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The Right to Request Flexible Working **Scheme**

Employee Guidelines



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1. INTRODUCTION

The Right to Request Flexible Working is contained in the Employment Act 2002. The Right to Request Flexible Working Scheme is incorporated into your contract of employment.

These guidelines are intended to assist employees in making a request under the scheme and should be read in conjunction with the Right to Request Flexible Working Scheme and should not be regarded as an authoritative statement of the law.

2. FREQUENTLY ASKED QUESTIONS

Who can make an application?

The right to make an application under the scheme is available to all employees of the Council (excluding agency workers) who:

- Have a child aged under sixteen, or a disabled child aged under eighteen
- Have responsibility for the upbringing of the child and will be making the application to enable them to care for the child
- Be either:

The mother, father, adopter, guardian or foster parent of the child; or married to or the partner (including spouses or partners of the same sex) of the child's mother, father, adopter, guardian or foster parent.

- Are carers i.e. employees who care for or expect to care for an adult who:
 - i. is married to, or the partner or civil partner of the employee
 - ii. is a near relative of the employee (this includes parents, parents-in-law, adult children, adopted adult children, siblings, in-law siblings, uncles, aunts, grandparents and step-relatives)
 - iii. falls into neither category but lives at the same address as the employee
 - iv. meets one of the above definitions and is making the application to help them with caring responsibilities
- Have worked for the Council continuously for 26 weeks at the date the application is made (excluding agency workers)
- Have not made another application to work flexibly under the right during the past 12 months

When can I apply?

At any time providing you meet the criteria above and ***you must*** make the request no later than two weeks before the child's appropriate birthday in the case of requesting to work flexibly to care for a child.

Under what circumstances can an application be made?

An application can only be made in order to help you to care for the child or to undertake adult carer responsibilities for people identified above. Applications cannot be made for any other purpose.

How often can an application be made?

One application a year can be made. Each year runs from the date when the application was made.

What kind of changes can be applied for?

There is scope to apply for a wide variety of different types of working pattern. Eligible employees can request to:

- Change the hours they work
- Change the times when they are required to work; or
- Work from home (whether for all or part of the week).

A request may be as simple as asking to start half an hour later than usual to enable you to drop your child off at school to a reduction in working hours, or a change of shift pattern. Individual circumstance will determine the type of change you may need.

It is important to recognise that Flexible Working incorporates a wide variety of working practices and that a flexible working arrangement can be any working pattern other than your normal working pattern.

How long do agreed changes last?

If an application is accepted under the scheme the changes are ***permanent*** and you cannot go back to your original hours/pattern once a change has been agreed under the scheme.

Can I withdraw my application?

Yes, but you must do so in writing on the Flexible Working Notice of Withdrawal Form (Form FW7), you should send it to the appropriate officer who will confirm in writing that the application has been withdrawn.

If I withdraw my application can I apply again?

Not immediately, you will have to wait 12 months before you can apply again.

Can management withdraw my application?

Yes, if you fail to attend two meetings without reasonable cause or if you refuse to provide the required information to enable the appropriate officer to make an informed decision.

Can I have a Trial Period?

You cannot ask for a Trial Period but if the officer considering your request is unsure about the impact the requested arrangement would have on the service, it is possible that he/she may wish to agree a trial period with you. ***(See 2.11 & 2.12 of the scheme).***

Can I ask for a temporary change?

It may be that you will need to make temporary changes to your working pattern because of a particular problem that is not expected to be permanent e.g. the illness of an existing carer or child minder, or the need to find alternative childcare. Any such request ***should not be requested under this scheme.***

You should discuss with your manager any temporary problem you may have. Your manager will deal with this type of request in a sympathetic and supportive manner bearing in mind both your needs and the needs of the service. Any agreement made for a temporary change will be set out clearly (in writing), a time limit agreed and will be monitored on a regular basis.

If an agreed temporary change becomes a permanent requirement then an application should be made in accordance with the Right to Request Flexible Working Scheme.

If in doubt speak to your manager or contact your Human Resources section for advice.

Who considers the application?

For the purpose of the scheme officers on grade GR15 or above and up to Service Director level from within your service area should consider applications. These are referred to as the Appropriate Officer within the scheme.

Can an application be refused?

Yes, but only where a clear business reason exists. A list of such reasons can be found in 2.10 of the scheme.

Are there time limits for consideration of requests?

Yes, these are clearly set out in Section 3.1 of the Scheme and a procedure flowchart can be found on page 8 of these guidelines. Copies of the forms referred to in the procedure are attached.

Can time limits be extended?

Yes but only if agreed between yourself and the appropriate officer or if the appropriate officer is absent from work due to leave or illness when the application is received, if this is the case then the time limits will apply from the date of the return of the appropriate officer or 28 days after the application was made whichever is the soonest.

What happens when I have put in a request?

The appropriate officer will hold a meeting with you to discuss your application; the exact procedure to be followed is contained in Section 3.1 of the Scheme. It would help your case if you have thought about how the change you have requested may affect the people you work with and the provision of the service within which you work. You should also think about how any possible problems can be overcome. This will help the appropriate officer come to a decision.

Can I be accompanied to the meeting?

Yes by a work colleague or Trade Union Representative, who can speak to the meeting and confer with you but cannot answer any questions on your behalf, (See Section 3.1 of Scheme).

Can I appeal if my request is refused?

Yes, the procedure and time limits are set out in Section 3.1 of the Scheme. You can also be accompanied at the appeal meeting

Who hears the appeal?

The Group Director or Service Director from within your service area, together with a representative from Human Resources will be present in an advisory capacity.

What happens if I lose my appeal?

Your application has been refused and you cannot apply again for another twelve months.

Can I appeal to anyone else?

Not unless your application has not been dealt with properly under the procedure, then you may have the right to pursue a claim to an Employment Tribunal or to go to ACAS under their Arbitration Scheme for Flexible Working (with the agreement of the Council). This is explained fully in Section 4 of the Scheme.

You should seek advice from Human Resources or your Trade Union (if you are a member) before making a decision to go to Employment Tribunal or ACAS

3. **PROTECTION FROM DETRIMENT AND DISMISSAL**

You are protected under the Act from detriment or dismissal for any reason connected to an application for the Right to Request Flexible Working.

This is fully explained in Section 5 of the Right to Request Flexible Working Scheme.

4. **EMPLOYMENT TRIBUNAL/ACAS ARBITRATION SCHEME**

You may have the right to pursue a claim before an Employment Tribunal or use the ACAS Arbitration Scheme (arbitration must be agreed by the employer and yourself) under certain circumstances.

These are contained in Section 4 of the Right to Request Flexible Working Scheme.

You should seek advice from Human Resources or your Trade Union (if you are a member) before making a decision on whether to go to an Employment Tribunal or ACAS.

5. **REMEDIES AND COMPENSATION**

If an Employment Tribunal or ACAS binding Arbitration finds in favour of you they can order your employer to:

- Reconsider an application by following the procedure correctly and/or
- Pay an award to you

Level of compensation

The Employment Tribunal or ACAS will determine the level of compensation up to a maximum amount of eight weeks pay.

The weeks pay will be limited to a maximum provided under Section 227 of the Employment Rights Act 1996. This is reviewed annually and at 1st February 2003 stood at £260.

In addition where an employer is found to have prevented you from being accompanied either at the meeting to discuss the application or appeal meeting they may make a separate award of up to two weeks pay (capped at the maximum identified above).

PROCEDURE FLOWCHART – HOW DOES THE PROCESS WORK?

