



Labour Program: fair, safe and productive workplaces

Flexible Work Arrangements What Was Heard

September 2016



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The world of work is rapidly changing with the fourth industrial revolution, characterized by a range of new technologies, the Internet of things and cloud computing. This is fundamentally affecting the way that work is organized and creates opportunities for more flexible workplaces. Flexible work arrangements (flex work) can benefit both workers and businesses, and many companies around the world have had great success in implementing such arrangements in their workplaces.

The Government of Canada recognizes that Canadians need help to balance their professional and personal responsibilities, and that is why we launched consultations as the first step in bringing the right to request flexible work arrangements to Canada.

For input on how to implement a meaningful right to request flexible work arrangements for federally regulated workers under the *Canada Labour Code*, we carried out broad public and stakeholder consultations.

I am pleased that hundreds of Canadians participated in the online consultation and openly shared their views and their personal experiences. More than 60 stakeholders, including employers and employer organizations, unions and labour organizations, advocacy groups, academics and others, also took time to meet with us or to send us their input in writing. I appreciated hearing about their valuable expertise and ideas, and also their needs and particular situations. Comments received from all participants gave us a broad and rich perspective on flex work.

This report provides an overview of what Canadians told us during these consultations about the benefits and challenges associated with the right to request flexible work arrangements and how it should be implemented.

I would like to thank everyone who participated for contributing to the development of new, evidence-based labour policy that will make a difference to Canadians who are looking for ways to balance work, family, and other priorities.

The Honourable MaryAnn Mihychuk, P.C., M.P.

Canada 

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Introduction

Flexible work arrangements allow employees to alter, on a temporary or permanent basis, their work schedule, the number of hours they work or the location where they do their work, or to take leave from work to meet responsibilities outside of work. Flex work, as it is commonly known, plays an important role in addressing the realities of today's workplace, society and economy. For employees, it offers a way to better manage the often competing demands of paid work and their family and other personal responsibilities outside of work. For employers, flex work helps foster productivity as well as inclusive and supportive work environments that attract and retain needed talent.

The Government of Canada is committed to amending the *Canada Labour Code* (Code) to provide workers in federally regulated enterprises with a right to request flexible work arrangements from their employers. The Government has also pledged to deliver on this commitment through meaningful engagement with the Canadian public, unions, employers and other stakeholders and through evidence-based policy development and implementation.

The Honourable MaryAnn Mihychuk, Minister of Employment, Workforce Development and Labour, launched engagement activities on flexible work arrangements on May 16, 2016. The activities offered Canadians and stakeholders multiple channels for providing their views and experiences related to flex work, the right to request flexible work arrangements and issues associated with implementing the right by June 30, 2016.

The key channels for participating in the consultations were:

- an online survey;
- social media, including Twitter;
- a discussion paper that invited feedback on a series of questions;
- six regional roundtables with key stakeholders (in Winnipeg, Montréal, Toronto, Atlantic Canada, Vancouver and Northern Canada); and
- a national roundtable held in Ottawa.

More than 1,260 Canadians participated in the online survey.¹ While not a representative sample, responses to the 34 multiple-choice and open-ended questions provided unique insight into how Canadians view flex work and the experiences they have had with it. Annex A presents an overview of those who participated in the survey.

¹ This figure includes all of those who responded to at least one question in the survey. Not all participants responded to every question (see Annex A for more details).

On social media, the hashtags #FlexibleWork and #ConditionsTravailSouples were used to engage with Canadians via Twitter. More than 20 tweets provided information about the consultations and the link to an online video. Tweets also asked Canadians about whether they use flex work and asked employers and employees in specific sectors about the impacts of flexible work arrangements in their workplaces. The tweets led to 42 re-tweets and 22 “likes” by individuals, consultants, international associations and others.

“The topic of #flexiblework is buzzing in Canada.”

Twitter user

Twenty written submissions were received in response to the discussion paper. Six came from employers and employer associations, three from unions and labour organizations, one from an academic and ten from advocacy groups (focused on issues such as caregiving, mental health and living with chronic disease), community groups and other organizations (see Annex B for a list). In addition, one labour organization, three individual Canadians and two academics provided other kinds of written documentation related to flex work, such as a copy of a publication.

Sixty-two stakeholders participated in the regional and national roundtables. The stakeholders represented a total of 50 different organizations (18 employers and employer associations, nine unions and labour organizations, 21 advocacy groups, community groups and other organizations and two think tanks) and included seven academics. The names of the organizations and academics can be found in Annex C.

This report presents an overview of what was heard during the consultations. Based on qualitative and, where possible, quantitative analysis, it identifies key messages and provides additional information about the issues that Canadians and stakeholders raised and the experiences they shared in three areas: flexible work arrangements, the right to request and implementation. The last section of the report addresses next steps.



Flexible Work Arrangements

This section reports on what was heard during the consultations about the use, benefits and challenges of flex work.

Use

Key messages

- Canadians and stakeholders alike indicated in the online survey, at the roundtables and in their written submissions that flexible work arrangements are available in many workplaces across Canada through employer human resource policies, informal workplace practices and collective agreements.
- Most employers and employer associations that participated in the roundtables indicated that they normally try to respond positively to requests for flex work.
- Over 73 percent (or just over 600) of those who responded to the survey question about whether they had asked for flex work in the past five years, said that they had. Flexible scheduling and flexible work locations were said to be the top two types of flex work requested.
- Most survey respondents who had made a request to their employer for flex work said that it had been granted. However, three in 10 said that it had not.
- About 27 percent (or 226) of those who responded to the survey question about whether they had asked for flex work in the past five years indicated that they had not. Of these, over one-third (84) said that, to the best of their knowledge, a flexible work arrangement was not available to them and another 19 percent (43) did not ask because they were afraid that it would be turned down.

What else was heard

Many employer and labour stakeholders and advocacy groups indicated at the roundtables and in their written submissions that, when considering a job offer, individuals are now more often choosing flexibility over a higher salary or opportunities for career advancement.

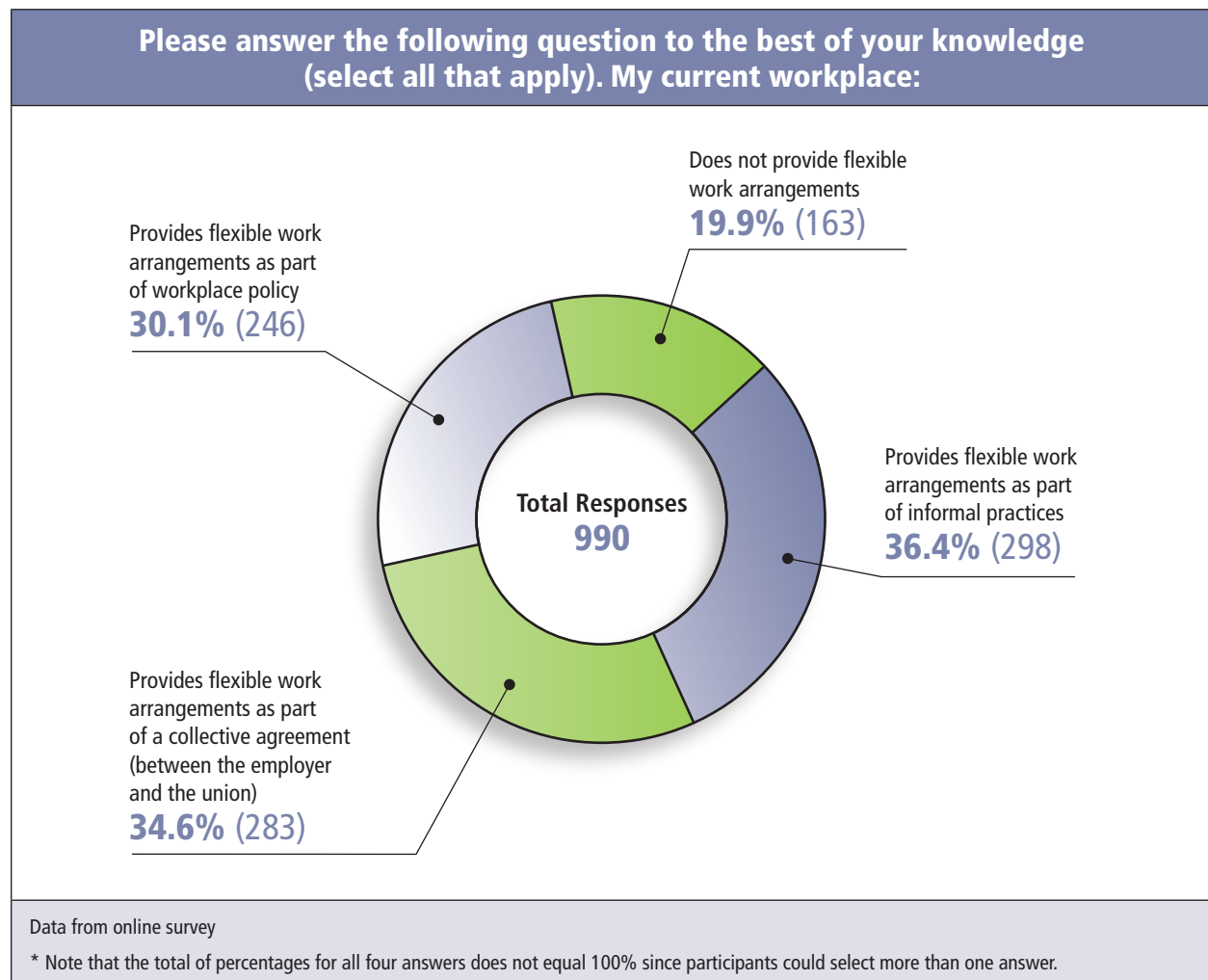
“I asked permission to take leave while my husband was battling cancer. I took unpaid leave to help him heal from surgery. I also asked to have my lunch hours consolidated every [two] weeks in order to be with him when he was at the chemo unit, which took most of the day.”

Online Survey Respondent

Most of the 600 or so survey respondents who said that they had requested flex work in the past five years indicated that they did so to increase their flexibility to care for family, or to manage health issues or other personal responsibilities. A number noted that their requests for flexibility were motivated by a desire to remain productive and engaged in the workplace.

Respondents to the online survey indicated that flexible scheduling options, such as flexible start and end times, compressed work weeks and time off in lieu, were the most common types of flex work available in their workplaces—and the ones they most often requested. Those who indicated that they had made a request said that they wanted to renegotiate their working hours in order to accommodate drop-off and pick-up of children from school, schedule appointments with physicians and other professionals at the most convenient times, manage chronic and unexpected health issues and spend more and higher-quality time with their families.

A flexible work location, such as telework and working in regional offices, was the second-most-available form of flex work identified by survey respondents, as well as the second-most-requested. Some survey respondents noted that encouraging telework and other forms of remote work can not only help employees reduce the costs of working, but also have environmental benefits.



While less common, some survey respondents reported that their workplaces offered flexible hours, such as job sharing and part-time work. It was noted that these options are often used by older employees or employees with chronic diseases who wish to remain attached to the labour market, or as a part of an employee's return-to-work strategy after taking parental or another type of leave.

While least mentioned overall, some survey respondents reported that employers offered a variety of paid and unpaid leave options, including short-term and long-term sick and family leaves, income averaging and education and bereavement leaves. A number of respondents said that they were able to reorganize the types of leaves available to them to accommodate their needs for flexibility.

Almost one-third (or 193) of survey respondents who had made a request for flex work said that it had been turned down. They reported many reasons, including: operational requirements; their workplace having core business hours; their job being client-facing; their employer not having a policy governing working from home; and their employer expressing concerns about treating staff fairly or other staff making similar requests. Some respondents indicated that they had not received any reply from their employer to their request. A few said that they were given information about how to use sick leave or vacation leave to provide any needed flexibility.

Benefits

Key messages

- Survey respondents and stakeholders recognized that flex work is—and should be—part of today's workplace reality. They generally agreed that flex work has advantages for employees and employers and pointed to a wide variety of benefits:
 - reduced absenteeism and “presenteeism” (i.e. a drop in work activities while at work);
 - workers who are healthier and feel they are better able to support their families and friends;
 - more effective recruitment and retention, especially among millennials, workers with care responsibilities and older workers;
 - more diverse, inclusive, engaged and healthy workplaces;
 - increased labour market participation by workers with chronic illnesses, disabilities and mental health issues; and
 - greater productivity and more innovative, more effective ways of working.

“I’m more productive as I can work around my personal life, instead of my personal life replacing my work life. I’m also less stressed as work doesn’t pile up nor do I ignore my personal responsibilities such as children’s events at school, appointments, etc.”

Online Survey Respondent

- There was also general agreement that flexible work arrangements have real, positive impacts for many different types of workers (e.g. workers with care responsibilities, millennial and older workers and workers with disabilities) and that realizing these benefits requires not seeing flexible working as a one-size-fits-all solution.

What else was heard

The consultations underscored that Canadians see being able to spend more, higher-quality time with their families as one of the most important benefits of flex work. Northern stakeholders and Indigenous organizations said that this was especially important in the North, where family responsibilities are often tied to cultural responsibilities and practices, such as hunting, fishing and harvesting.

Virtually all stakeholders and respondents to the online survey emphasized the importance of flex work for workers with caregiving responsibilities and their employers. Survey respondents reported that having to provide child care and elder care were among the top reasons for asking for flex work, with some noting that working part-time is sometimes the only alternative available for women with intensive care responsibilities. Several written submissions suggested that flex work can play a potentially transformative role in Canadian society by encouraging men to play a greater role in caregiving.

Advocacy groups, as well as several employer and union organizations and academics, stressed that flex work is particularly important for workers with conditions such as multiple sclerosis, arthritis and some mental health issues who have symptoms that are considered episodic, i.e. periods of good health interrupted, often unpredictably, by periods of illness or disability that affect their ability to work. For these individuals, flexible work arrangements are important means to manage their symptoms, be more productive at work and maintain their quality of life.

“As a single parent, I do not even apply to many of the opportunities that are well-paying. I know that I would not be able to maintain a job given my son’s needs. I often wish we could create more fluid opportunities... If there were more flexible opportunities I believe there would be a significant shift of single parents into the workforce completing full work weeks.”

Online Survey Respondent

“A diagnosis of MS shouldn’t mean someone has to give up working...But the truth is that many people feel they have no choice but to leave a job, even though they are willing and able to stay.”

Multiple Sclerosis International
Written Submission, June 29, 2016

“An elder may indicate to an employed relative or community member that they are craving fresh seal meat. This may add pressure to take leave to go seal hunting during the prime seal hunting season. In this day and age, an Inuk hunter requires considerable funds to purchase hunting equipment and supplies. This means they need a job to ensure they have the ability to buy those necessities. On the other hand, if they are working, they do not have as much flexibility to go hunting. The importance of providing nutritious foods of choice to the community, the role of hunters and the strengthening and passing on of cultural practices should be valued and accommodated, just as much as the wage economy.”

Nunavut Tunngavik Inc.

In addition, two labour organizations emphasized that flexible work arrangements can offer employees who are victims of domestic violence safety and protection while at work and allow them to retain their job. They pointed to the benefits of flexible hours or a change in shift or work location for these individuals. They also suggested that consideration be given to introducing a paid domestic violence leave under Part III of the Code.

Employers and employer organizations generally agreed that, when it works well, flex work can bolster innovation and improve productivity. They also stressed that it is already playing an important role in attracting and retaining good employees and fostering workplace diversity.

Challenges

Key messages

- Survey respondents and stakeholders agreed that there are challenges associated with enhancing flexibility in work arrangements and that, in some cases, they can be significant.
- Four principal challenges were identified during the consultations:
 - finding an appropriate mix of measures to enhance flexibility;
 - financial considerations for employers and employees;
 - existing workplace practices and cultures; and
 - certain elements of the broader labour law context.

What else was heard

Building on the theme of “one size does not fit all,” several employer and labour organizations and at least one think tank highlighted that the need for flex work is often unpredictable and that it is important for workplaces to have flexible work arrangements that respond to episodic, short-term and longer-term flexibility requirements. It was also noted that it is important for employees, employers and policy-makers to recognize that flexibility in work arrangements is related to but distinct from flexibility to take leave from work.

Another consistent theme heard from stakeholders and others was the importance of finding the right balance between the needs of employees and the needs of employers. As many noted, despite areas of shared interests, flexibility is motivated by different considerations, raises different issues and concerns and has different impacts for employees and employers.

“Flexible work arrangements, leaves and other benefits for employees serve as important recruitment and retention tools, and banks are very cognizant of that fact as they compete with other employers for talent.”

Canadian Bankers Association
Written Submission, June 30, 2016

“My current manager does not believe that telework or [a] compressed schedule lead to excellence in service. In fact, senior management believes that being in corporate services means that you must be here [five] days a week as it should not be a burden to clients when we are off of work and they should be able to contact us anytime they need it.”

Online Survey Respondent

In addition, there was a strong consensus that not all types of flex work are appropriate for every job. Stakeholders noted that flexible work arrangements may be especially challenging to implement in sectors with 24/7 or continuous operations, such as aviation, rail and trucking, and in small and medium-sized enterprises, where resources to accommodate flexibility are often very limited.

A number of employers, employer organizations and unions emphasized that flexible work arrangements pose special challenges for workplaces in the North. As several employers noted, flexible schedules are one of the working conditions that businesses can use to attract and retain skilled workers in the North. However, they also indicated that flexible leaves are more difficult to accommodate because it is hard to fill vacancies given the nature of the local labour market and that, as a result, in most cases when an employee goes on leave, their position remains unfilled.

Employers and employer associations stressed the financial implications of flex work, pointing specifically to the costs of hiring temporary workers to backfill employees who have adjusted their work schedules or taken leave and the costs of providing technologies for employees working off-site.

“I’ve seen many employers who claimed to offer flexible hours, but either refused to honour the commitment, or let people go who requested it.”

Online Survey Respondent

Advocacy groups noted that changes in work schedules, hours and location, including moving to part-time work, can have negative impacts on employees’ pay and/or benefits (e.g. health, pensions) and that this can result in employees not taking advantage of opportunities for more flexibility, even if they or their family would benefit.


Of all the challenges discussed during the consultations, workplace practices and culture generated perhaps the most interest and the strongest views. There was a general sense from survey respondents and stakeholders that, despite progress having been made in recent years, organizational norms in many workplace cultures remain biased against flex work and there is still often a stigma attached to asking for flexible work arrangements or a fear of formal or informal reprisal (e.g. dismissal, reduced career opportunities, bullying or harassment).

Survey respondents and stakeholders also offered that:

- While there are exceptions, the predominant perspective in many workplaces is that flex work means that work will not get done, not that it might get done better.
- Flexible work arrangements call for employers and employees to rethink workplace practices, such as how work is assigned, how meetings are scheduled and how performance is assessed, particularly if work takes place in geographically dispersed locations.
- Too much discretion is often left in the hands of individual managers who lack training and tools to consider requests for—or to propose—flexible work arrangements.

“I asked for consistent scheduling to the extent possible in order to take night classes at University. I worked in a 24/7 environment with a seniority-driven schedule—I was at the bottom of the list.”

Online Survey Respondent



In addition, the results of the online survey suggest that workplace culture is one of the main reasons employees do not ask for flex work; one out of five respondents who said that they did not request a flexible work arrangement explained that it was because they feared reprisal from management or other staff.

Stakeholders and many survey respondents recognized that flex work operates in a broader legal context and pointed to several other specific issues which they felt are, or could be, barriers to enhancing flexibility:

- collective agreements, which traditionally offer flex work or favourable work schedules based on seniority, rather than, say, when an employee makes a request or what type of flexibility they are seeking;
- certain provisions in the Code pertaining to overtime, which may be too restrictive from the standpoint of employers and/or employees;
- Code provisions regarding the employer's responsibility to ensure that work locations meet health and safety requirements, which may not be adequate for remote locations, such as an employee's home; and
- federal *Commercial Vehicle Drivers Hours of Service Regulations*, which are designed to be consistent with fatigue management principles and prescribe certain work conditions, such as when a driver can be on duty and rest periods.

In addition, labour and employer organizations and several academics stressed that flex work should not affect any rights or benefits under a collective agreement that are more favourable to an employee than those provided under the Code. They also emphasized that, while flexibility is about accommodating personal needs, workplace practices, rights and remedies to foster flex work should not duplicate, be inconsistent with or in any way negatively impact the provisions that already exist under the Canadian human rights regime.



The Right to Request

This section outlines what was heard during the consultations about the processes for employees to make requests for flex work and for employers to respond, as well as when a request can be refused.

Making a request

Key messages

- Views on whether employees should have a legal right under the Code to make a request for flex work were very polarized. Employers and employer associations argued strongly that such a right is not necessary, while labour organizations, advocacy groups, academics and most survey respondents said equally strongly that it should not be left up to the discretion of employers to grant employees the flexibility they need.
- There was general agreement among stakeholders and survey respondents about the need to formalize the process for exercising the right to request and what the basic features of the process should be (e.g. requests should be submitted in writing and be clear on what is being requested and for how long).
- There was no consensus on how formal the process for making a request should be, nor on a few specific features of the process. Whether employees should be required to disclose the reasons for requesting flex work was especially controversial.

What else was heard

While recognizing that the Government is committed to introducing a statutory right to request flexible work arrangements, employers and employer associations maintained that creating such a right is not necessary. They pointed to the wide range of flexibilities currently being provided and used, both formally and informally, and the provisions that already exist under the Code and the *Canadian Human Rights Act* to ensure that employees are accommodated when circumstances warrant flexibility. They also suggested that a statutory right could potentially interfere with existing flex work arrangements, including those negotiated in collective agreements.

“Both the employee and the employer need to be able to sit down and have a discussion as to how the arrangement would work. Neither party should be able to put unreasonable restrictions on the arrangement.”

Online Survey Respondent

Labour organizations, advocacy groups, academics and most survey respondents said that granting flexible work arrangements should not be left to the goodwill or discretion of the employer. They argued that, although flex work is already available in many workplaces, that does not mean that it is available to all employees or that there are strong human resource policies in place to support employees seeking flexibility. From their perspective, creating a statutory right will create more stability and predictability in the workplace and lead to more employees seeking changes in when, where and how they get work done, particularly if they are protected from employer reprisal for exercising the right.

One stakeholder recommended that employees in small enterprises (e.g. less than 25 employees) be exempted from the right to request as those organizations have less financial and human resource capacity to support flexible working.

Over 70 percent (or 527) of those who responded to the survey question about how likely they would be to use the right to request flexible work arrangements if they had it said that they would be “very likely” to use it. Another 12 percent (or 91) said that they would be “somewhat likely” to use it.

While stakeholders and survey respondents generally agreed on the importance of formalizing the process for making a request for flex work, there was less agreement on how formalized the process should be. Employers and employer associations, in particular, highlighted the advantages of current practices where employees can directly approach their manager with a request for flexibility in the short term and receive an immediate response without a need to document the discussion, inform human resources or implement other procedures. They also pointed out, as did some labour organizations, that when short-term flexibility is required, there is often not enough time for a longer, more formalized process because the employee needs a response as quickly as possible.

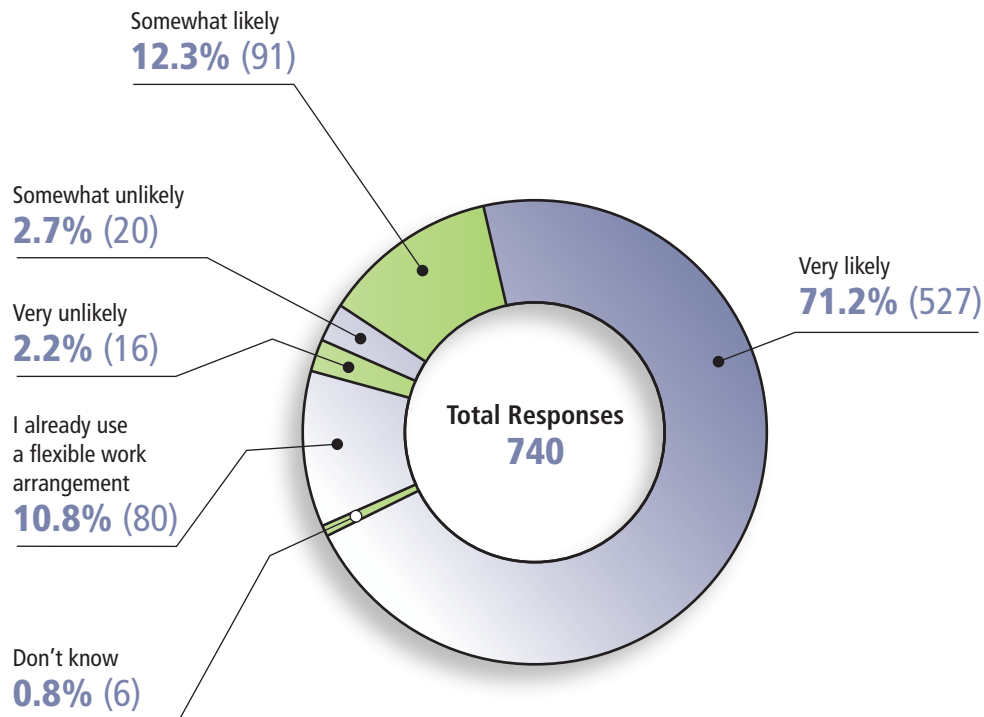
Overall, stakeholders and survey respondents agreed that the process for making requests should be:

- as simple and straightforward as possible;
- clear about the conditions under which a request can be made (and the reasons for which a request can be denied);
- well documented and transparent;
- handled fairly and without reprisal; and
- read in light of collective agreements and other labour legislation.

“A legislated standard providing employees with the right to request flexible work arrangements is preferable to the current circumstances, under which employers may consider employee requests on an optional and voluntary basis...[and employees] have no recourse when requests...are denied. Employees are also more likely to avail themselves of an opportunity to request a preferred work arrangement if they know they have a statutory right to do so, and employer reprisals for exercising this right are unlawful.”

Canadian Labour Congress
Written Submission, June 29, 2016

If you had the right to request a flexible work arrangement, how likely would you be to use that right?



Data from online survey

There was also general agreement that requests should be made in writing and outline what is being requested, when and for how long. In addition, some stakeholders saw value in requests, to the extent possible, identifying how the arrangement being sought would impact the employee's job and the employer. It was noted that research shows that requests are more likely to lead to mutually beneficial outcomes if they involve developing a joint work plan detailing how the new arrangement will work.

There was somewhat less agreement on the conditions that should be met before an employee can make a request. Labour organizations and many survey respondents argued that because a right is a right (and is not contingent on an employee demonstrating worthiness in the eyes of the employer) and the need for flexibility is often unpredictable, there should be no restrictions on when an employee can exercise their right to request.

Employer organizations, on the other hand, maintained that employees should be entitled to make a request only after one year of continuous service with the same employer and that there should be limits on the number of requests that can be made per calendar year, to help ensure that potentially costly arrangements are not required for employees with minimal attachment to the workplace.

Labour organizations and advocacy groups stressed that under no circumstances should a flexible work arrangement be forced upon an employee by their employer, nor should employees be expected to use flexible work schedules and arrangements as a substitute for sick leave or accessible child care.

One of the most contentious issues was whether employees who make a request should be required to indicate the reasons for the request.

Labour organizations and survey respondents said that they should not and cited privacy concerns.

On the other hand, employers and employer associations indicated that, while employees should not be required to fully disclose health or other sensitive information, they should be obligated to provide a general idea of the reasons. Their view was that this would allow employers to make better-informed decisions when faced with competing requests, or to propose other accommodations if the initial request cannot be accommodated.

Advocacy groups expressed concerns that disclosing personal information would lead to discrimination and argued that employees should only be required to explain how they will meet the requirements of their job while working flexibly.

Responding to requests

Key messages

- There was general agreement among stakeholders and survey respondents that employers should be required to give due consideration to all requests for flex work that are submitted in writing and to respond to them within a set timeframe, also in writing.

What else was heard

Advocacy groups, labour organizations and unions argued that employers should be required to give reasonable consideration to a flex work request and provide a written response within a reasonable timeframe that indicates approval, rejection or acceptance with conditions or amendments. Survey respondents tended to agree that the employer should have an obligation to respond in a reasonable timeframe, but some noted that the timeframe should be dependent on the type of request (emergency or short-term versus long-term request) or the industry.

“FETCO agrees that flexible work arrangements provide an opportunity for employees to enhance work-life balance, if used appropriately. Our employers have a large number of such arrangements in place currently. And we are open to further enhancement, on a [firm]-by-firm basis, as appropriate in the circumstances... FETCO supports the use of flexible work arrangements when the operations of the business are enhanced (not diminished)... [However,] FETCO asserts that employers, unions and employees should be left to sort out appropriate arrangements, without government intervention.”

Federally Regulated Employers –
Transportation and Communications
Written Submission, July 8, 2016

Employer associations argued that having the same requirements for responding to all requests for flex work could create undue burden for employers (e.g. if a request would have minimal impacts on operations) and reduce the benefits for employees (e.g. if the process takes too long to respond to an emergency or short-term request).

Survey respondents favoured having the employer be required to reply in writing within two weeks to a month. However, like most employers and labour organizations, they noted that such a time period would not accommodate emergency requests or some short-term requests.

Refusing a request

Key messages

- There was broad recognition during the consultations that a right to request flex work is not a right to work flexibly and that there are legitimate business reasons for which an employer should be permitted to turn down a request. However, there was considerable debate about what those reasons should be and whether they should have to be disclosed to the requesting employee.

What else was heard


Survey respondents identified four top reasons for their requests for flex work being turned down: business and operational requirements (e.g. a job not being suitable for the flexible work arrangement being requested); an employee's poor work history; additional costs to the employer; and a negative effect on productivity and workflow.

At the roundtables and in their written submissions, stakeholders suggested a number of possible grounds for refusing a request, including:

- the burden of additional costs;
- inability to reorganize work among existing staff;
- detrimental effects on the ability to meet customer demand;
- inability to recruit additional staff;
- detrimental impacts on quality;
- detrimental impacts on performance;
- insufficiency of work during the periods the employee proposes to work; and
- planned structural changes.

“There should be documentation. A form would be a good idea to ensure that no issues get missed. An employee should not be required to justify their request but should be given the opportunity to explain if they wish. It should be mandatory for there to be a discussion between the employee and the manager to discuss pros and cons and to identify the best solution for everyone. The employee should be involved in coming up with solutions to make [sure] their flexible work arrangement is as seamless a change to their team as possible. Employers should be required to respond within a month, though there should be exemptions (faster responses required) for times of emergency.”

Online Survey Respondent



Labour organizations, unions and advocacy groups cautioned that for employers to seriously consider requests, additional costs alone should not be grounds for refusing a request. This was echoed by a large number of survey respondents who said that the threshold or test for refusing a request should be relatively high.

Regardless of their perspective on particular grounds, participants agreed that the grounds for refusing a request must be clearly articulated and well understood by employers and employees, and not undermine provisions that are found in existing collective agreements or other legislation (e.g. *Canadian Human Rights Act*).

Employer organizations argued that employers should be allowed to modify or cancel a flexible work arrangement that is in place.

Union and employer organizations, academics and advocacy groups agreed that, if a request for flex work is refused, the employee should be entitled to know the reason why.

IV

Implementation

This section highlights what was heard during the consultations about three aspects of successfully implementing a right to request flex work under the Code: changing workplace culture; compliance and enforcement; and monitoring and assessing progress.

Changing workplace culture

Key messages

- One of the strongest messages heard during the consultations, from survey respondents, labour and employer organizations, academics, advocacy groups and others, was that establishing a legal right to request will not on its own enhance flexibility for workers; complementary shifts in workplace culture are also required.
- Two key areas for change were identified: workplace policies and procedures, and norms and attitudes towards flex work and employees who work flexibly.

“Flex work is not about working less, it’s about working better.”

Vanier Institute of the Family
National Roundtable, June 23, 2016

What else was heard

Stakeholders and survey respondents stressed the important role that workplace policies and practices play in achieving cultural change. They said that, in many cases, the policies and procedures that are in place today do not yet reflect the reality of flex work and will need to be updated. They said, as well, that new policies and procedures may be able to help address issues such as concerns about favouritism in the way employers consider requests and fear of reprisal by managers or other employees as a result of making a request.

“I am the ED of a small, non-profit arts organization and aim to accommodate staff requests for flex time by accounting for lieu time accumulated by evening and weekend duties. However, we lack a formal policy, and I require approval from a sometimes-unreliable Board of Directors to request and receive my own flex time arrangements when needed.”

Online Survey Respondent

In addition, stakeholders and survey respondents pointed to a more fundamental need to adjust norms, attitudes and behaviours related to flex work. A number of common misconceptions about flex work were identified, for example, that an employee with a flexible work schedule is less productive or not dedicated to their work, or that flex work is bad for business.

Many stakeholders, academics and survey respondents contended that, beyond changing workplace policies and practices, education and training—for both employers and employees—must be a priority in catalyzing cultural change. Some noted that, since the onus is on employees to make a request for flex work, they must be aware that they have the right before they can exercise it. Others identified managers as a key target audience for education and training, on the grounds that managers are often perceived to be a roadblock to negotiating flexible work arrangements that benefit employees and employers.

There was general recognition among survey respondents and stakeholders that collaboration between all workplace partners is necessary for effective cultural change.

Compliance and enforcement

Key messages

- Three main issues related to compliance and enforcement were highlighted during the consultations:
 - promoting proactive compliance by employers, for example through clear guidance, education and training;
 - ensuring that appropriate recourse mechanisms are available for employees whose requests for flex work are turned down or who believe that their employer has not otherwise complied with related provisions in the Code; and
 - determining whether introducing a right to request calls for other key enforcement mechanisms.

What else was heard

One of the common messages from stakeholders was that to successfully implement a right to request, the federal government must provide employers and employees—on an ongoing basis—with clear information and guidance about roles and responsibilities under the related provisions of the Code. It was suggested that ideally education and training for employers and employees would be provided as well. In addition, many stakeholders, including employer organizations, argued that the federal government should rely on information, education and other forms of proactive compliance before enforcement.

Stakeholders made suggestions about other ways to foster proactive compliance. Several noted positively the promotional campaigns that the UK government has carried out on the benefits of flex work for all employers and employees, regardless of whether the latter work flexibly themselves. Other measures that were identified, and could have more or less government involvement, included:

- sharing lessons learned across organizations and among employer and employee organizations and other stakeholders;
- joint employer-employee committees on work-life balance that could provide a forum for discussions on flex work in a given workplace, including with non-unionized employees, and could develop tools to assist individual employers and employees in having conversations about flexible work arrangements and preparing work plans detailing how new arrangements will work; and
- public recognition for workplaces that have best-in-class initiatives to support enhancing flex work.

On the issue of recourse, stakeholders agreed first and foremost with the basic principle that an employee whose request for flex work is turned down or who believes that their employer has not otherwise complied with the relevant provisions in the Code should have access to appropriate recourse. There was a general sense that limiting recourse to the court system would reduce access to justice.

Labour organizations, advocacy groups, academics and think tanks argued that employees should have the right and the ability to seek the assistance of a labour inspector, access mediation and/or file a complaint with an employment tribunal. Many said that the employer should have to demonstrate that they have not unreasonably refused a request and that, if a complaint is founded, an employer should be required to reconsider the request or compensate the employee.

Employers and employer associations agreed that employees should have access to recourse, but expressed concern about placing an unfair burden on the employer in terms of cost, duration, frivolous claims and penalties. They tended to support processes such as mediation. In addition, they said that, if a request is determined to have been unreasonably denied, it should be honoured, but that the employer should not be required to compensate the employee.

Many survey respondents supported allowing employees to challenge a decision to refuse a request for flex work, beginning with internal recourse to the employer (e.g. asking for further explanation), but with the possibility of moving to a formal external review or grievance process, including third-party mediation or arbitration. Survey respondents noted that employees should be at least able to challenge a decision on procedural grounds.


The relationship between recourse mechanisms related to flex work and recourse mechanisms available under the existing federal human rights regime generated much debate. Stakeholders and survey respondents expressed concern about potential for duplication and overlap with recourse available under the *Canadian Human Rights Act*. They cautioned that cases where an employee's employer fails to accommodate them to the point of undue hardship (e.g. on the basis of family status) could lead to forum shopping, concurrent complaints/reviews and potentially inconsistent decisions.

“The issue is putting this [right to request] in place while communicating the positive aspects and ensuring that employers see how this will benefit them in the long run, instead of creating an undue burden on employers, which would result in some fractious situations in the workplace.”

Online Survey Respondent

“Establish a reporting mechanism for employees to submit information when an employee's right has been denied and a penalty for employers who do not comply. Penalties must be meaningful, but fair and applied consistently.”

Online Survey Respondent



Some participants suggested considering other provisions or tools beyond recourse mechanisms to support compliance and enforcement of a right to request, such as:

- protections for employees against reprisal resulting from making a request; and/or
- reporting requirements for employers (e.g. on the number of requests received and approved as is or with modification and the number turned down).

However, employers and employer organizations cautioned against introducing requirements into the Code that compel employers to add processes and procedures to what should be an internal discussion between the employee and their manager about a mutually accommodating work arrangement.

More generally, a number of stakeholders urged the federal government to emulate the best elements of the approaches on flex work in place in the UK, Australia and New Zealand. All of these approaches establish a statutory right to request and share similar principles, but vary to some degree on certain aspects such as entitlement, information requirements, the process for handling requests and grounds for refusing a request and recourse.

Similarly, it was recommended that provincial and territorial governments be consulted on flexible work practices in their respective jurisdictions. This was considered to be an important way to foster consistency across Canada with regards to providing the right to request flexible work arrangements.

Finally, a number of stakeholders underscored that it will be important that the federal government's labour standards infrastructure, especially the Labour Program, be ready to provide the support needed by employers and employees to understand and implement flex work provisions in the Code (e.g. by developing interpretation guidelines, undertaking outreach) and to cope with an increase in complaints, reviews and/or appeals linked to flex work requests (e.g. educating labour inspectors and mediators).

Assessing progress: data collection, analysis and monitoring

Key messages

- The consultations confirmed that there is little data currently available to establish a solid baseline on flex work and that addressing this gap will be a key challenge in monitoring implementation and, where necessary, making adjustments.

What else was heard

Many survey respondents and stakeholders recognized the importance—for the federal government, union and employer organizations and others—of having access to reliable data on the use of the right to request, the outcomes of requests and other issues related to flex work more generally for various purposes.

It was suggested that it would be worthwhile to explore the extent to which employer and employee engagement surveys could be a source of data, or whether the Labour Program or a third party could collect and analyze data. The lack of Statistics Canada data on flex work was also noted.

“One manager refused me outright and was a complete jerk about it, berating me, belittling me, forcing me to seek support and go around him. It was a horrible situation and it was never really resolved—eventually he left... My management team shifted when he left, and subsequent managers, both junior and senior, have been far, far more supportive—giving me everything I need and helping me thrive as an employee. I’ve got all the accommodation I need, feel amazingly well supported, and feel I can contribute 110% to the organization while knowing that, if I need a day to heal, or to work from home one day, they’ve got my back (and I’ve got theirs).”

Online Survey Respondent



Next Steps

Minister Mihychuk would like to thank all those who participated in the flex work consultations. Their voices have been heard and will provide a strong foundation for developing evidence-based policy that will help Canadians better balance the demands of paid work and their family and other personal responsibilities outside of work.

Over the coming months, the Government plans to move forward on its pledge to amend Part III of the *Canada Labour Code* to give workers in federally regulated sectors the right to request flexible work arrangements and explore other ways to help them better manage their work and personal lives.

ANNEX

Online Participation

Between May 16 and June 30, 2016, Canadians were invited to complete an online survey to express their views on flexible work arrangements. The survey asked questions about what types of flex work Canadians have access to or would like to have access to and why; their experience of requesting flexible work arrangements; and their views on the tools and steps that would be required to effectively implement a right to request flexible work under the *Canada Labour Code*. This annex provides an overview of the 1,262 individuals who responded to the survey, in whole or part, based on self-reported information.²

	% OF RESPONDENTS	# OF RESPONDENTS
Country of residence		1,082
Resident of Canada	99.6%	1,078
Not a resident of Canada	0.4%	4
Province or territory of residence		1,074
Alberta	7.7%	83
British Columbia	15.3%	164
Manitoba	7.1%	76
New Brunswick	0.6%	6
Newfoundland and Labrador	0.7%	7
Northwest Territories	0.0%	0
Nova Scotia	1.9%	20
Nunavut	0.3%	3
Ontario	43.0%	462
Prince Edward Island	0.2%	2
Quebec	21.1%	227
Saskatchewan	1.9%	20
Yukon	0.4%	4

² While 1,262 Canadians responded to the survey, not everyone answered every question. Therefore, the total number of respondents is different for each question.

	% OF RESPONDENTS	# OF RESPONDENTS
Employment		1,097
Working at a paid job or business	92.2%	1,011
Looking for paid work	1.1%	12
Going to school	1.0%	11
Caring for children	0.9%	10
Household work	0.3%	3
Retired	1.1%	12
Maternity/paternity or parental leave	1.8%	20
Long-term illness	0.4%	4
Volunteering	0.1%	1
Providing care to family or friends for a long-term health condition	0.3%	3
Other	0.5%	6
Don't know/Prefer not to answer	0.4%	4
Participants representing an organization or institution		1,094
Representatives	10.1%	111
Individuals	89.9%	983
Types of organization or institution represented		112
Organized labour/labour organization	4.5%	5
For-profit company	4.5%	5
Other non-profit organization	8.9%	10
Provincial/territorial government	0.9%	1
Federal government	76.8%	86
Other	4.5%	5
Working in a federally regulated sector		1,093
Yes	42.5%	464
No	44.0%	481
Don't know	13.5%	148

	% OF RESPONDENTS	# OF RESPONDENTS
Breakdown of those working in the federally regulated sector		484
Banks	1.2%	6
Marine shipping, ferry and port services	0.4%	2
Air transportation, including airports, aerodromes and airlines	3.3%	16
Railway and road transportation that involves crossing provincial or international borders	1.4%	7
Canals, pipelines, tunnels and bridges (crossing provincial borders)	0.2%	1
Telephone, telegraph and cable systems	2.7%	13
Radio and television broadcasting	1.2%	6
Grain elevators, feed and seed mills	0.0%	0
Uranium mining and processing	0.2%	1
Businesses dealing with the protection of fisheries as a natural resource	0.6%	3
First Nation activities	1.0%	5
Federal Crown corporation	33.7%	163
Private businesses necessary to the operation of a federal act	0.8%	4
Other	53.1%	257
Gender of respondents		1,077
Female	73.7%	794
Male	24.2%	261
Prefer not to answer	2.0%	22
Respondents with children under the age of 18 living in their household		1,082
Yes	48.5%	525
No	50.1%	542
Prefer not to answer	1.4%	15
Respondents who have asked their employer(s) for flexible work arrangements in the past five years		832
Asked	72.8%	606
Not asked	27.2%	226

ANNEX **B**

Written Submissions

The following 20 individuals and organizations made written submissions in response to the flex work discussion paper:

- **Employer organizations**

- Canadian Association of Counsel to Employers
- Canadian Bankers Association
- Canadian Federation of Independent Business
- Canadian Trucking Alliance
- Conseil du patronat du Québec
- Federally Regulated Employers – Transportation and Communications

- **Unions and labour organizations**

- Canadian Labour Congress
- Confédération des syndicats nationaux
- Professional Institute of the Public Service of Canada

- **Advocacy groups, community groups and other organizations**

- Arthritis Alliance of Canada
- Association des proches aidants de la Capitale-Nationale
- Au bas de l'échelle
- British Columbia Law Institute
- Bureau de normalisation du Québec
- Canadian Society for Industrial and Organizational Psychology
- Confédération des organismes familiaux du Québec
- Multiple Sclerosis Society of Canada
- Municipal Retirees Organization Ontario
- Nunavut Tunngavik Inc.

- **Academics and think tanks**

- Arla Day, CN Centre for Occupational Health and Safety, St. Mary's University

ANNEX

Roundtable Participation

A total of 62 stakeholders participated in the regional and national roundtables held as part of the flex work consultations. They represented the following 50 organizations and included the seven academics identified below:

- **Employers**

- Aboriginal Peoples Television Network Inc.
- Canadian Pacific Railway
- Manitoba Telecom Services Inc.
- NorthwEsTel Inc.
- Rogers Communications Inc.
- Summit Air

- **Employer organizations**

- Atlantic Chamber of Commerce
- British Columbia Maritime Employers Association
- Canadian Association of Counsel to Employers
- Canadian Bankers Association
- Canadian Federation of Independent Business
- Canadian National Railway Company
- Canadian Trucking Alliance
- Federally Regulated Employers – Transportation and Communications
- Fédération des chambres de commerce du Québec
- Manitoba Chamber of Commerce
- Canadian Chamber of Commerce
- Trucking Human Resources Canada



- **Unions and labour organizations**

- Canada Labour Congress
- Confédération des syndicats nationaux
- Fédération des travailleurs et travailleuses du Québec
- International Longshore and Warehouse Union
- Public Service Alliance of Canada
- Public Service Alliance of Canada (Atlantic)
- Conseil du patronat du Québec
- Unifor
- Yukon Federation of Labour

- **Advocacy groups, community groups and other organizations**

- Aboriginal Council of Winnipeg
- ALS Society of Manitoba
- Alzheimer Society of Manitoba
- Arthritis Alliance of Canada
- Arthritis Consumer Experts
- Association des proches aidants de la Capitale-Nationale
- Calgary Economic Development/WORKshift Canada
- Canadian Centre for Elder Law British Columbia Law Institute
- Canadian Centre on Disability Studies
- CARP Canada
- Council of Canadians with Disabilities
- Disabled Women's Network of Canada
- Entrepreneurs with Disabilities Network
- Gen Y Inc.
- Health Association Nova Scotia
- Immigrant Services Society of British Columbia
- March of Dimes
- Mood Disorders Association of Manitoba
- Nunavut Tunngavik Inc.
- Regroupement des aidantes et aidants naturels de Montréal
- Vanier Institute of the Family



- **Academics and think tanks**

- Arla Day, CN Centre for Occupational Health and Safety, Saint Mary's University
- Brenda Lautsch, Beedie School of Business, Simon Fraser University
- Centre for the Study of Living Standards
- Conference Board of Canada
- Diane Lacaille, Mary Pack Chair in Rheumatology, University of British Columbia
- Graham Lowe, Professor Emeritus, University of Alberta
- Janet Keefe, Nova Scotia Centre on Aging, Mount Saint Vincent University
- Karen A. Duncan, Rady Faculty of Health Sciences, University of Manitoba
- Stéphanie Bernstein, Université du Québec à Montréal