

## Ask The League

*Recently, a town employee requested to meet with her supervisor to discuss decreasing her work hours or perhaps telecommuting from home a few days a week. Is the town obligated to consider this request?*

Yes. Act 31 of the 2013 legislative session, which went into effect on January 1, 2014, requires all Vermont employers, including towns, to at least consider providing flexible work arrangements with their employees.

The law provides all employees in Vermont the “right to ask” for flexible workplace arrangements without fear of retaliation. The law defines “flexible working arrangement” as intermediate or long-term changes in the employee’s regular working arrangements, including changes in the number of days or hours worked, changes in the time the employee arrives at or departs from work, work from home, or job-sharing. [It] does not include vacation, routine scheduling of shifts, or another form of employee leave. 21 V.S.A. § 309(a)(2)

As employers, all towns are under a “duty to consider” and “discuss” workplace flexibility requests in good faith up to twice a year for each employee. Both the town and its employee may propose alternative arrangements during the discussions. The town, however, has full discretion on whether to grant or deny requests depending on whether the request “could be granted in a manner that is not inconsistent with its business operations or its legal or contractual obligations” (e.g., collective bargaining agreements) 21 V.S.A. § 309(b)(2).

In order to determine if a request is consistent with its business operations, a town may consider:

- the burden of additional costs;
- a detrimental effect on employee morale unrelated to discrimination or other unlawful employment practices;
- a detrimental effect on the employer’s ability to meet consumer demand;
- an inability to reorganize work among existing staff or to recruit additional staff;
- a detrimental impact on business quality or performance;
- insufficient work during the periods the employee proposes to work; and
- planned structural changes to the business.

Towns are only required to address the above criteria when considering the employee’s request and are under no obligation to grant or deny it based on whether or not the criteria are met. However, towns are prohibited from punishing or retaliating against employees who make the request or ignoring it altogether. Towns must notify the employee of its decision regarding the request. If the employee’s request was in writing, the response from the town must also be in writing.

Although there is no private right of action under this provision of the law, a town’s failure to comply with the law may result in administrative or court action by the attorney general or the state’s attorney offices.

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