



MINISTERUL MUNCII ȘI
PROTECȚIEI SOCIALE AL
REPUBLICII MOLDOVA

**Expanding
Choices** through
Family-Friendly Policies



With funding from

Austrian
Development
Cooperation



CENTRUL
Parteneriat pentru
Dezvoltare



EXPANDING THE WORKING ARRANGEMENTS

Public policy recommendations
for improved work-life balance



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Public policy recommendations for improved work-life balance

This document is developed by the Center Partnership for Development within the ‘Expanding Choices: Gender-Responsive Family Policies for the Private Sector in the Western Balkans and Moldova’ Project, implemented by the UN Population Fund (UNFPA), with the support of the Austrian Development Agency (ADA), the operational unit of the Austrian Development Cooperation in partnership with the Ministry of Labor and Social Protection and Chamber of Commerce and Industry of the Republic of Moldova. The opinions expressed are those of the authors and do not necessarily reflect the views of UNFPA, ADA or any of its affiliated organisations.



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INTRODUCTION

It is possible to ensure work-life balance by creating a labour market friendly to parents and people (caregivers) who take care of a family member, which means: (i) more opportunities so that mothers do not have to reduce their working hours in order to take care of children, and (ii) fathers engage more and dedicate more time for child care and upbringing, (iii) families with children have more options of alternative childcare services and (iv) they can negotiate flexible working arrangements in order to reconcile successfully their work and family life.

More flexible working arrangements could be regarded as a remedy for providing equal employment opportunities for women and men. Reconciliation of work and family life is still a problem, both at national and international level. Due to the perpetuation of obsolete gender roles in the society, with women being mainly involved in unpaid care activities and men in money-earning activities (**according to Gender Equality Index 2021 in the Republic of Moldova**) and the gaps in public policy documents on labour, gender inequalities are maintained on the labour market, both in terms of employment and remuneration, women being affected the most. **Directive 2019/1158 of the European Parliament and of the Council on work-life balance for parents and carers** highlights how important it is for authorities to take measures that would stimulate and help balance efficiently the time allocated by women and men for paid and unpaid work (care work). Flexible working arrangements are among these measures. Thus, in order to encourage the workers who are also parents and carers to stay on the labour market, workers should be able to adapt their work schedule depending on their personal needs and preferences. For this purpose and taking into account the workers' needs, employers are to provide flexible working hours in order to adapt the working schedule, including by using, where possible, certain remote work formulas, flexible working schedules or reduced working hours for care activities.

Although provisions on flexible working arrangements were introduced in the national law in 2020¹, they are deficient. The amendments to the Labour Code do provide expressly for the access of all employees to flexible working schedule, but only at request, which raises uncertainties about who can benefit from this provision and to what extent this measure covers all the employees. At the same time, the right to request a flexible working schedule is reserved only for the employees who have individual or collective employment contracts that provide for this possibility and the decision to accept or not the flexible working arrangements is totally up to the employer. Although the provisions introduced in the law were aimed at increasing the access to flexible working arrangements, they create space for discrimination and abuse by employers.

This document is part of a series of analyses that represent four comprehensive public policy responses aimed to ensure a labour market friendly to parents and carers. Given the significant gender inequalities noticed over the years on the labour market, the authorities should step in with an exhaustive and efficient package of measures that would facilitate a smooth integration of parents on the labour market. In this regard, four essential directions of intervention at national level were identified: (i) policy solutions to encourage an efficient return of mothers on the labour market from the childcare leave, as well as the formal employment of women who are working informally; (ii) measures that encourage fathers to engage more in childcare and education activities; (iii) efficient ways of increasing the working schedule flexibility, including for parents and (iv) diversifying the options of alternative individual childcare services.

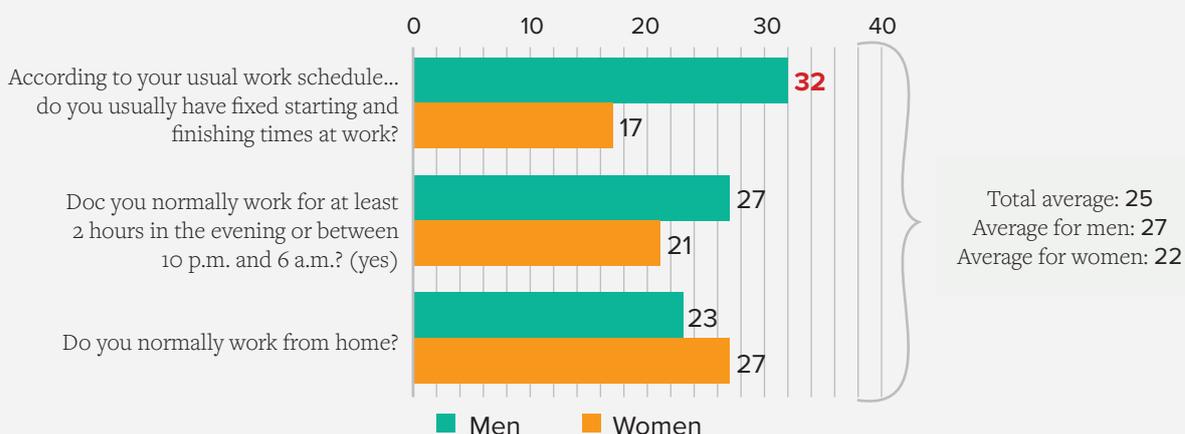
¹ Article 1001. Flexible working schedule - https://www.legis.md/cautare/getResults?doc_id=113032&lang=ro

I. LEVEL OF FLEXIBILITY OF WORKING ARRANGEMENTS IN MOLDOVA

Flexible work is not so widespread in Moldova; on average, only a quarter of the employed population practice certain alternative working arrangements. In order to understand the national context around work flexibility, the Generations and Gender Survey (2020) data were analysed. The Survey addressed the topic of flexible working among the employed population (18-64 years)², by covering a set of benchmark-questions concerning the labour beyond the working hours (8:00 a.m. – 5:00 p.m.), starting and ending the work at fixed hours, teleworking, etc.³ According to the Figure below, on average, only 25% of the interviewed employees mentioned that they usually use one of the flexible working options.

On average, slight gender gaps are noticed, which grow more pronounced when data are interpreted from the perspective of flexibility options used by women and men. Gender-disaggregated data revealed that the share of men who are relatively more likely to admit that they engage in non-typical working arrangements is by 5 pp greater than women's (see Figure 1). We can assume that gender gaps are not big because many women, particularly working women with children, choose sectors and positions that allow them a certain flexibility and men are not worried about balancing work and family life (particularly due to the perpetuation of certain obsolete perceptions about gender roles in the society). As regards the used flexibility options, according to the figure below, we notice that (i) almost twice more men than women have a schedule without fixed start and end times – 32% vs 17% and (ii) more men are used to work at least 2 hours in the evening or at night (between 10.00 p.m. and 06.00 a.m.) in order to perform the work tasks – 27% vs 21% women.

Practice of employed population regarding certain flexible working options



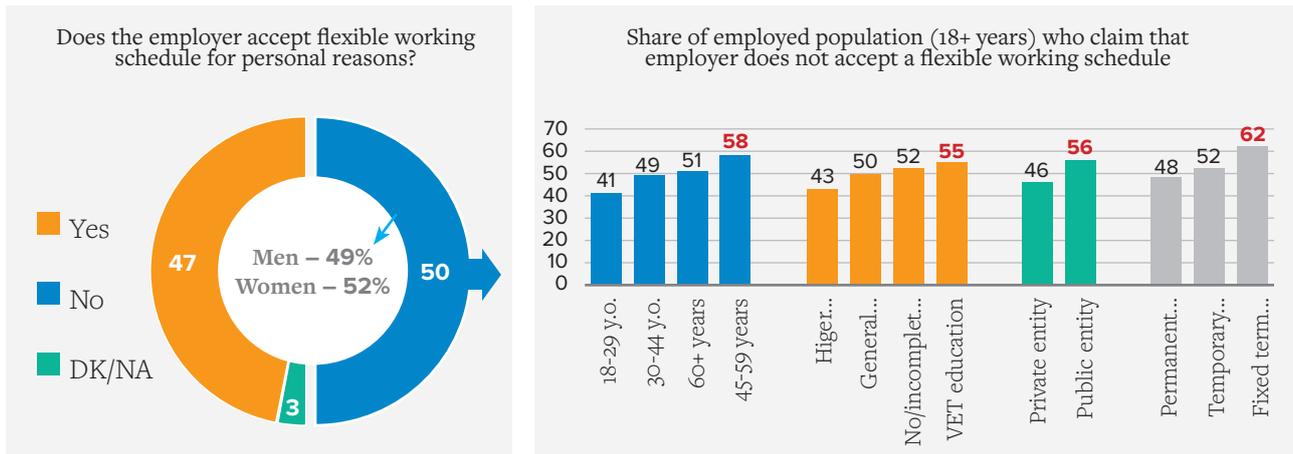
F1. Share of employed respondents depending on the work practice with regards to the use of certain forms of flexible working, %

Source: Generations and Gender Survey 2020

² The survey covered the employed population aged 15+, but taking into account the small number of respondents aged 15-17 (9 respondents), the analysis was carried out on the basis of data specific to the 18+ category.

³ Note that flexible working options are more varied at international level, where over 13 options of non-ordinary working arrangements are identified (see Chapter III. How do we contribute to flexible working?). Given the limitations of the survey regarding the coverage of a more exhaustive set of questions about flexibility (the survey included 10 blocks of questions about quite broad subjects, such as demographic aspects, labour, income, well-being, household, perceptions and attitudes, etc.), the benchmark-questions included in the questionnaire allow to shape a basic image about the national practice in terms of flexible working arrangements.

A significant share of employers is reluctant to provide a job with flexible schedule. Half of the employed population claim that the employer does not accept flexible work schedules (see the Figure below). The breakdown of employment data by socio-demographic criteria revealed certain inequalities in this context. As a result, Figure 2b reveals the criteria, which showed the most significant differences when identifying the profile of persons for whom the opportunity to practice a certain flexible working arrangement is less valid. We found differences by age, type of contract, type of entity and level of education. It is obvious that employees working on the basis of a fixed term contract are least likely to benefit from flexible working (62% claimed that the employer did not accept a flexible schedule for personal reasons), followed by people of pre-retirement age (58%). Employees with a lower level of education and those from public sector also are included in this category.



F2. Share of employed population (18+ years) who reported that the employer does not accept flexible working schedules, %

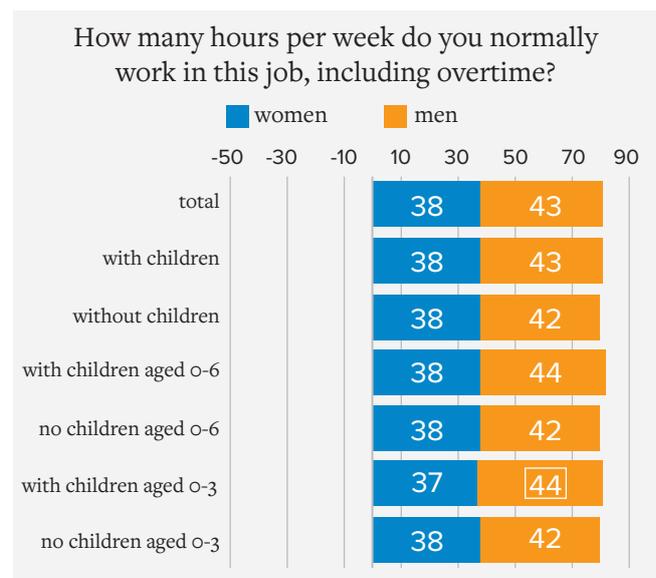
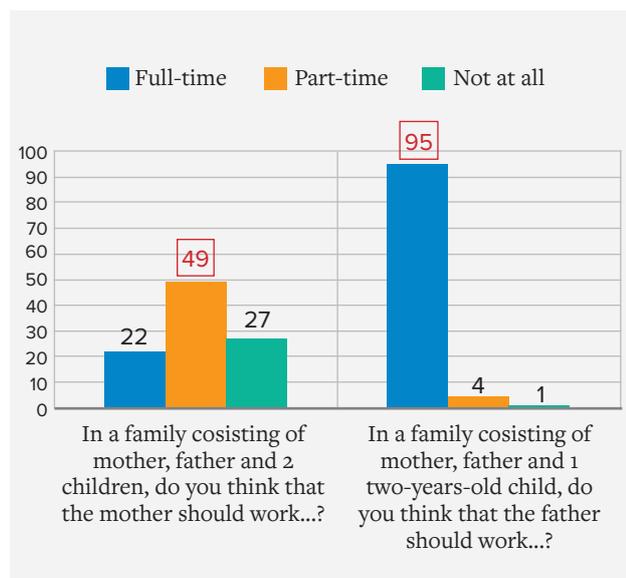
Source: Generations and Gender Survey 2020

Although the access to flexibility is more or less the same for women and men, gender implications are different and considerable. As previously mentioned, pronounced gender gaps are not noticed in terms of practicing certain non-ordinary working arrangements. Nonetheless, lack of flexible working for women means loss of their economic potential – total or partial withdrawal from the labour market, shifting to a part-time working schedule, lower remuneration, segregation of labour market (both per areas and positions⁴), etc., for men – reduced engagement on family life.

(i) Because women do not have access to flexible working schedules, they work less or withdraw completely from the labour market. The first Figure below presents the profile of employed population depending on certain flexible options of the performed work. Thus, we clearly note that the responsibilities of taking care of small children aged 0-3 emphasise the need to shift to a reduced working schedule, mainly in the case of women. The gender difference in this case can be reasoned by the much higher expectations that mothers engage in childcare, which is not so obvious in the case of men (Figure 3b). Generations and Gender Survey revealed that, in the case of a family made up of mother, father and two children, about half of the respondents claim that the mother should work part-time and other 28% believe mothers should not work at all. As regards the fathers – 95% believe they should work full-time. Also, it is worth mentioning that differences are noticed as regards the perception concerning the average number of hours that a mother and a father should work during a week. Thus, for mothers the average number of hours is 21 and for fathers – 26 hours.

⁴ On the basis of NBS data, the Gender Equality Index 2021 was calculated, including for labour sector. Thus, we note a pronounced gender segregation on the labour market both with regards to the areas of activity of women and men, and to their positions, women being more exposed to these inequalities in both cases. <https://progen.md/wp-content/uploads/2021/03/INDEXUL-EGALITATII-DE-GEN-2021-1.pdf>

The Figure 3d shows relevant differences between the number of paid hours' women and men should work during a week. Thus, particularly when children aged 0-3 are present, the work schedule of fathers is by 8 hours longer than in the case of mothers; part-time work being one of the reasons that explains this difference.



F3 a. Mapping the employed population depending on flexible working options, %
F3 b, c. Perception towards the engagement of mothers and fathers in paid and non-paid work, %
F3 d. Average number of hours/week worked by women and men

Source: Generations and Gender Survey 2020

(ii) Part-time work generates financial risks for women. A higher share of women, particularly mothers with children aged 0-3 and women aged 60+, with part-time jobs means lower remuneration and fewer career advancement opportunities. In this context, gender inequality is quite pronounced, constituting 17 pp in the case of presence of children aged 3 (31% women vs 14% men) and to 14 pp in case of persons aged 60+ (31% women vs 17% men). Given the low number of hours allocated for paid work, these employees risk to face a

higher financial vulnerability (see the Figure above, 3d). Note that according to NBS data, gender pay gap for 2020 is 13.7%, women being more disadvantaged from this perspective. Also, a significant gender gap is registered in terms of pensions – equivalent with 20.7%⁵.

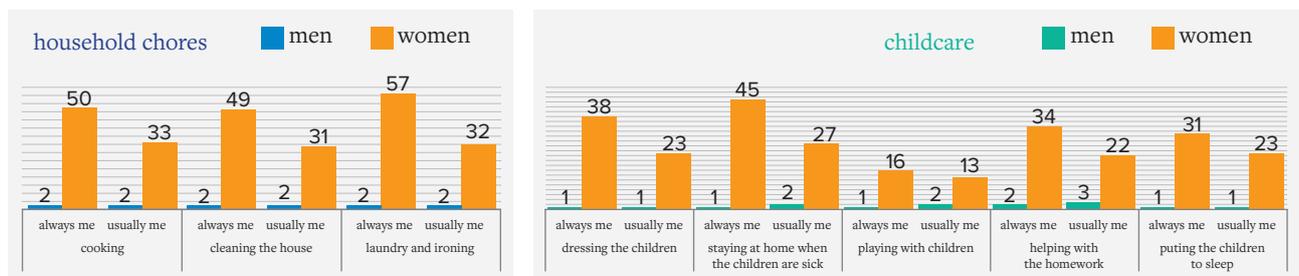
(iii) Insufficient reconciliation practices have an unfavourable impact on work and on the efficient engagement in the performance of household chores, particularly in the case of women. This fact is confirmed by the data reflected in Figure 7. We can describe two main findings: (i) a significant share of employed persons face difficulties in combining efficiently the work responsibilities and the household activities (on average, 48% of the respondents reported they faced such situations several times per week/month and (ii) employed women are those who mainly bear the double burden of combining the paid work with non-paid work, as gender inequalities are against them.



F4. Share of those who mentioned more difficulties in performing the household chores due to work responsibilities, and vice versa, % Source: Generations and Gender Survey 2020

(iv) For men, lack of flexible working has implications on a more active engagement in the family life. The Figure below reveals a clear and pronounced division of the engagement of women and men in performing the childcare responsibilities and household chores. Thus, on average, 65.3% of women compared with 3.4% men reported that they always or usually engage in non-paid activities.

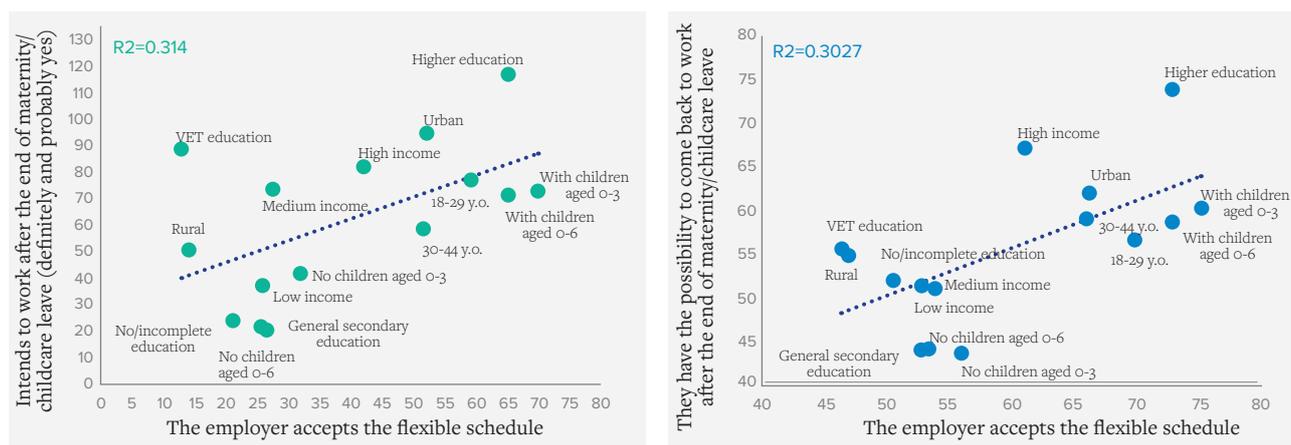
Who does the following tasks in your household?



F5. Share of women and men depending on their engagement in care tasks, % Source: Generations and Gender Survey 2020

⁵ Authors' calculations on the basis of data provided by NBS for 2020. https://progen.md/wp-content/uploads/2021/02/CPD_Inegalitate-salariale-2020.pdf

The willingness of employers to offer more a flexible working schedule determines the return of mothers on the labour market. Figure 6 reveals the correlation between the affirmative answers provided by employed women about the acceptance by the employer of flexible work schedule due to personal reasons and answers of mothers about their intention and possibility to come back to work after the completion of maternal and/or parental leave. We can notice a direct correlation between these conditions. In other words, the more open are the employers to apply non-ordinary work schedules, the more likely are mothers to come back to work. In this context, we do not exclude that the application of certain schemes to increase the flexible working would have a positive impact on diminishing gender employment gap, particularly among mothers (who register the lowest employment rate, according to NBS data).



F6. Analysis of the correlation between the acceptance by the employer of flexible working schedule and the willingness of mothers to come back to work after the end of maternity/childcare leave, %

Source: Generations and Gender Survey 2020

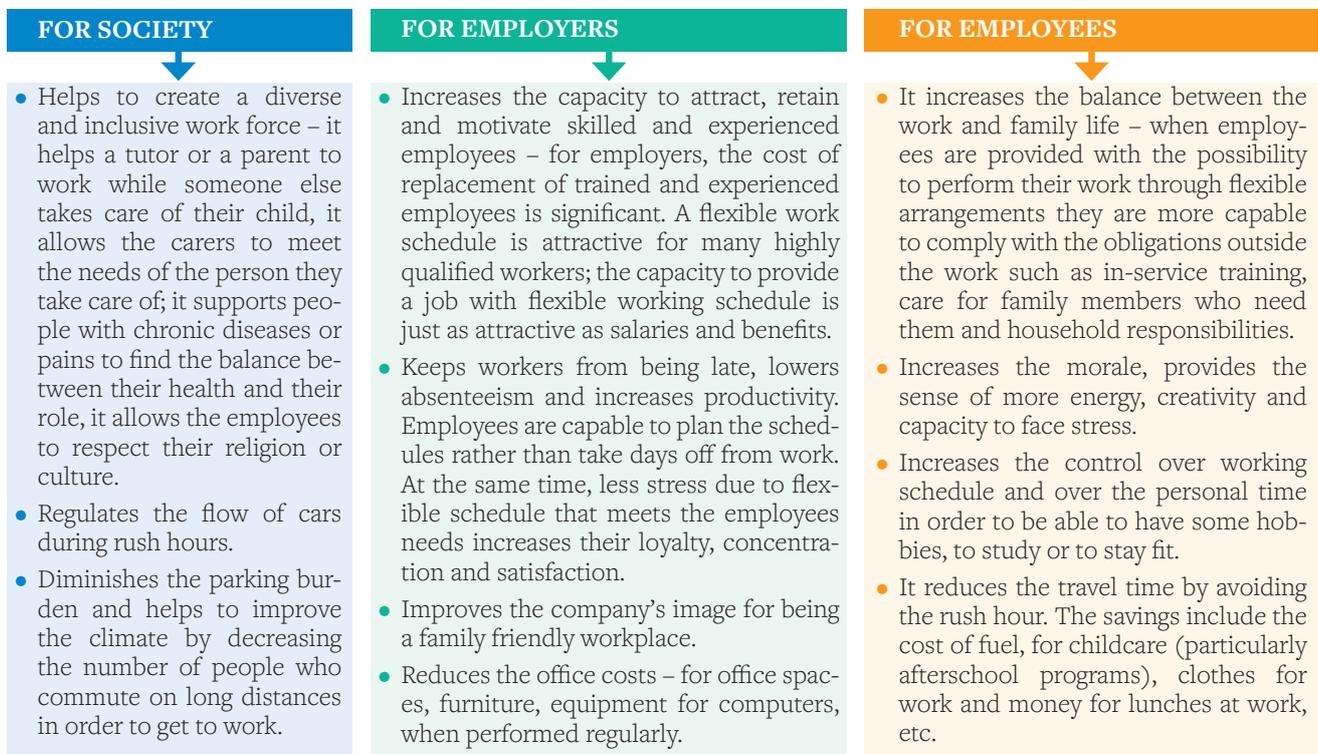
One of the causes that results in limited use of flexible working are the gaps in the employment regulations intended to stimulate and facilitate the implementation of working options adjusted to employees' needs. In May 2020, the authorities approved amendments to the Labour Code, by supplementing it with a new chapter on remote working (**Chapter IX**)⁶. Thus, the new provisions regulate the remote work, the conclusion, amendment and termination of individual employment contracts that allow teleworking, and the peculiarities of organising and protection in remote working. This is an important step encouraging employers to implement one of flexible working arrangements, namely teleworking. Besides these provisions, the Labour Code includes certain clauses on flexible working schedule. Nonetheless, the failure to specify clear working schemes with specific criteria that would best align with the specificities of the activity and the needs of the employees and the fact that the employer is the one who mainly decides upon the flexibility options offered to employees, violate the right of the employee to benefit from those arrangements that would best meet his/her needs. For these reasons, in order to overcome certain practices that disadvantage the equal participation of women on the labour market, it is important to supplement the labour law with provisions that would help to achieve an efficient reconciliation of work and family life, without negative repercussions on the opportunities of professional growth and/or equitable remuneration.

⁶ https://www.legis.md/cautare/getResults?doc_id=121530&lang=ro

II. HOW DO WE CONTRIBUTE TO EXPANDING THE WORKING ARRANGEMENTS?

Offering more flexible working arrangements is a precondition for an equitable and inclusive work environment. Taking into account the current context, particularly the past year, a period when many employees had an asynchronous and non-standard work schedule⁷, it is important to understand that in fact, the global labour trends are changing⁸. Thus, we note a gradual shift to different working options, both within the enterprise (at the workplace) and outside it. This note discusses flexible work schedules. Given the importance of ensuring decent working conditions, where every person can enjoy equitable employment opportunities that meet the individual labour needs, it is necessary to shape the labour policies in order to efficiently implement these provisions. At European level, Directive 2019/1158 of the European Parliament and of the Council on work-life balance for parents and carers highlights how important it is for authorities to take measures that would stimulate and help efficiently balance the time allocated by women and men for paid and unpaid work (care work).

The international practice reveals the positive connection between flexible working arrangements, improved productivity and income generation. A successful flexibility policy results in higher engagement and performance of employees, which can improve the companies' profits. At the same time, flexible working arrangements can be a useful method of maintaining the employees' productivity, supporting their personal needs at the same time. A flexible work schedule offers various benefits, including higher productivity, improved morale, reduced absenteeism, increased turnover and better quality of work.



T1. Benefits of flexible working schedule for different stakeholders

⁷ https://progen.md/wp-content/uploads/2021/02/Studiu_Impact_COVID_corectat.pdf

⁸ <https://hbr.org/2021/01/9-trends-that-will-shape-work-in-2021-and-beyond>

An extended range of flexible working arrangements are identified and piloted at international level.

Flexibility at the workplace means offering a ‘flexible working arrangement’ by introducing different options that modify the time and/or place where the work is usually performed. According to the international practice, a flexible working arrangement targets 3 basic dimensions: (i) flexibility in scheduling the worked hours, such as alternative working schedules (for example, flexible time and compressed working weeks) and arrangements concerning the schedule of shifts and pauses; (ii) flexibility in the number of worked hours such as part-time work and work quotas; (iii) flexibility at the workplace, such as work from home or from an alternative location. In this context, the following working schedule options were identified (see the Table). For example, in Australia, there are 13 flexible working arrangements that can be implemented by employers.

WORKPLACE FLEXIBILITY OPTIONS	
TYPE	DESCRIPTION
Flexibility time	Allows to vary only with the start and finish times of the working time in the same day, but not with the total number of hours per day. For example, non-traditional start and end hours (e.g. 09:00 a.m. - 06:00 p.m. or 07:00 a.m. - 04:00 p.m.).
Compressed week	The same number of working hours per week (per week or per month), compressed in a shorter period. For example, a week of 40 hours can be worked at a rate of 10 hours per day during four days instead of eight hours per day for five days. Modifications of the salary are not necessary.
Free time in exchange of overtime hours	Approved overtime hours that can be compensated with free time It may include ‘flexitime’ arrangements according to which an employer can work overtime during various days of the week and later to claim free time instead of those hours.
Teleworking/ Remote working	You can work in other location than the official workplace. A wide range of terms concern the work in different locations, including ‘mobile working’, ‘distributed working’, ‘virtual teams’ and ‘teleworking’. They are collectively named ‘telecommuting’ in this set of instruments.
Part-time working	An usual type of working which implies less hours than in the case of full-time arrangement, with remuneration that is proportionate with that work. Not all the part-time working is flexible, but it offers flexibility to workers who have arrangements of lifestyle options that are not compatible with part-time work arrangement.
Job-sharing	A full-time job role is divided into several job roles that should be assumed by two or more employees that are paid proportionately for the share of work performed by each of them. For example: Two employees (who work in the same department) with excellent technical abilities are interested in starting a business together. With the approval of their department, the position of every employee is reduced until the break: one of them works in the morning and one of them in the after-noon; the combined effort of those two employees equals to a full-time position, each of them having 0.5.
Purchased leave	A period of non-paid leave usually available when the annual leave ends. Employees usually deduct the amount for the unpaid leave from the employee’s salary, as a lump sum or as average deductions during the year.
Flexible career	Implies that the person can exit and re(enter) to work in the same organisation or it can increase or reduce the volume of work or the career pace in order to meet different stages of their life. This can be quite relevant for employees who retire. It can also imply that employees are able to take ‘one year career gap’ at the beginning of the career and to get back to work after for the same employer.

T2. Workplace flexibility options

At the national level, in order to increase the number of people who can benefit from flexible working arrangements, legislative amendments are to be made and supporting measures are to be taken. The conceptual analysis of the national law on workplace flexibility identified the following major problems concerning working arrangements: (i) working flexibility is assimilated more like a ‘bonus’ to which certain categories of employees are entitled, when in fact, it should be regarded as a normality for all the employees and (ii) the implementation of flexible working arrangements is at the discretion of the employer. In such situation, if these approaches are perpetuated, this will limit various employees to use different schemes of salary-based work. Thus, in order to overcome such situations and increase the efficiency of flexible working arrangements, at least four essential interventions need to be implemented in tandem. The first of them having a more imperative character, while the last one – a support character: (i) review the asymmetry of power between the rights of the employer and of the employee regarding the flexible working schedule, (ii) exclude the mitigating circumstances concerning certain categories of employees that can benefit from/request, as a matter of priority, flexible working arrangements (such as parents with small children, guardians, carers, older people, etc.); (iii) provide for reasonable adaptation to flexible working, (iv) approve the regulatory framework to support employers from different activity areas in introducing flexible working.

The proposed interventions in details

(i) When deciding about implementing the flexible working schedule, the legislation should ensure a balance between the rights of employers and of employees. Although the national labour law allows implementing flexible working arrangements, including remote working, there were identified various gaps that do not encourage employees to benefit for working schedules that are best adapted to their needs. Specifically, we mean Article 100¹ of the Labour Code, which specifies that flexible working schedules shall be established by the employer in agreement with the employee at his/her request, if this opportunity is stated in the collective employment contract, in the internal regulations of the establishment or in another regulatory act of the entity. Interpreted from the perspective of an employee, this provision diminishes the level of observance of equal rights and interests of both parties in employment relationships. Thus, as long as the implementation of flexible working arrangements remains at the discretion of the employer, we do not exclude that flexible working practices will not be spread on a large scale in Moldova.



F5. Proposed interventions to adjust the labour law in terms of flexible working
Source: Authors' proposals

The labour law is to be supplemented with express provisions that provide the employee with the right to request flexible working. The international practice on this subject allowed to identify certain benchmarks when employees apply for flexible working arrangements. We specifically refer to the situation of **United Kingdom**. Thus, employees who decide to change their working schedule should make an application to their employer and in this regard, they should comply with certain requirements on filling in that application (see the box below). In this context, to facilitate observance of employee's right to request and benefit from a certain flexible working arrangement in Moldova, taking into account the lack of these clauses, the following express provisions need to be introduced in the law: (i) the employee's right to request from the employer a flexible working schedule and (ii) the minimum information the employee should include in the application filed with his/her employer. The following model can be used in this regard.

INTERNATIONAL PRACTICES

The practice of the **United Kingdom** regarding flexible working schedule underlines certain benchmarks in implementing such arrangements. Thus, in order to ensure an efficient work-life balance, the employee has the right to shift to another working arrangements, other than the standard ones. To do so, the employee should submit a **written application** in order to shift to a flexible working arrangement.

The application should be filed in written form, via email or in form of a letter sent to the employer. **The Acas Code of Practice on flexible working requests** provides certain benchmarks in the process of filing such a request. Thus, the employer can provide a **standard form to make an application** to facilitate this process. Additionally, it is specified what information should be compulsorily included in the letter: The letter shall include:

- Application date;
- Statement that this is a statutory request;
- Details of how the employee wants to work flexibly and when they want to start;
- An explanation of how they think flexible working might affect the business/entity and how this could be dealt with, for example if they're not at work on certain days;
- A statement saying if and when they've made a previous application.

(ii) **The attenuating circumstances concerning certain categories of employees in terms of benefiting from a flexible working schedule are to be eliminated.** Though initially these provisions offer certain facilities for some categories of persons in reconciling the family/care and professional responsibilities (such as parents with small children, guardians, carers, people with disabilities, older people, etc.) they can later result in employment marginalisation/discrimination circumstances. Thus, the practice to offer flexible working arrangements only to certain categories of persons (identified as categories that have priority in this situation) can emphasise certain employment inequalities which will continuously discriaffect those categories. This can be explained by the need to respond with measures taken by the employer involving certain costs for adapting the working schedule and the place of work to the conditions agreed with the employee (remote working, part-time schedule, compressed working days, flexibility regarding the start and end of the working day, etc.). In this context, employers have additional labour costs and we do not exclude that they will show an increased resilience/reluctance to employ the categories that will involve additional costs related to flexible working schedules. Thus, the elimination of provisions/circumstances that allow only to certain categories of people to benefit from flexible working arrangements will help overcome the obsolete perceptions towards some catego-

ries of employees. For example, parents with small children (particularly mothers), carers of family members with disabilities or with certain health issues (women mainly assume this role), older people, people with disabilities, etc. Thus, the more diverse the profile of the labour force who can actually request flexible working schedule, the more difficult for the employer will be to marginalise/discriminate against certain categories of persons upon employment.

Any employee might be in a position to need a flexible working arrangement. In this context, the legal framework should not provide for specific reasons/provisions according to which an employee may or may not benefit from flexible working. Thus, when identifying the categories that may request flexible working arrangements it is necessary to overcome the idea that flexible arrangements are aimed to facilitate only the employment of parents, carers, older people, people with disabilities, etc. We also should remember that other categories of employees may need to adapt their working schedule in order to balance efficiently the paid and non-paid work. Thus, someone can request flexibility to better take care and educate the children, take care of parents, etc., but someone can request such arrangements in order to engage in education activities, in activities that help to solve some community problems, volunteering, etc. In this regard, not specifying certain categories of beneficiaries of flexible working schedules will provide fair opportunities to all employees.

INTERNATIONAL PRACTICES

In the United Kingdom, all employees have the legal right to request flexible working - not just parents and carers. **The Code of Practice on handling in a reasonable manner requests to work flexibly** included the only basic criteria that should be compulsorily respected by the employee who wants to request flexible working arrangements.

Minimum criteria for applying a flexible working schedule:

Every employee has the statutory right to ask to work flexibly:

- after 26 weeks' employment service;
- if is classified **legally as employee**;
- if the employee did not ask to work flexibly in the past 12 months.

* * *

PricewaterhouseCoopers implemented an internal policy they loosely call 'everyday flexibility'. It isn't something the company mandates that all teams adopt; it's an approach/principle and a way of life that is meant to be individualized for each person. The key is understanding that it's impossible to have a one-size-fits-all approach to 'flexibility'. Every employee, at any age, benefits from and is looking for its availability. Flexibility for a *carer* might mean being able to leave work early to take an elderly parent to a doctor's appointment. For a *parent*, it might mean taking a midday run, so evenings can be spent with their children. And for *others*, it could simply be taking an hour in the afternoon to go to a yoga class and recharge (...)

(iii) Reasonable adjustment of the workplace to implement flexible schedules needs to be included in the law. Starting from the premise that labour market is characterised by a large diversity of jobs (both from the point of view of area of activity and specificities of work), it is clear that not all the workplaces offer the same flexible working arrangements. For example, companies that provide certain services (translation, consultancy, IT, etc.) can offer a large range of flexible working arrangements, while the employers from areas that involve working in units with continuous flow or in shifts – can implement completely different options. Thus, the

right of the employee to benefit from flexible working is to be aligned with the reality of the area in which the person works (specificities of the provided work, type of industry, position, etc.). Because the right to a flexible workplace refers particularly to the responsibility of the employer to create the requested working conditions, if possible, it is necessary a reasonable adaptation of the workplace to flexible working. This process implies an objective analysis of the working situation of the person who requested the flexible working, the adjustment being based on certain specific and clear assessment criteria.

This provision aims to facilitate the process of making an objective decision on the acceptance or refusal to implement flexible working schedule. Speaking about the previously proposed interventions aimed at ensuring the right of the employee to request and benefit from flexible working schedule and at providing equal opportunities to all the employees to benefit from such an arrangement that is best aligned to their needs, we shouldn't omit the fact that not in all cases it will be possible to meet the individual requests of the staff (taking into account the work specific character) and an answer in this regard is to be communicated to the applicants. Thus, in order to facilitate the decision-making on the implementation of the flexible schedule for an employee or another, without exposing the employer to the perpetuation of certain discriminatory practices, it is necessary to indicate expressly the reasonable conditions according to which the request to benefit from flexible schedule is accepted or rejected. Otherwise, it is necessary to establish the legal obligation for the employer to present reasonable explanations in the case of acceptance or refusal of the request to provide one flexible working arrangement or another.

The legislation recommends to include the minimum factors that are to be taken into account by the employer when making the decision about reasonable adaptation of the working schedule. In this regard, **the international practice** underlines a set of minimum five factors, namely: (i) costs for the reasonable adjustment of the working schedule and workplace according to the flexibility arrangement and with the entity's characteristics (dimension, financial characteristics, nature of work, etc.), (ii) impact on the entity's performance and on the quality of work provided by the applicant, (iii) possibility to engage other labour forces, (iv) effects on the clients' satisfaction, (v) consequences on the entity if the request for flexible working arrangements is not met, etc. These analysis benchmarks will ensure a balance between the right of the employee to benefit from flexibility and the right of the employer to come with an optimal answer that do not have negative impact on their activity. Where appropriate, those elements can be regarded as benchmarks during the mediation process when the employee who requested flexibility does not agree with the decision taken by the employer.

The terms regarding the decision to accept or refuse the request for reasonable adjustment of the workplace from the perspective of flexibility are to be specified. Thus, the Labour Code should stipulate (i) the period for reviewing the employee's request to change the working arrangements, (ii) the period during which the employer shall take a decision about employee's request and (iii) in the case of a favourable decision, the period when the flexibility arrangement agreed with the applicant will be implemented. For example, in the **United Kingdom**, the employer has 3 months (or longer if agreed with the employee) to make a final decision on flexible working. In **Australia**, this term is 21 days, a period during which the employer should take a decision.

At the same time, the law should allow reviewing the flexible working arrangements when they are implemented, by either the employer or the employee. This means that regardless the working schedule, the performed work should meet the agreed quality and quantity. Thus, if the employee or the employer notices that the job responsibilities are not performed as agreed when an agreed working arrangement is implemented, the Labour Code should allow any of the parties involved (employer or employee) to request the review and the negotiation of those arrangements in order to improve the performance of work.

INTERNATIONAL PRACTICES

The experience of Australia can be indicated as one that supports the adaption of workplaces from the perspective of flexible working arrangements. Thus, there are sample documents for employers aimed to increase the efficiency of providing flexible working arrangements. Employers and employees can agree to change the standard working arrangements in order to help the employees to reconcile the work and other aspects of their lives. The flexibility has various forms and different arrangements will fit for different workplaces and workers. There are at least 13 common options of flexible working arrangements.

TIPS FOR EMPLOYERS WHEN THEY RECEIVE A REQUEST FROM THE EMPLOYEES TO CHANGE THE WORKING ARRANGEMENTS:

If the employer receives a request for flexible working arrangement, they should take into account the following:

- What are the employee's key duties?
- Do any of these duties need to be done at set times or locations?
- Why is the employee requesting this new arrangement?

CONTINUED

- Who does the employee interact with in the normal course of their work? Will the proposed arrangement affect these interactions?
- Are there any technology solutions, which could help? (for example, video calling, instant messaging, email)
- What are the consequences for the employee if the request is refused?

REFUSING A REQUEST

Employers can only refuse a request for a flexible working arrangement from an employee who is entitled to make the request under the Fair Work Act on reasonable business grounds.

Reasonable business grounds for refusing a request could include:

- **cost** – the requested arrangements would be too costly for the employer;
- **capacity** – there's no capacity to change the working arrangements of other employees to accommodate the request;
- **practicality** – it would be impractical to change the working arrangements of other employees, or take on new employees, to accommodate the request;
- **inefficiency or impact** – the requested arrangement is likely to result in significant loss of efficiency or productivity. The request may also have a significant negative impact on customer service.

* * *

In the United Kingdom, the employer should analyze correctly the request, in accordance with the Acas Code of Practice on flexible working requests and take a decision within maximum 3 months. Some employees will allow the employee to file such a request even if the employee does not have the legal right to benefit from these practices. In this case, the employers shall be guided by the internal procedures on handling flexible working arrangements, developed at their discretion.

The employers can turn down a request only if:

- it will cost the enterprise/entity too much, which will have negative impact on its activity;
- the work cannot be reorganised among other staff;
- more staff cannot be recruited in the team/company/entity;
- the flexible working will affect the quality and the performance of the person and of the entity;
- there will be a negative effect on the ability to meet customer demand;
- there's not enough work for the employee to do when they've requested to work;
- there are planned changes to the labour force.

(iv) Secondary legislation that would contain guidance for the employers and employees on flexible working. If the previous measures were imperative, then this measure aims to facilitate the implementation of the above-mentioned practices. In this context, we refer to the authorities approving a framework regulation/a guideline/instruments for employers in order to provide more details to consider when deciding to initiate the flexible working. Thus, the legislation is to provide expressly the development of support materials for employers containing details about the processes concerning the request to create a flexible place of work, minimum conditions to benefit from flexible working arrangements, models of requests/decisions, deadlines for providing the answer, flexible working arrangements depending on the area of the activity of the employer, etc. Certain international models can be consulted **here** and **here**.

At the same time, it is necessary to have provisions that encourage the employers to develop internal policies on flexible working. Given that various benefits were underlined in relation to integrating flexible working arrangements, the legal framework is to provide for clauses aiming at encouraging employers to develop internal procedures that are specific to the work they perform in order to ensure a more efficient alignment with the interests and needs of employees. In this regard, these procedures will have developed by the employers, but the main condition is that they should be in line with the minimum provisions set in the Labour Code on flexible working schedule.

III. PROPOSED AMENDMENTS TO THE LABOUR CODE OF THE REPUBLIC OF MOLDOVA No 154/2003

CURRENT EDITION	PROPOSED AMENDMENT
<p>Article 100¹. Flexible working schedule</p> <p>(2) Flexible working schedules imply a different way of organising working time, compared to the one set in the entity.</p>	<p>Thus, it is proposed to exclude paragraph 2 and supplement Article 1 with the notion of flexible working schedules, in accordance with Article 3(f) of the EU Directive No 2019/1158 of the EUROPEAN PARLIAMENT AND COUNCIL of 20 June 2019 on work-life balance for parents and carers and repealing Council Directive 2010/18/EU: ‘flexible working arrangements’ means ‘the possibility for workers to adjust their working patterns including through the use of remote working arrangements, flexible working schedules, part-time working or compressed working week’.</p>
<p>Article 1. Terminology</p>	<p>It is proposed to supplement the Article 1 with the term ‘reasonable accommodation’ in accordance with Law No 121 of 25.05.2012 on Ensuring Equality, which will have the following text: ‘any necessary or appropriate modification or adaptation, in a particular case, which does not impose a disproportionate or unjustified burden when it is necessary to ensure a person, in the cases established by law, the right to a flexible working schedule’.</p>
<p>Article 100¹. Flexible working schedule</p> <p>(1) Flexible working schedules shall be established by the employer in agreement with the employee at his/her request, if this opportunity is provided for in the collective employment contract, in the internal regulations of the establishment or in another regulatory act of the entity. (2) Flexible working schedules imply a different way of organising working time, compared to the one set in the entity. (3) Flexible working schedule shall be established on the basis of the parties’ agreement, with the employer monitoring the employee’s daily working time. (4) The working conditions within a flexible working schedule shall be established in the individual employment contract. (5) Flexible working schedule shall be applied without prejudice to the provisions of Article 100. (6) The duration of daily working time may be divided in two periods: a fixed period, when the employee is at the workplace, and a variable period, when the employee may choose the arrival and departure time.</p>	<p>It is proposed to reword Article 100¹ of the Labour Code as follows:</p> <p>Article 100¹. Flexible Working Schedule</p> <p>(1) Flexible working schedule shall be established at the request of employees or by the employers (ex officio), both at the moment of employment and after the closure of the individual employment contract, by agreement between the employee and the employer, except the cases stipulated in paragraph 9 of this Article. (2) The flexible working schedule concerns at least 3 dimensions: a) flexibility in scheduling the worked hours, such as the duration of working schedule, start and finish of the work, breaks, alternation of working and non-working days; b) flexibility in the quantity of worked hours such as part-time working and work quotas; c) working flexibility, such as working from home or in an alternative location. (3) The flexible working schedule shall be established in the individual employment contract or in the additional agreement to the individual employment contract. (4) Flexible working schedule does not imply changes in norming the work, the remuneration as well as limiting the rights of the employee on the calculation of seniority, including the length of contribution, length of annual leave or other employment rights. (5) An employee may ask for reasonable accommodation of the working schedule in written form through a request, which shall include the following information: data of request submission, desired working arrangement and when would the person like the working schedule to enter in force, the impact or the reason of these changes in the working schedule (if any).</p>

	<p>(6) The employer shall examine the request for reasonable adjustment of the working schedule and shall provide an answer within 30 days from its receipt.</p> <p>(7) If the request filed by employee is approved, the employer has 3 months to reasonably adjust the working schedule in order to be more flexible.</p> <p>(8) If the employer rejects the employee's request, the employer shall indicate the reason for the decision through a written answer to the request filed by the employee.</p> <p>(9) During the examination of the request for reasonable adjustment, the employer can take into account the following factors in order to determine if it is possible or not to adjust the job to flexible schedules:</p> <ul style="list-style-type: none"> a) additional costs; b) incapacity to reorganise the work among the existing staff; c) incapacity to recruit additional staff; d) negative impact on quality; e) negative impact on employee's performance; f) negative impact on the capacity to meet customer demand; <p>(10) The employer shall present evidence deemed appropriate to justify the reason of the refusal.</p> <p>(11) The refusal of the employer can be appealed with the Council for Equality or in the court.</p>
	<p>Final provisions</p> <p>In order to align with the provisions set in the Labour Code on flexible working schedule, the Ministry of Labour and Social Protection, within 6 months, shall develop a framework regulation on reasonable accommodation of the working schedule in order to increase its flexibility including methodological guidelines, which will contain: concepts and benchmarks, examples of flexible working arrangements, criteria for analysing the specificities of the entity, models of relevant internal documents, tips for developing and approving internal regulations in this regard, approved by Government Decision.</p>



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