



Parent & Carer
Alliance C.I.C.

Flexible Working Requests

Guidance note

Guidance for Employers

Quick Overview

From 6th April 2024:

- Employees can make a request from day one of employment.
- An employee will not have to explain what effect, if any, they think their requested change would have on the employer.
- Two requests can be made in any 12-month period.
- Employers must consult with the employee first before refusing a request.
- Employers must conclude the process within two months unless the parties agree a longer period.

PRACTICAL NOTES

Once you've successfully filled a vacant position and you're These notes cover the conducting of flexible meeting requests and appeals.

List questions before the meeting to ensure you discuss all the relevant issues and take in copies of any documents. This will give you something to refer to but does not preclude you asking further questions that arise in the course of the discussion.

Notes of meetings should be written, as far as possible, word for word and in their entirety, even if parts of the discussion seem irrelevant at the time.

You may adjourn proceedings at any point during the hearing if it seems necessary or desirable to do so e.g. to gather further information.

Never make or give the decision in the hearing. Adjourn to consider the points, speak to the Employment Advisory Service, who will ask to see a copy of the minutes and discuss the options with you. It remains your responsibility to make the final decision.

What is flexible working?

Flexible working covers a number of options, some of which may or may not already be in place in your organisation. It is not confined to requests by individual workers, but can form part of a broader reorganisation

BACKGROUND

of staffing requirements. Some forms of flexible working are:

- Part time working.
- Changes to days or times or locations worked.
- Job share arrangements.
- Annualised hours (usually implemented across a group of employees to meet fluctuating demand for work around the year).
- Working from home.
- Flexi-time arrangements.

Are there any advantages for employers in this?

- Retention of valued employees for who a full-time core-hour working is no longer possible.
- A broader local pool of potential employees who are available at different times of the day or for part-time working only.
- A more motivated and loyal workforce – employees who have working hours tailored to suit them are more likely to want to stay with you.
- An opportunity to tailor the number of staff you have at work at any time to the demands of your customers.

THE STATUTORY RIGHT

Employees have a statutory right to request flexible working. This does not mean that the categories mentioned have a statutory right to work flexibly. Your obligation as the employer is to show you have considered the request reasonably. However, you do not have to agree to the request. If you are not sure, speak with the Employment Advisory Service. See also the guidance notes below on reasons to refuse.

Employed agency workers (those who work under a contract of employment and not an agency worker contract for services) are only entitled to make a request 'upon return' from a period of parental leave.

Employee shareholders (those employees who have been issued with at least £2000 worth of shares and cannot claim unfair dismissal) are only entitled to make a request within 14 days after a return from a period of parental leave.

EMPLOYEE ELIGIBILITY

In order to have a request for flexible working considered under the statutory process, employees must meet certain eligibility requirements:

- Have worked continuously for you for 26 weeks at the time of making the application.
- Not to have made a flexible working request in the previous twelve months.
- Be requesting a change in hours, times or place of work or some other change relating particularly to your organisation's way of working.

THE PROCESS

An application for flexible working from an employee must:

- Be in writing
- Be signed and dated and give the date the changes would start from
- State their preferred pattern of working
- State what effect they believe this will have on the organisation and how this impact can be handled.
- Confirm that a previous request has not been made in the past 12 months.

The application will also ask the employee to confirm whether the request is made in relation to the reasonable adjustments duty under the disability provisions of Equality Act 2010 because this may play a part in your decision making process.

Request Flexible Working letter FLE02 from the Employment Advisory Service.

In response to a request, as a minimum, you should:

- Either agree in writing or if you cannot do so straight away, arrange a meeting with the employee in a timely

manner.

- Consider ways in which you can either meet the request or come to some mutually agreed compromise.
- Respond after the meeting in a timely manner, in

The employee does not have a statutory right to be accompanied at a flexible working meeting; However, you should check any flexible working policy in existence in your organisation to check whether there is a contractual right.

In the event that there is no contractual right to a companion, the statutory Code of Practice on flexible working and related guidance states that it is good practice that a companion be permitted. You should discuss this with an adviser before making a decision.

An employee who is asked to act as an accompanying person is under no statutory duty to undertake the role. If there is a conflict of interest, you are entitled to refuse an employee's choice of accompanying person.

In the case of an employee under the age of 18, you should consider allowing them to bring a parent, guardian or other adult who could act in that capacity. This may also be appropriate for an employee with acknowledged learning disabilities.

An employee who has difficulty with spoken communication should be provided with assistance, for example an interpreter or a signer. You should pay any costs incurred and assist with the arrangements if necessary. Any interpreter or signer is in addition to an accompanying person.

A companion is not entitled to time off work to prepare for the meeting. However, it may be best to allow them to meet with the employee before and after the hearing in order to confer. They must be paid for this time and the time spent at the hearing.

THE RIGHT TO BE ACCOMPANIED

If the employee cannot attend the first meeting, another meeting should be arranged.

If an employee fails to attend the second meeting without good reason, you may consider the request

NB. If you are the employer of an agency worker, you will need to involve the end user organisation to whom the employee is assigned in the decision making.

- Make a note of the date, time and venue and list those present.
- Explain the purpose of the meeting, introduce those present and their roles and explain the procedure.
- Remind the employee that you will not be making a decision at the end of the meeting, but that your role now is to listen to their proposal and discuss any problems and options around this.
- If the application indicates that the request is being made in relation to the duty to make reasonable adjustments under disability discrimination legislation, ask the employee to confirm that this is the case.
- Ask any companion of the employee to identify themselves.
- Go through the proposals and allow the employee to explain.
- Ensure clear and comprehensive notes are taken.
- Establish if the employee is willing or able to consider any other suggestions, for example, different patterns of working that may still meet their needs but meet the needs of your organisation too.

If the request you are dealing with is a request which conflicts with a request from another employee and you are only able to agree to one, explain to the employee that reaching a compromise may involve a discussion between the two employees themselves.

- Close the meeting, noting the time. Invite the employee and any companion to sign the minutes as a true record. If they refuse, try to find out why. If they continue to refuse, record that the minutes were offered

HOLDING THE MEETING

and refused, then you and the note-taker sign. Employees may have copies of the minutes.

- Explain you will respond shortly to the application. Check once more that there is nothing else the employee wishes to add.

- Avoid making any reference to the Employment Advisory Service during the course of the hearing. Our role is to provide professional advice on the options available to clients, NOT to make a decision. The distinction can become blurred and this can cause legal difficulties if a case goes before an employment tribunal

Consider if you are able to meet your employee's request and if not, whether there are any compromises that could be made meaning a modified arrangement is agreed. You should weigh up the benefits of the requested changes for both you and the employee against any adverse business impact of implementing the changes. The emphasis should be on trying to accommodate wherever possible i.e. if you are not sure if the change to the working pattern would work or not, then you could trial the changes and assess how they will work in practice. This will demonstrate you are reasonably and logically considering the request before outright refusing it.

You may refuse the request only for one (or more) of the following statutory reasons:

- The burden of additional costs
- The detrimental effect on your ability to meet customer demand
- Inability to re-organise work among existing staff
- Inability to recruit additional staff
- The detrimental impact on quality
- The detrimental impact on performance
- A lack of work during the periods when the employee proposes to work
- Planned structural changes.

Speak to the Employment Advisory Service who will send you appropriate outcome letters

AFTER THE MEETING

APPEAL	<p>The employee does not have a statutory right to appeal a decision denying their flexible working request. However, the statutory Code of Practice on flexible working and related guidance states that it is good practice because an appeal may reveal new information or can rectify a defect in earlier procedure.</p> <p>Any appeal will follow the same format as the original meeting, and the employee should receive a timely outcome.</p>
TIMESCALES	<p>The entire process, starting with the application and including any appeal, should be concluded within 3 months. There are no staggered time scales stating when the meeting needs to be held; when the outcome letter must be sent etc. If there is a reason why you cannot deal with the application within 3 months, the time limit may be extended with the employee's agreement.</p>
PRIORITISING REQUESTS	<p>If you receive conflicting requests and it is only possible to agree to one request, there are various considerations:</p> <ul style="list-style-type: none">• Although there is no obligation to do so, you may want to take the employees' personal circumstances into account where you consider it relevant e.g. whether the request is made in order to be able to look after children versus a request in order to play football. You may also want to consider the repercussions of a refusal, for example, if the employee has made it clear that they would be unable to continue working for you if their request was denied. You will still need to show that any request refused was refused due to business reasons and that the exact reason falls into one of those prescribed above;• Prioritise those where a refusal could well lead to a claim of discrimination e.g. disability discrimination;• Have a discussion with both or all employees who have made a request to see if they can come up with a compromise;• Ask employees who have previously had a request agreed whether they can change their arrangements e.g. swap a day off, or whether they are willing to revert to their previous hours

REFORM TO FLEXIBLE WORKING REQUESTS

The Employment Relations (Flexible Working) Act 2023 will bring about wholesale changes to the current flexible working process.

Regulations have been made which will remove the current 26 week service requirement. From 6th April 2024, employees can make a request from day one of employment.

Further regulations will also confirm that:

- An employee will not have to explain what effect, if any, they think their requested change would have on the employer.
- Two requests can be made in any 12-month period.
- Employers must consult with the employee first before refusing a request.
- Employers must conclude the process within two months unless the parties agree a longer period.
- Although the implementation date of the remaining changes has not been confirmed, it is expected they will come into force on 6 April 2024 to align with the removal of the 26 week service requirement.
- An updated statutory Code of Practice will also be in place to reflect the changes. The new version has not yet been finalised.

DO I HAVE TO DO ANYTHING NOW?

It's expected the full set of changes will come into force on 6 April 2024 so the existing process will still apply for any requests made until that date.

It will be wise for employers to consider the impact of these changes in readiness for their implementation

Employers may well begin to receive requests from employees much earlier in their employment due to the removal of the 26 week service requirement. Theoretically, requests may be made as early as the employee's first day at work.

This may then mean that that the employee is unable to give a good account.

WHAT DO THESE CHANGES MEAN?

When a request is received it will need to be dealt with promptly. This is because the time frame to deal with such a request will be reduced. Employers should reflect on how long they are currently taking to deal with a request and consider whether there will be any issues for them once they must complete the process in two months, instead of three.

The number of requests an employee can make will increase, and employees are likely to be able to make a request from day one, so employers could find themselves dealing with more requests. How they will manage competing requests from employees will therefore need to be considered.

As the employee will not have to explain what effect, if any, they think their requested change will have on the employer, it will fall more to employers to consider what impact any change might have. However, employers could still ask the employee what they think when they meet to discuss the request

Whilst employers should already hold a meeting to discuss the request with the employee, the Act will require employers to consult with them before refusing. This will mean that employers will have to be able to evidence that they have engaged with the employee.

It is important to note that the changes do not give employees any more rights to actually work more flexibly.

An employer can still refuse the request if one (or more) of the statutory reasons apply, so this remains unchanged from the current position

Version History

Apr 22, 2030

- Describe the revision made to the research brief
- Revised by: @parentandcareralliance



Parent & Carer Alliance C.I.C.

o