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



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## 1. **INTRODUCTION**

- 1.1 This policy relates to eligible employees who have the right to request a flexible working pattern (it does not provide an automatic right to work flexibly). It places a duty on the Council to consider the requests seriously. This duty is contained in the Employment Act 2002.

The right to request to work flexibly applies to employees with children aged under sixteen or disabled children aged under eighteen and employees with carer responsibilities.

- 1.2 In drawing up the scheme, the Council recognises that the scheme:
- i) Contributes to mainstreaming equalities
  - ii) Ensures consistent application of the right to request flexible working across the Council
  - iii) Removes the potential for perceived discrimination
  - iv) Fulfils the requirements of the legislation

## 2. **ELIGIBILITY**

- 2.1 The Right to Request Flexible Working 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

- 2.2 Employees must have worked for the Council continuously for 26 weeks at the date the application is made.
- 2.3 Agency workers **are not eligible** under the scheme.
- 2.4 The scheme applies equally to male or female employees who are recognised as having responsibility for the upbringing of a child, or a caring responsibility for an adult and meet the criteria in point 2.1

#### Applications

- 2.5 One application a year can be made under the right to request flexible working. Each year runs from the date when the application was made.
- 2.6 An application may be made no later than two weeks before the child's 16th birthday or 18<sup>th</sup> birthday if the child is disabled.
- 2.7 An application can only be made in order to help an employee to care for the child or to help the employee to undertake adult carer responsibilities. Applications cannot be made for any other purpose.

#### Successful Applications

- 2.8 Successful applications will be treated as a **permanent** change to the employee's contractual terms and conditions (unless otherwise agreed). The employee has **no right to revert back to the previous working pattern**.
- 2.9 Successful applicants will remain on current terms and conditions until the date agreed for the commencement of the change.

#### Unsuccessful Applications

- 2.10. An application can be refused only where there is a clear business reason. The business ground(s) for refusing an application must be from one or more of those listed below:
- Burden of additional costs
  - Detrimental effect on the ability to meet customer demand
  - Inability to reorganise work among existing staff
  - Inability to recruit additional staff
  - Detrimental impact on quality
  - Detrimental impact on performance
  - Insufficiency of work during the periods the employee proposes to work
  - Planned structural changes

## Trial Periods

- 2.11 If the appropriate officer (for the purpose of this policy an appropriate officer is an officer within the service area on GR 15 or above up to Service Director level) is uncertain about the impact that a request for flexible working will have on the service, he/she in conjunction with a Human Resources representative may allow the employee to work under the requested flexible working arrangement on a reasonable 'trial period' to determine if the arrangement would have an adverse effect on the service.
- 2.12 If a trial period is agreed the following should be clearly spelt out:
- That the agreement to the employee's request for flexible working is subject to the outcome of the trial period.
  - The length of the trial period, to include starting and finishing dates
  - That the change is a **temporary change** for the trial period only
  - The details of the change agreed for trial. For example reduced working hours.
  - The date that the employee will revert back to their previous terms and conditions if it is determined that the change is not working.  
N.B. this decision must be for a business reason as identified in point 2.10
  - The employee must be informed in writing of this decision in sufficient time to allow for previous child care arrangements to be put back in place where applicable.

### 3. **THE PROCEDURE**

3.1 The procedure and time limits are set out below:

- Applications must be made in writing on the Request for Flexible Working Application Form (Form FW1) and forwarded to the appropriate officer as identified in 2.11
- Applications will be acknowledged in writing confirming the date of receipt.
- The appropriate officer will arrange a meeting with the employee to discuss the application within 28 days of receipt.
- An employee has the right to bring a companion to the meeting who must be either a work colleague or trade union representative. The companion has the right to address the meeting or confer with the employee during it but is not allowed to answer questions on the employee's behalf,
- The appropriate officer will inform the employee of the decision in writing within 14 days of the meeting using either the Flexible Working Application Acceptance (Form FW2) or Rejection Form (Form FW3) depending on the decision made.
- In the case of a successful application the appropriate officer and employee will consider the arrangements to be made for the change in working pattern
- If the application is rejected the employee has the right of appeal. An appeal must be made in writing on the Flexible Working Appeal Form (Form FW4) and must be registered within 14 days of receipt of the decision.
- An appeal meeting must be held within 14 days of receipt of the Flexible Working Appeal Form (Form FW4).
- The appeal meeting will be held by an Officer at Group Director or Service Director level and a representative from Human Resources in an advisory capacity.
- An employee has the right to bring a companion to the meeting who must be either a work colleague or trade union representative. The companion has the right to address the meeting or confer with the employee during it but is not allowed to answer questions on the employee's behalf,
- The employee will be informed of the appeal decision in writing within 14 days of the meeting on the Flexible Working Appeal Reply Form (Form FW5).

### 3.2 Extension of Time Limits

There are two circumstances where time limits can be extended.

- Time limits may be extended through agreement of the employer and employee.

Requests for an extension must be made in writing on the Flexible Working Extension of Time Limit form (Form FW6).

- Where an application is sent to the appropriate officer who will deal with the application and the appropriate officer is absent from work due to leave or illness, an automatic extension applies. The period that the employer has to arrange the meeting will commence either on the day of the appropriate officer's return or 28 days after the application is made whichever is the soonest.

There are no other circumstances where an automatic extension to any period applies.

### 3.3 Withdrawal of Application

There are three reasons why an application may be treated as withdrawn

- An employee decides to withdraw their application and must do so in writing on the Flexible Working Notice of Withdrawal Form (Form FW7). The appropriate officer will confirm in writing the withdrawal of the application.

An employee who withdraws their application will not be eligible to make another application for 12 months from the date their application was made.

- If an employee fails to attend two meetings without reasonable cause, the appropriate officer may treat the application as withdrawn.
- If an employee unreasonably refuses to provide the appropriate officer with the required information to enable him/her to make an informed decision then the appropriate officer can treat the application as withdrawn.

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

##### Employment Tribunal

4.1 An employee can pursue a claim before an employment tribunal on the grounds that the

- Employer has failed to follow the procedure properly
- A decision by their employer to reject their request for flexible working was based on incorrect facts. In this case the full procedure (including appeal) must have been completed before a claim to an employment tribunal can be registered.
- A claim must be registered within three months of the decision.

##### ACAS Arbitration Scheme for Flexible Working

4.2 The ACAS Arbitration Scheme provides an alternative to pursuing a claim to an employment tribunal, which gives employees an alternative to having their complaint settled at tribunal.

4.3 Use of the scheme is entirely voluntary and both the employer and employee must agree to the dispute going to arbitration.

4.4 Where both parties agree to use the scheme the decision of the arbitrator is binding and the employee waives their right to go to an employment tribunal.

#### 5. **PROTECTION FROM DETRIMENT AND DISMISSAL**

5.1 An employee is protected against being subjected to detriment by any act or deliberate failure to act by their employer and it is unlawful for an employer to dismiss an employee because:

- Their application to work flexibly has been granted
- They made an application to work flexibly under the right
- They have made or have stated their intent to make a complaint to an employment tribunal in respect of their application to work flexibly

5.2 Detriment can cover a wide range of forms of unfair treatment, such as denial of promotion, facilities or training opportunities which the employer would otherwise have offered or made available.

5.3 Employees who suffer unfair treatment at work for the above reasons may make a complaint to an employment tribunal.

6. **FURTHER INFORMATION**

Further information, copies of appropriate forms and guidance can be obtained from Human Resources, Unit D, The Pavilions, Clydach Vale, CF40 2XX, Tel: (01443) 424075, Fax: (01443) 424025