

The law on flexible working

As an employer, you need to know about flexible working. The law says you must 'consider seriously' requests to work flexibly from employees with a child aged 16 or under, a child with disabilities under 18 and employees looking after a dependant adult.

But in fact it may pay to consider offering flexible working to other employees as well. This briefing covers:

- The different types of flexible working.
- Who qualifies to apply for flexible working.
- The procedures you must follow if you receive a request to work flexibly.
- What you need to do to introduce new working arrangements.
- Other legislation to be aware of.

1 What is flexible working?

Flexible working is any working pattern other than the normal working pattern — it can involve changes to the hours an employee works, the times they are required to work or their place of work.

1.1 There are a number of working practices that involve changes to the **hours and times** worked:

- A flexitime arrangement requires an employee to be at work during a specified core period, but lets them otherwise arrange their hours to suit themselves.
- With compressed hours, employees work the same hours over fewer days.
- With annual hours contracts, employers and employees agree they will work a given number of hours during the year, but the

pattern of work can vary from week to week.

- Staggered hours contracts let employees start and finish work at different times.
- Employees may also wish to take time off in lieu, unpaid sabbaticals or career breaks.

1.2 Employees may request a **job-sharing arrangement**.

- This is where one job is shared between two people, who might work alternate days, half weeks, or alternate weeks, or one person working in the morning and one in the afternoon.

1.3 **Shift** work, **part-time** work and **term-time** work also count as flexible work, in that they involve variations to the normal pattern of working hours.

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1.4 Flexible working may also involve changes in the location of the **workplace**, such as working from home.

- Employees may request to do some or all of their work from home. You will need to consider your health and safety obligations (see 4.3).

2 Who qualifies?

Parents or carers requesting flexible working under the statutory right must fulfil certain criteria.

2.1 The **employee** must:

- Be the mother, father, adopter, guardian or foster parent of the child in question.
- Be the spouse, partner, civil partner or relative, or live at the same address.
- Have responsibility, or expect to have responsibility, for bringing up or caring for the adult or child.
- Make the application as a means of enabling them to care for the child.
- Have worked for you continuously for at least 26 weeks before making the application.

Business benefits

Although you only have a legal obligation to provide flexible working arrangements in specific circumstances, you may want to consider introducing it for other employees.

Flexible working can have a number of business benefits.

- A** More flexible working patterns may **attract employees** to your company.
 - Having a flexible approach will also help you retain existing staff.
- B** It can help to reduce **employee turnover**.
- C** It may boost **employee morale** and commitment.
- D** The introduction of more flexible working arrangements has also been shown to reduce **absenteeism**.
- E** It has also been proven that flexible working provisions can lead to noticeable improvements in **employee productivity**.

- Have made no other application in the preceding 12 months.
- Be willing to agree a change in their working pattern, with a corresponding drop in pay if necessary.
You can agree that it should only be a temporary or transitional change.

2.2 If the employee is requesting **flexible working** in order to look after a child, the child must be sixteen or under, or under 18 in the case of a child with disabilities.

3 Implementation procedure

Under the law on flexible working, both sides are required to follow the correct procedure.

3.1 It is up to the employee to prepare a **detailed application** well in advance of when they want to change their working pattern.

- The application must be in writing and clearly state what the application is for and when it will be effective from.
- The employee should be able to come up with a clear plan of how the new pattern would work and must show that the changes will not harm your business.
- It must also explain how the employee feels he or she meets the relationship criteria.

3.2 It is **good practice** to acknowledge an application to work flexibly in writing. Once you have received an application from an employee you must:

- Arrange a meeting with the employee within 28 days of receiving it. This is to decide a start date (if you agree), or to consider alternatives (if you do not). The employee has the right to be accompanied at the meeting by a companion. The companion must be a worker also employed by you.
- If you agree, write to the employee within 14 days of the meeting detailing the new working pattern and confirming the start date.
- If you do not agree, you must write to the employee within 14 days with business reasons why the proposed arrangement will not work. You must date your refusal and set out your appeals procedure.

3.3 You can **refuse an application** to work flexibly only if there is a clear business reason.

Valid reasons as set out in the legislation are:

- The burden of additional costs.
- A detrimental effect on the ability to meet customer demand.
- An inability to reorganise work among other employees.
- An inability to recruit additional employees.
- A detrimental effect on quality.
- A detrimental effect on performance.
- Insufficient work when the employee proposes to work.
- Planned structural changes.

3.4 If you refuse an application to work flexibly, the employee may **appeal**.

- He or she must write to do so within 14 days of you sending your letter of refusal.
- You must have another meeting within 14 days of receiving this letter to hear the appeal.
And you must write, accepting or refusing the appeal, within 14 days of this meeting.

3.5 If you still refuse the application, and the employee feels that their application has not been considered seriously, they may want to take **further steps**.

- Try to deal with the problem internally at this stage. An informal discussion between you and the employee may clear up any misunderstandings.

Or, encourage them to use a formal grievance procedure. It will also be much quicker than involving external parties.

- If it is still not possible to resolve the dispute, the employee may decide to involve an external third party. This might be someone from Acas or some other mediator or conciliator. They will try to resolve the problem in an informal manner by mediating discussions between you and the employee.

3.6 In some circumstances, the employee may decide to make a **formal complaint** to an employment tribunal or to the Acas arbitration scheme.

- The employee can only do this if you have failed to follow the correct procedures, if your decision was based on incorrect facts, or, perhaps, if the employee is caring for a disabled relative, and the employee claims the refusal amounts to disability discrimination.
- If it is shown that you have not followed the correct procedure, you will have to reconsider the application.
- You may also have to pay compensation to the employee. The amount payable will be decided by the employment tribunal or the Acas arbitrator and will be limited to a maximum of eight weeks' pay. Each week's pay is currently limited to £350. If a discrimination claim succeeds, compensation is not capped.

Individual cases

The requests you receive from individuals will often involve forms of flexible working tailored to their specific circumstances. For example:

- A** Fathers (or those with responsibility for bringing up children) may wish to **work hours** that allow them to drop off a child at school in the morning.
- B** The mother of a 14-year-old with disabilities may need some sort of **flexitime arrangement** to allow for absences of a carer or to take the child to special classes.
- C** The mother of a young baby may need the flexibility to **work from home** at short notice.

Individual requests for flexible working don't necessarily entail a reduction in the total hours worked.

3.7 The **timescales** may be extended by mutual (written) agreement. If the employee fails to attend two or more meetings (without giving a reasonable explanation) then the employer may treat the application as withdrawn.

4 Moving into flexible working

Once you have accepted a request for flexible working you may need to make some changes.

4.1 You will need to amend the employee's **contract of employment** to reflect the changes.

- You may want to agree a trial period to ensure the changes are working.

4.2 If the new flexible working arrangement involves changes to the number of hours worked, you will need to amend the employee's **pay** and **holiday entitlement**.

4.3 If the employee will be working from home, **health and safety** requirements will apply just as they do to those who work in the office.

An initial risk assessment must be carried out although this can be done by the employee. Areas to consider are:

- The seating and layout of the employee's computer workstation.
- Electrical equipment. Has it been tested and certified?
- Make sure there are no trailing extension leads.
- Adequate lighting levels, ventilation and room temperature.

You will need to give employees simple, specific health and safety advice and record what has been done.

4.4 Consider the impact of the changes on **other employees**.

- If an employee will be working fewer hours than previously, make sure you have adequate cover in place. Other employees may become resentful if their workload increases because of the changes.
- You should inform other employees as early as possible.
- You also need to make sure work is allocated fairly. For example, in a job share you need to make sure that both parties have equal responsibilities.

4.5 Make sure you are **consistent** in your approach to flexible working. Keep clear records of who has applied to work flexibly, and what your response was. Monitor and evaluate how the new arrangements are working so you can put changes in place if necessary.

5 Other legislation

In general, the same legislation applies to employers offering flexible working patterns as to those adopting more conventional arrangements.

You should also take account of some specific forms of protection for employees working flexibly.

5.1 The employee is protected against **dismissal** or constructive dismissal under the flexible working rights. It is unlawful to dismiss an employee because:

- They have applied to work flexibly and it has been granted.

- They have made or intend to make a complaint to an employment tribunal.
- In such a case, the 12 month qualifying period of employment is waived and dismissal will be classed as automatically unfair.

5.2 If you are making employees **redundant**, make sure this has nothing to do with their right to work flexibly.

- Employees are protected from dismissal on these grounds.

5.3 When implementing flexible working arrangements you will need to make sure you are not **discriminating** against the employees concerned.

- Under the part-time workers regulations, fixed term and part-time employees are entitled to be treated 'no less favourably' than their permanent, full-time colleagues.
- If you place a requirement on an employee to work full time, the employee may be able to make a claim against you for indirect discrimination or indirect marital discrimination under the Sex Discrimination Act.
If the employee is caring for a disabled relative, the refusal may amount to disability discrimination. There is no ceiling on the amount of compensation that can be awarded in such cases.

5.4 People who work on annual hours or term-time contracts are protected by the **working time** and **minimum wage** regulations, just like full-time employees.

6 Further help

6.1 You can find more detailed guidance in 'Flexible working — the right to request and the duty to consider: a guide for employers and employees' produced by the **Department for Business, Enterprise & Regulatory Reform**. Visit www.berr.gov.uk/employment/workandfamilies.

6.2 **Acas** has a good guide to forms of flexible working, plus an advice leaflet and various forms on its website at www.acas.org.uk or for further advice call 08457 47 47 47.

6.4 Visit www.direct.gov.uk/en/Employment/Employees/Flexibleworking/DG_10029491 for an **interactive guide** to flexible working rights.

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