effective. Unite believes this role should be given to a strong and well-resourced EHRC to monitor compliance of the regulations for employers to state in job adverts whether flexible working may be available or not.*

**B. What should be the process for reporting a breach? Please describe.**

*Comments: The enforcement body needs to establish an accessible process for individuals as well as trade unions to report a breach. Also, workers should be able to take their case to an employment tribunal. Under the legislation, the employer is given such power in dealing with appeals. This has taken away the basic right of employees and has given the employer the right to veto any concerns or objections. We do not believe that this encourages best practice. ACAS code of practice asks employers to allow appeals and to allow the employee to talk to them about the decision. However, this code is legally very weak. This is an unjust procedure which gives a free hand to employers to decide whether or not to allow appeals. For example in the health sector, the employer has decided that they will not accept less than 0.6 whole-time equivalent (WTE) part-time working for a Band (grade) 7 post and below, of 0.5 WTE for a band 6 post and below. Unite representative challenged these seemingly arbitrary figures and asked for the equality impact assessment. She is still waiting for an answer after more than two months. Our representatives also find their biggest challenge currently across private and public sector is the refusal of flexible working due to shortage of staff and management's refusal to consider any flexible working arrangements. Government should introduce a statutory right to appeals which must be considered by an independent person(s) to avoid conflict of interest. Government should take this opportunity to include an explicit right to challenge an unreasonable refusal of a request as opposed to a procedural failure to give proper consideration of the request, at an employment tribunal. We opposed the removal of the statutory procedure for considering flexible working requests under the guise that it was bureaucratic and costly. This only weakened the right and gave employers a free hand to do as they pleased, and reject requests, without any recourse. Unite calls for the reinstatement of statutory procedure for considering flexible working requests.*

**C. What should be the penalty for a breach? Please describe.**

Comments: *Government should amend the EHRC's powers to mirror the provision in s.32 of the Equality Act 2006. Furthermore, EHRC should be given powers to enforce and put in action plans as well as monitor and issue fines to private sector employers who fail to comply with a notice.*

**Question 14:**

**If a requirement to provide a link to your flexible working policy on the gender pay gap reporting portal was introduced, do you agree that it would be helpful also to ask employers to record whether they had advertised jobs as open to flexible working?**

Strongly agree	<input checked="" type="checkbox"/>
Agree	<input type="checkbox"/>
Neither agree nor disagree	<input type="checkbox"/>
Disagree	<input type="checkbox"/>
Strongly disagree	<input type="checkbox"/>
Don't know	<input type="checkbox"/>

**Please provide reasons for your answer**

Comments: *As stated in our answer to Questions 6*

Thank you for your views on this consultation.

Thank you for taking the time to let us have your views. We do not intend to acknowledge receipt of individual responses unless you tick the box below.

Please acknowledge this reply

At BEIS we carry out our research on many different topics and consultations, and your views are valuable to us. Would you be happy for us to contact you again from time to time either for research or about other consultations?

Yes

No