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## The Right to Request Flexible Working **Scheme**

### Guidelines to Managers



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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 employees' contract of employment.

These guidelines are intended to assist managers in implementing the scheme they should be used in conjunction with the Right to Request Flexible Working Scheme and should not be regarded as an authoritative statement of the law.

*Managers should ensure that they have read the Right to Request Flexible Working Scheme and are aware of its contents.*

### **The Rights and Responsibilities of Employers**

#### ***Employers Rights***

- To reject an application when the desired working pattern cannot be accommodated within the needs of the business
- To seek the employee's agreement to extend timescales where it is appropriate
- To consider an application to be withdrawn in certain circumstances

#### ***Employers Responsibilities***

- To consider requests properly in accordance with the set procedure
- To ensure they adhere to the time limits contained within the procedure
- To provide the employee with appropriate support and information during the course of the application
- To only decline a request where there is a recognised business ground and to explain to the employee in writing why it applies
- To ensure that any variation with the procedure is agreed in advance with the employee and recorded in writing

## 2 **FREQUENTLY ASKED QUESTIONS**

### ***Who is eligible under the scheme?***

To make an application under the statutory right the employee will have to meet certain criteria that are set out below:

- Be an employee
- Have a child under sixteen, or a disabled child under eighteen
- Make the request no later than two weeks before the child's appropriate birthday
- Have responsibility for the upbringing of the child and 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 of (including same sex partners) the child's mother, father, adopter, guardian or foster parent

- Be a carer 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 (agency workers are excluded)
- Not have made another application to work flexibly under the right during the past 12 months

### ***Under what circumstances can an application be made?***

An application can only be made in order to help the employee 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 allow the employee to drop their child off at school. **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 the normal working pattern.**

### ***How long do agreed changes last?***

If an application is accepted under the scheme the changes are **permanent** and this should be made clear to the applicant.

### ***What if I am not sure about the impact of changes on the provision of services?***

If the officer considering the request is unsure about the impact the granting of the request would have on the service then it is possible to agree a trial period with the employee making the request. **(See 2.11 & 2.12 of the scheme).**

### ***Can an employee ask for a temporary change?***

It may be that an employee will need to make temporary changes to their 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 considered under this scheme.**

Managers should deal with this type of request in a sympathetic and supportive manner bearing in mind both the needs of the employee and of the service. Any agreement made for a temporary change should set out clearly (in writing) the time limit agreed and should 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 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 the service area of the applicant 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 applicant and 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.

***How do I consider a request?***

You must hold a meeting with the applicant; the exact procedure to be followed is contained in Section 3.1 of the Scheme.

***Can an applicant be accompanied to the meeting?***

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

***Can an applicant appeal if I refuse the request?***

Yes, the procedure and time limits are set out in Section 3.1 of the Scheme.

***Who hears the appeal?***

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

### ***Can an application be withdrawn?***

Yes, but there are only 3 circumstances under which an application can be withdrawn and these are set out in Section 3.3 of the Scheme.

## **3 PROTECTION FROM DETRIMENT AND DISMISSAL**

Employees 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 and managers are strongly advised to acquaint themselves with its' contents.

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

An employee has the right to pursue a claim before an employment tribunal or use the ACAS Arbitration Scheme (arbitration must be agreed by the employer and employee) under certain circumstances.

These are contained in Section 4 of the Right to Request Flexible Working Scheme and managers are strongly advised to acquaint themselves with its' contents.

## **5 REMEDIES AND COMPENSATION**

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

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

### **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.

In addition where an employer is found to have prevented the employee 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?

