

Group Briefing
July 2019

Step Plan to Tackling Banded Hours Requests under the Employment (Miscellaneous Provisions) Act 2018

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This document contains a general summary of developments and is not a complete or definitive statement of the law. Specific legal advice should be obtained where appropriate.

To ensure compliance with your obligations under the Employment (Miscellaneous Provisions) Act 2018, our five-step plan below will assist you in dealing with any banded hour requests you receive.

QUESTION 1: IS IT A VALID REQUEST?

This involves asking:

- a. if the person submitting the request is an employee (other than a truly casual employee);
- b. if the request is in writing; and
- c. if the employee has at least 12 months' continuous service.

If the answer to either (a), (b) or (c) is no, refuse the employee's request and explain why.

If the answer to (a), (b) and (c) is yes, move to Question 2.

QUESTION 2: IS THERE A BASIS FOR REFUSING THE BANDED HOURS' REQUEST?

The following are the limited justifications you can rely on under the Act for refusing a banded hours' request:

1. where there is no evidence to support the claim in relation to the hours worked in the reference period (being the 12 months preceding to the date of the request);
2. where there have been significant adverse changes to the business, profession or occupation carried on by the employer during or after the reference period;
3. where there are exceptional circumstances or an emergency (including an accident or the imminent risk of an accident), the consequences of which could not have been avoided despite the exercise of all due care, or otherwise to the occurrence of unusual and unforeseeable circumstances beyond the employer's control, it would not be practicable for the employer to comply with the request;

4. where the average of the hours worked by the employee during the reference period was affected by a temporary situation that no longer exists; or
5. where there is a collective agreement concerning banded hours arrangement.

If you can rely on any of the above justifications, you can refuse the employee's request and respond to them on that basis. If you can't rely on any of the above justifications, move to question 3.

QUESTION 3: WHAT IS THE APPROPRIATE BAND TO PLACE EMPLOYEES ON?

This is a calculation exercise and requires you to work out what were the relevant employee's average weekly working hours over the previous 12 month period. You then assess which band they should fall into from the following:

Band	From	To
A	3 hours	6 hours
B	6 hours	11 hours
C	11 hours	16 hours
D	16 hours	21 hours
E	21 hours	26 hours
F	26 hours	31 hours
G	31 hours	36 hours
H	36 hours and over	-

If there are weeks in which the employee is not expected to work or in which the relevant business is not being carried out, specific advice should be sought.

QUESTION 4: HAVE YOU APPROVED/REJECTED THE REQUEST WITHIN 4 WEEKS?

If not, you must!

QUESTION 5: HAVE YOU PUT IN PLACE A SYSTEM TO ENSURE YOU WILL COMPLY WITH PLACEMENT OF THE EMPLOYEE IN THE BAND?

Diary regular reminders (perhaps monthly) to monitor the relevant employee's hours to ensure the employee will "work hours the average of which shall fall within that band for a period of not less than 12 months following that placement." Regular monitoring will avoid having to overcorrect an employee's hours at the end of the reference period.

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