

TikTok did not breach 'right to request' remote work law in novel decision

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In the first case taken under the Work Life Balance and Miscellaneous Provisions Act 2023, a WRC adjudicator has determined that social media company, TikTok, was not in breach of the Act when it denied an employee full-time remote work.

Alina Karabko claimed that the respondent, TikTok Technology Ltd, did not consider her application for fully remote working arrangements in accordance with the Work Life Balance and Miscellaneous Provisions Act 2023 (the Act) and the Code of Practice on the Right to Request Remote Working (the Code of Practice).

In particular, the complainant alleged that the respondent "completely disregarded her needs" when deciding on her request.

The respondent rejected the claim in its entirety and maintained that the complainant's request was refused following an objective, fair and reasonable decision-making process, which took account of her needs and those of the respondent.

AO Marie Flynn determined that the complaint was not well founded.

The right to request remote working and the right to request flexible working came into force on 6 March 2024, when the Code of Practice was finalised.

The decision, the first to be published by the WRC, illustrates the confines of the Act, which have been evident since the law was being designed.

RETURN TO OFFICE POLICY

The complainant worked fully remotely during the Covid-19 pandemic. On 25 July 2023, the respondent informed its staff of its Return to the Office policy, whereby all staff who had not already done so would be required to return to the office at least three days per week, from 9 October 2023.

On 25 July 2023, the complainant submitted a request to continue working remotely fulltime due to accommodation and other issues but her request was refused. The complainant asked the respondent to clarify the consideration process behind the rejection.

She disputed the respondent's contention that on-site team engagement is the only way to collaborate. She contended that her entire team would never be in the office at the same time and, therefore, the only way to meet is online.

Ms Karabko further submitted that during her working week some of her colleagues work from home on different days, so that the full team are not, and will never be, in the office at the same time. Additionally she is working for the North America and Canadian market and the teams she interacts with are not physically based in Dublin.

She claimed that her individual specific circumstances were not taken into due consideration in an objective, fair and reasonable way during the decision-making process, particularly in relation to her difficulties in finding accommodation in Dublin.

She asserted that she is not disputing the merits of the respondent's decision, she is disputing the consideration behind the respondent's decision to refuse her request for remote working.

AO Flynn emphasised that adjudicators are not empowered to investigate the merits of a decision made by an employer where a request for remote working has been refused, or where a request has been granted but is not in line with the employee's preferred pattern.

'OBJECTIVE, FAIR AND REASONABLE'

The Code of Practice provides that an employer who receives a request for remote work must consider the request, having regard to: their own needs (i.e. the business needs); the employee's needs; and the requirements of the Code of Practice in relation to considering a request.

The Code of Practice also sets out that in reviewing whether a role or an individual employee is suitable for remote work, it is important that both are reviewed in "an objective, fair and reasonable manner."

AO Flynn said it was clear that the complainant's request was treated very seriously by the respondent. On receipt of the complainant's request, two members of staff of the respondent, one from HR and the other a manager from the complainant's operational area, met on a number of occasions to consider the request in detail.

Mr Fitzsimons, the complainant's line manager, said that taking all of the relevant factors into account, the decision was made to refuse the complainant's request to work remotely on a fulltime basis.

CONSIDERATION PERIOD

The respondent acknowledged receipt of the complainant's remote working request on 5 April 2024 and notified her that it required an extension of time to adequately consider the request.

Section 21(2) of the Act provides for an extension of the consideration period of up to eight weeks.

The respondent issued a decision in respect of the request in writing to the complainant on 12 April 2024, informing her that her request had been refused and providing reasons for the refusal.

AO Flynn found, therefore, that the respondent has complied with its obligations under the Act, which requires an employer who receives a remote working request to consider the request, having regard to a number of criteria, and to respond not later than four weeks after receipt of the request:

The respondent was represented by Kiwana Ennis BL, instructed by A&L Goodbody. (ADJ-00051600, AO: Marie Flynn)