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## **The ‘nexus’ requirement for flexible work arrangement requests to work from home**

Many employees have made requests to work from home, some of which have been made with reference to section 65 (Requests for flexible work arrangements) of the *Fair Work Act*.

Some recent FWC decisions highlight the jurisdictional requirement that there be a ‘nexus’ between the employee’s circumstances (e.g. the employee is a parent of a child of school age or younger, or aged 55 and over), and the flexibility requested. If a ‘nexus’ does not exist, the jurisdictional requirements for making a request under section 65 are not met and the issue of whether the employer has ‘reasonable business grounds’ to refuse the request does not arise.

The ‘nexus’ requirement arises from section 65(1) which gives an employee to whom particular circumstances apply, a right to request flexible work arrangements “because of those circumstances”. For example, it is not enough that an employee is aged 55 years or over. The requested flexible work arrangements must relate to the circumstance of the employee being aged 55 or over, e.g. the employee is suffering from an age-related health condition.

In [\*Michael Fogo v Boeing Aerostructures Australia Pty Limited\*](#) [2024] FWC 3037, Commissioner Connolly held that an employee’s request under section 65 to work from home did not meet the jurisdictional requirements in the Act because there was no ‘nexus’ between the employee’s circumstances (aged 55 or over) and the flexibility requested.

The employee was 61 years of age and requested to work from home two days per week in order to transition to retirement. The following extract from the decision is relevant:

[68] *The principal argument Mr Fogo advances in support of the “nexus” between his request and his circumstances is that working from home 2 days a week will allow him to transition into retirement. Enabling him to adjust to the negative impacts of the reduce social exposure of not being in the workplace on those 2 days.*

[69] *Critically, however, Mr Fogo does not specify when it is he intends to retire or even seek to give his employer any indication when he will be able to decide to retire if his flexible working arrangement is accommodated. As a person of 61 years of age, this may be 5 years or more from now. This being the case, it is difficult to see how any nexus or proximate connection can be maintained between a request to work from home now and a still-to-be-determined decision to retire in the future.*

[70] *Mr Fogo has also not presented the Commission with any medical evidence or independent assessment to advance his proposition that when he retires the reduced social exposure of being in the workplace less (or not at all) will have a negative impact on his mental health. The strongest argument he advances is that it “may” have this negative impact.*

See also the decision of Commissioner Platt in [\*Shane Gration v Bendigo Bank\*](#) [2024] FWC 717 which dealt with some similar issues relating to a working from home request, including the 'nexus' requirement'.

For further advice or assistance on any working from home or other flexible work issues, please contact Stephen Smith, Principal of Actus Workplace Lawyers on 0418 461 183 or Email: [stephen.smith@actuslawyers.com.au](mailto:stephen.smith@actuslawyers.com.au).