

Handling Flexible Working Arrangement (FWA) Applications

By Shariffullah Majeed and Arissa Ahrom



The recent amendments to the Employment Act 1955 (“EA”) includes a provision which affords employees the right to apply for a flexible working arrangement (“FWA”) to vary their hours, days or place of work.¹ This marks a formal parliamentary recognition of such an arrangement which was catalysed by the pandemic that made a widespread adoption of remote work necessary. In fact, it was stated during the Second and Third Reading of the Employment (Amendment) Bill 2021 in Parliament that the FWA provision is aligned with the hybrid working culture shift which resulted from the pandemic.²

Pursuant to section **60P (1)** of the EA, an application for FWA is subject to the provisions in relation to rest days, hours of work, holidays and other conditions of service or anything contained in the contract of service. Hence, any variation to the hours, days or place of work must be done within the confines of the EA or in the terms of the employment contract.

What shall employers do upon receipt of FWA application?

An application for FWA shall be made by employees in writing and in the form and manner as may be determined by the Director General.³ At this juncture, there has not been any fixed form or manner in which an application for FWA shall be made.

Therefore, in the absence of any internal policy which sets out the form or manner for FWA applications, employers should readily accept applications in any written form. For example, via e-mail, letter or WhatsApp.

Upon receipt of such written application, an employer shall be brought to either approve or refuse the application within 60 days and inform the employee of its decision in writing.⁴ If the employer refuses the application, grounds of the refusal must be stated.⁵ It must also be noted that the EA does not specify the grounds in which an employer may refuse an application for FWA. Thus, employers are not obliged in any circumstances to approve such applications.

¹ Section 60P(1) of the Employment (Amendment) Act 2022.
² DR.21.03.2022 at p. 27.
³ Section 60Q(1) of the Employment (Amendment) Act 2022.
⁴ Section 60Q(2) of the Employment (Amendment) Act 2022.
⁵ Section 60Q(3) of the Employment (Amendment) Act 2022.



In any event, it is advisable for employers to only refuse an application for FWA on reasonable grounds. For example, where such an arrangement is not practicable or viable in view of the nature of the employee's job. This is particularly where the nature of the job requires the employee to be at a specific location or work during specific hours.

Factors to consider in respect of FWA applications

According to a survey conducted in 2021, 48% of the respondents in Malaysia expressed a preference to flexible working policies post-pandemic⁶ as employees increasingly value a healthy work-life balance. It is clear from the implementation of FWAs in organisations worldwide that such an arrangement is made essential in the modern-day workforce.

When implemented effectively, FWAs can boost productivity and reduce issues of tardiness or absenteeism in an organisation as employees spend less time commuting to work and have more scheduling freedom.

While it is obvious that employers must consider the nature of an employee's job in deciding whether to approve or refuse an application for FWA, employers ought to also consider, among others, the following:

- (a) Whether the organisation already has a FWA Policy in place to establish the rules and procedures of FWA;
- (b) Whether the organisation is equipped with tracking and management tools to monitor and track the employee's performance and productivity;
- (c) Whether the organisation has in place sufficient cybersecurity measures to prevent cyber security hazards; and
- (d) Whether the employee has sufficient work from home facilities that would enable him / her to perform his / her obligations efficiently.

⁶ Randstad, '48% of respondents in malaysia wants flexible work arrangements after the pandemic: randstad work monitor' (Randstad, 18 February 2021) <<https://www.randstad.com.my/hr-trends/workforce-trends/1-in-2-respondents-wants-flexible-work-arrangements/>> accessed 9 February 2023.

FWA Policy

Therefore, in order for an effective implementation of FWA, employers should ensure that an FWA Policy is in place to provide clear guidelines to the management and employees in relation to the rules and procedures of the arrangement. Essentially, the policy should contain comprehensive provisions regarding the FWA application process, conditions for approval and / or refusal, the employee's obligations and employer's expectations. It is also imperative that the policy contains specific and structured procedures to address disciplinary and performance issues remotely to avoid any uncertainties and inconsistencies in the organisation's practices. **LH-AG**

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