



*Championing better
work and working lives*

Good Work Plan: Proposals to support families Transparency of flexible working and family related leave and pay policies

Submission to Department for Business, Energy and Industrial
Strategy

Chartered Institute of Personnel and Development (CIPD)

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Background

The CIPD is the professional body for HR and people development. The not-for-profit organisation champions better work and working lives and has been setting the benchmark for excellence in people and organisation development for more than 100 years. It has 150,000 members across the world, provides thought leadership through independent research on the world of work, and offers professional training and accreditation for those working in HR and learning and development.

Our membership base is wide, with 60% of our members working in private sector services and manufacturing, 33% working in the public sector and 7% in the not-for-profit sector. In addition, 76% of the FTSE 100 companies have CIPD members at director level.

Public policy at the CIPD draws on our extensive research and thought leadership, practical advice and guidance, along with the experience and expertise of our diverse membership, to inform and shape debate, government policy and legislation for the benefit of employees and employers, to improve best practice in the workplace, to promote high standards of work and to represent the interests of our members at the highest level.

Introduction

The Government is consulting on a proposal to create greater transparency around an employer's flexible working and parental leave policies. This part of the consultation considers whether large employers (250+) should publish their family related leave and pay and flexible working policies on their own websites and also additionally in a public space such as on the gender pay gap portal. The consultation also considers whether employers should have a duty to consider if a job can be done flexibly and make that clear when advertising a role.

Our responses to the consultation are outlined below. These are informed by evidence and insight gathered by a YOUNGOV/CIPD survey of 516 HR professionals and our extensive work in the area of flexible working, including our position as co-chairs of the Flexible Working Taskforce and our research and guidance.

CIPD Recommendations

- 1.) Large employers (250+ employees) should publish their family-related leave and pay policies on their website
- 2.) Large employers (250+ employees) should also publish their flexible working policies on their website
- 3.) The Government should provide template policies which could be adapted by individual employers to represent their offer
- 4.) We support a voluntary approach to public reporting (such as via the Gender Pay Gap Portal) to encourage greater transparency about an organisation's approach to flexible working and family-related leave and pay
- 5.) Providing a simple link to policies already published on individual websites would be a good starting point as this would aid transparency for both employees and employers but would not significantly increase workload and bureaucracy for organisations
- 6.) We also support a voluntary approach to encouraging employers to set out how they are using greater transparency about their employment policies as part of their gender pay gap action plans
- 7.) Rather than introducing additional legislation around advertising jobs as flexible or not we would encourage employers to voluntarily use the tagline 'happy to talk flexible working' or a short statement covering the organisation's approach to place, hours and times of work, wherever possible in their recruitment
- 8.) Our respondents came up with some interesting suggestions, regarding alternatives to extra legislation (which could prove difficult to enforce). These include:
 - Encouraging organisations to have flexible working as the default and to highlight when a job is not suited to flexible working
 - Creating a government sponsored award for employers offering flexible working
 - Developing a universal logo that can be used on adverts to indicate flexible working
 - Creating a voluntary reporting system for which companies are then given a grading or award based on the level of flexibility they can offer
 - Compulsory flexible working tick boxes/ filters on external jobs boards

- Financial incentives (such as tax breaks) to those organisations advertising roles as genuinely flexible

Our response

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

There is substantial support from HR professionals for the publishing of family-related leave and pay policies on large employers' websites. Two thirds of HR professionals agree that large employers should publish their family-related leave and pay policies (65%) on their public websites. Larger employers of 250+ are significantly more likely to agree that organisations should publish their policies than smaller organisations. Those working in the public sector are also significantly more likely to agree than those working in the voluntary and private sector.

2. Do you agree that larger employers (250+ employees) should publish their flexible working policies on their website?

HR professionals are even more supportive of publishing their flexible working policies. Over two thirds of HR professionals agree that large employers should publish their flexible working policies (68%) on their public websites. Unsurprisingly, larger employers of 250+ are significantly more likely to agree that organisations should publish their policies than smaller organisations. Those working in the voluntary and public sectors are also significantly more likely to agree than those working in the private sector.

Additional CIPD question: How helpful do you think it would be to employers if the Government provided template policies that could be adapted by individual employers to represent their offer?

Four in five respondents (81%) think it would be helpful if the Government provided template policies which individual employers could adapt. These would be helpful for guiding employers around the content of both family-related leave and pay and flexible working policies and could potentially minimize any extra work/ burden for those that don't already have formulated policies.

Additional CIPD question: For what reasons might employers not publish their flexible working policy?

In the light of the consultation questions on transparency of policies, we thought it would be interesting to explore some of the reasons why employers might not currently publish their flexible working policies. Over half (58%) think this may be because of fear that more employees will want to work flexibly. This is followed by it creating extra work for employers (42%), viewing it as competitive information (35%) or because they do not consider their policy to be sufficiently attractive (31%).

At the CIPD, we are supportive of promoting and opening up flexible working policies to all. We believe that providing greater transparency around flexible working policies will lead to more people having the opportunity to work flexibly and will encourage organisations to be more creative in the types of flexible working they offer, thus supporting more inclusive employment and progression. Transparency around such policies would mean that they were clearly part of an organisation's value proposition for existing and new employees and that organisations would increasingly develop their approach to flexible working to help them stand out from competitors and recruit and retain valued staff.

3. Do you agree that transparency of these policies will help employers to recruit and retrain staff?

Almost three quarters (73%) of HR professionals think that transparency of these policies will help recruitment and retention of staff. We agree, and believe the benefits of transparency for employers could even extend beyond recruitment and retention of valued staff.

Research shows that the [vast majority of us \(87%\)¹ would like to work more flexibly](#) – and there is a [strong demand for flexible working](#) from men and women and across all age ranges². It can even [motivate us more than financial incentives](#)³. According to the case study organisations in our recent guidance on flexible working, quality flexible working can help organisations:

- address skills shortages
- attract and retain talent and support diversity
- narrow their gender pay gap
- improve employee job satisfaction and loyalty
- support well-being

- empower organisations to be more agile and responsive to change.

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 an internal policy document on a public-facing website would be simple and inexpensive?

With regards to reworking and publishing a policy on family-related leave and pay which extends the statutory minima:

There is a level of uncertainty over how easy this would be. Over two in five (45%) HR professionals think it would be easy but a fifth (22%) think it would be difficult. Expense to the employer is also unclear with a third (36%) neutral and 45% thinking it would be inexpensive to do. However, despite uncertainty over ease and expense, three in five respondents feel that it would be appropriate to do (60%) and a similar proportion thought it would also be useful (60%).

We would therefore be supportive of this proposal and as mentioned above, Government templates and guidelines around this would help to minimize difficulty and expense for employers.

5. Do you agree that, as for family related leave and pay, reworking and publishing a flexible working policy on a public-facing website would be simple and inexpensive?

With regards to reworking and publishing a flexible working policy:

Over half of respondents (54%), feel that it would be easy to rework and publish the internal policy. Perceptions around cost are less certain with a third (35%) neutral and 46% thinking it would be inexpensive to do. As with the family-related leave and pay policies, three in five think it would be appropriate (60%) and useful (61%) to publish.

We would therefore be supportive of this proposal and as above, Government templates and guidelines around this would help to minimize difficulty and expense for employers.

- 6. How helpful would the following information be if it was held (and viewable) on a central database – for instance the Gender Pay Gap Reporting Portal:**
- a) Whether flexible working may be available from the start**
 - b) Approach to place, hours and times of work**
 - c) Approach to informal flexible working (such as later starts to accommodate health and other appointments)**
 - d) Enhancements to different types of family-related leave and pay, for example: Maternity Leave and Pay; Paternity Leave and Pay; Adoption Leave and Pay; Shared Parental Leave and Pay; parental leave taken in respect of older children; or, any other contractual enhancements to family-related leave and pay.**

Our view at the CIPD, is that it would be helpful for employers of 250+ to include all of this information in their family-related leave and pay and flexible working policies published on their websites. It would be useful if any Government templates and guidance could prompt organisations to provide information on all of these areas so that candidates could compare and contrast potential organisations in a consistent way and would have access to all the information they needed to make a fully informed decision about applying for a position. Transparency around all of these aspects would also encourage employers to produce more developed and competitive positions around family-related leave and pay and flexible working, which we believe would ultimately be beneficial to employers and employees alike.

Rather than creating the burden of having to replicate all of this information on their website and on a central database (such as the Gender Pay Gap Reporting Portal) – we suggest that organisations provide a simple link to the policies already published on their websites.

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

We know that an estimated [87% of employees want to work flexibly](#), yet the proportion of quality jobs (paid £20k+ FTE) which are advertised with flexible working options is only 11%⁴. Supply falls well short of the extremely high demand.

There is a large gap between flexible working (which is more widely accessible) and flexible hiring (which is relatively rare). Research shows that by restricting opportunities to

work flexibly at the point of hire, employers are cutting themselves off from a proportion of the candidate market. Particularly for fields of work that are known to have skills shortage problems, there are clear benefits in accessing the wider talent pool that is available to work flexibly.

We also know that for certain groups of people (such as carers, parents and those on low-incomes) employment without formal and informal flexible working is often not an option. Research found that flexible working was 'very' important for the following groups: Non-white employees (32%), those with an annual household income of less than £15,000 (32%), employees with caring responsibilities for a relative or an adult in the household (31%).

In summary, we believe that a job applicant's decision on whether to apply for a job would be significantly influenced by the publication of the above information. Most employees want to work flexibly and there is an unmet demand for this, further some groups of workers such as carers, parents and those on low-incomes would find it very difficult to work at all without the provisions of flexible working and in some cases enhanced parental leave and pay policies.

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?

The HR professionals we surveyed are supportive of publicly reporting family-related leave and pay and flexible working policies (in addition to reporting on their own websites). The majority (72%) support this: just under half think this should be voluntary (48%) and a quarter think it should be mandatory (25%).

We believe that such a requirement should be voluntary not mandatory. We think that candidates and employees are most likely to search for this policy information on an employer's website first and foremost. It is therefore helpful to have a requirement for organisations of 250+ employees on this. The Government could then encourage good practice voluntary public reporting (potentially through the gender pay gap portal and providing a link to the organisation's own website policies). This would create further transparency, with minimum burden on organisations and could allow job searchers and employees to compare and contrast employers on their policies in this area which in turn would encourage organisations to develop their offerings to ensure they are competitive.

However, a voluntary approach should be subject to review after two years to evaluate how effective it has proved, with the option of introducing mandatory reporting on family-related leave, pay and flexible working policies if voluntary reporting has proved ineffective.

The Government should also consider whether encouraging organisations to report this information via the gender pay gap reporting portal might give the impression that this is a female issue when of course the provision of family-related leave and pay and flexible working should be open to all employees.

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:

a) To provide a central point of information for employees or prospective employees?

b) To let employers record the information as a part of the annual cycle of Gender Pay Gap Reporting?

Of the 72% of HR professionals surveyed that think an organisation's policies on flexible working and family-related leave and pay should be reported publicly (in addition to on their own websites), 44% think the policies should be reported on the gender pay gap reporting portal on GOV.UK.

We are supportive of this but, like more of the HR professionals surveyed, we believe the approach should be voluntary not mandatory.

Voluntary reporting of this information via the Gender Pay Gap Portal would provide a central point of information for employees or prospective employees and allow them to compare and contrast employers on their policies in this area which in turn would encourage organisations to develop their offerings to ensure they are competitive. It would also encourage employers to detail this information as part of the annual cycle of Gender Pay Gap Reporting.

Overall voluntary reporting via the Gender Pay Gap Reporting Portal would aid transparency but would not increase bureaucracy for organisations – encouraging the inclusion of a simple link to policies already published on organisations' own websites would be a good starting point.

However, as mentioned above, the Government should also consider whether encouraging organisations to report this information via the gender pay gap reporting portal might give the impression that this is a female issue when of course the provision of family-related leave and pay and flexible working should be open to all employees

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?

We think the Government should encourage employers to discuss how they are using greater transparency about their employment policies as part of their gender pay gap action plans. This should be a voluntary approach and could be outlined in GEO and Government guidelines on effective gender pay gap action plans. Of the 72% of HR professionals surveyed that think an organisation's policies on flexible working and family-related leave and pay should be reported publicly (in addition to on their own websites), almost a quarter (23%) think it should be reported within employers' gender pay gap action plans.

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)?

We do not believe that this should be a mandatory reporting requirement. We support a voluntary approach to providing this information and believe the simplest way of doing so would be to encourage organisations to include a link to their website policies. The Government could also encourage organisations, through guidelines on effective gender pay gap action plans, to include information about transparency and their policies on family-related leave and pay and flexible working.

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)?

Seven in ten (70%) HR professionals agree in principle it should be a requirement to state in job adverts whether flexible working may be available or not. However, the extent to which legislation around this could be enforced or would drive positive change in practice is debatable. There would need to be clear guidance about the definition of flexible working, for example, would part-time working be regarded as flexible work. Many jobs have some flexibility over start and finish times or have a range of different shift patterns

but if there is limited choice for individuals in using these working arrangements would they still be regarded as flexible working if highlighted in a job advert?

There would also need to be clear guidance around what constitutes a job advert. The concern over introducing legislation is that some employers might inaccurately say they provide flexible working advertising arrangements that provide little choice or flexibility for individuals in practice while others will play it safe and simply state flexible working is not available if there is any ambiguity to avoid the risk of falling foul of the law.

The CIPD is committed to creating culture change when it comes to the take up and implementation of a range of flexible working practices. We want more employers to use the tagline 'happy to talk flexible working' in their recruitment and genuinely think about how roles can be done flexibly but feel a legal duty around this would be difficult to enforce and may lead to unintended negative behaviours by employers. CIPD believes that boosting the availability and uptake of flexible working is about highlighting the business case and the benefits around flexible working and encouraging and enabling employers make positive change through providing practical guidance and support.

In terms of what is practical to provide in a short job advert and what is most useful to the candidate -

there is not one standout approach to how this should be done but the most popular approach identified by employers is using a short statement covering the organisation's approach to place, hours and times of work supported by 29% of employers) or a simple statement such as 'Happy to talk flexible working'(28%). A fifth of respondents think the best option would be a simple statement with a link to a published policy (20%) or a short statement covering the organisations' approach with a link to a published policy (20%).

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.

b) What should be the process for reporting a breach? Please describe.

c) What should be the penalty for a breach? Please describe.

As outlined above we are not supportive of a legal requirement because it would be extremely difficult to enforce regardless of where the enforcement powers sat and may lead to unintended negative behaviours by employers.

Requiring employers to say in job advertisements whether flexible working is available or not would require clear definitions about what falls under the category of flexible working and what constitutes a job advert, which may not be a simple as it sounds.

Even if employers do state whether flexible working is or is not available in their job adverts, it is debatable if this would drive change and encourage employers to think about their working culture and how they train their line managers. Employers that don't have flexible working cultures or understand the business case for flexible working would just state in their adverts that they don't provide flexible working.

In terms of enforcement it is highly unlikely a successful job applicant would report a breach while it is also very difficult to see an unsuccessful applicant having the motivation to report a breach where an employer had failed to specify if there was flexible working available. Even if an individual did want to make a complaint and report a breach, proving that a breach had occurred would be extremely difficult.

It would involve a consideration of information on job content and design, sector specific context in terms of operational demands, evidence from the line manager and consideration of the wider culture and leadership of the organisation, all of which might be material in different ways to whether a job could be done flexibly or not.

If a body such as the Equality and Human Rights Commission, for example, was responsible for enforcing this requirement it would only be effective if the resources were in place to monitor job adverts at scale and to investigate employers if they were suspected of breaching the duty. Even then, proving that an employer had breached the duty would be challenging as noted above.

We want more employers to use the tagline 'happy to talk flexible working' in their recruitment and genuinely think about how roles can be done flexibly. We think more work needs to be done around boosting the availability and uptake of flexible working through highlighting the business case and the benefits and encouraging and enabling employers to make positive change through providing practical guidance and support

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?

Again, we believe that if employers are asked to record this information it should be a voluntary rather than mandatory approach. We would also question how helpful this information would be. Employers might have been able to advertise some jobs as open to flexible working but not others, for legitimate reasons. How would this information then be recorded? In terms of considering whether a job could be done flexibly and then including this in job adverts, some organisations might have made a thorough and genuine assessment of whether jobs could be done flexibly, and others might have performed a quick tick box exercise. Some organisations might be able to offer more informal flexibility but be reluctant to include this on adverts if a legislation was put in place.

References

1. Timewise Flexible Jobs Index (2018).
2. Timewise and EY, Flexible working: a talent imperative. A research study into the UK workforce: who wants flexibility, for what reasons, and how much it matters to them.
3. Eltringham, M. (2017) Nine out of ten employees believe flexible working is key to boosting productivity.
4. Timewise Flexible Jobs Index (2018).