



FLEXITIME

There has been much discussion recently about the changes to the law which are required before flexitime can be introduced. However, even within the bounds of existing law flexitime is possible. Nevertheless, before a flexitime schedule can be properly implemented employers need to properly understand what flexitime is and what they need to be aware of before they implement it.

Flexitime may be categorised into the following areas.

"Flexible work hours - Generally this means working outside the hours of 8:30am to 4:30pm on a weekday;

"Remote Work- Working from a location outside the premises of the employer;

"Compressed Work Week- Working fewer than the regular number of days, with increased hours worked per day;

"Job Sharing- a Single position is held by more than one person with each person working on a shift system; and

"Part-time or Reduced Schedule- working less than a 40 hour week.

Under the existing legislation contractual arrangements can be made to ensure that there is no difficulty with Remote Work. However, with respect to Flexible work hours, Job Sharing, a Part-time or Reduced Schedule and a Compressed Work Week, among other things, the following issues arise:

TOWNS AND COMMUNITIES ACT

Under the Towns and Communities Act, with certain exceptions such as Pharmacies, Lodging-Houses and Public Wharves, no person shall open any place of business on Sunday, Good Friday or Christmas Day. Consequently, if the flexitime or compressed work week entails any acts which may be construed as the company opening for business on any of the abovementioned days then the company will be guilty of an offence.

WOMEN (EMPLOYMENT OF) ACT

Under the provisions of the Women (Employment of) Act a woman's total hours of employment cannot exceed ten hours in any twenty-four hour period. An employer who contravenes this provision is liable to a fine on the first occasion and on a second conviction to such fine or imprisonment with or without hard labour for a term not exceeding six months.

HOLIDAYS WITH PAY ORDER (1973)

Flexible work hours, Job Sharing, a Part-time or Reduced Schedule and a Compressed Work Week may also affect an employee's statutory rights to vacation leave under the Holidays with Pay Order (1973) (the Order). The Order does not take into consideration the number of hours worked on a given day. The calculation of the number of days of holidays with pay to which an employee is entitled and the determination of when the entitlement arises is based solely on the number of days worked.

THE NATIONAL MINIMUM WAGE ORDER (1975)

Under the provisions of The National Minimum Wage Order (1975) (the Order) an employer is required to allow any worker, other than an hourly worker, one rest day each week.

WORKING HOURS

If the employer has a staff manual which sets out "Work Hours" the institution of flexible work arrangements with specific employees will have the effect of modifying the terms of the contract between the Company and the employees in respect of "Working Hours" which are usually fixed from 8:30am to 4:30 pm Monday through Friday. If there are 'overtime' provisions these should also be addressed.

CONCLUSION

There are other issues which may arise, such as whether there has been such a dramatic change in the job description that a redundancy may be said to have arisen, or if the position is made redundant subsequent to the implementation of the flexitime schedule, how this will affect notice requirements and the quantification of redundancy payments. However, once properly structured, there is no need for employers to await the proposed changes in legislation to institute a form of flexitime in their businesses.

Emile Leiba is an Associate at Myers, Fletcher & Gordon and a member of the Firm's Litigation, Labour & Maritime Departments. Emile may be contacted at emile.leiba@mfg.com.jm or through www.myersfletcher.com