

Guidance for Schools

Flexible Working

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FLEXIBLE WORKING

INTRODUCTION

The term 'flexible working' can be applied to a number of working patterns. This guidance relates to rights under the Children and Families Act 2014 which states that all employees have a statutory right to request flexible working; as long as they have 26 weeks continuous service at the date they make the request.

It is recognised that there may be actual or perceived difficulties in accommodating requests, but employees and Headteachers are encouraged to work together to achieve workable solutions. Where this is not possible, reasons must be given as to why the request cannot be agreed.

A request which is refused may give rise to a claim for breach of the Flexible Working Regulations or discrimination under other relevant legislation, e.g. carers may be able to claim discrimination under the Equality Act 2010 or Employment Equality (Age) Regulations 2006, or on the grounds of Sex Discrimination.

The statutory right is for a permanent change of contract.

For advice on flexible working alternatives, for example job-share, please contact HR Consultancy for Schools.

ELIGIBILITY

The employee:

- needs to have been employed continuously for 26 weeks at the date the application is made;
- must not have made another application to work flexibly under the legislation during the previous 12 months. (However, discretion can be given to a further request within this period.)

CHANGES THAT CAN BE REQUESTED

A request to work flexibly includes:

- change to the hours worked, **or**
- change to the times required to work, **or**
- change to the place of work.

These changes could include working from home or an alternative work place, requesting a job-share, working compressed hours, or moving to an annualised hours or term-time only contract, but applications for a change in working pattern may not always require a significant alteration.

The change in working pattern, if granted, will be a permanent contractual change to the current terms and conditions of employment and there is no right in law to revert back to the previous working pattern.

However, consideration can be given to requests for a temporary change, e.g. to accommodate a temporary need, or a trial period may be mutually agreed.

PROCEDURE

The time limits to deal with a flexible working request are laid down in the legislation and state that the consideration process must be completed within three months of first receiving the request, including any appeal. This three month period can be extended by agreement between the employee and the Headteacher/Line Manager, but any mutually agreed change to the time limits should be recorded in writing.

Request for flexible working

An application to work flexibly must be made in writing, preferably using Form FW1 (see Model Letter 1). Remember only one application can be made in a year under the legislation and an accepted application will mean a permanent change to terms and conditions. This means the employee should give careful consideration to:

- which working patterns will help them best;
- any financial implications it might have if the desired working pattern will involve a reduction in salary;
- any effects it will have on the services provided by the school and how these might be accommodated;
- the application must specify a start date for the proposed change giving the employer reasonable time to consider the proposal and implement it;
- an employee should submit their request in a timely manner prior to the requested implementation date in order to give the Headteacher/Line Manager time to consider the proposal which can take up to three months.
- the application should also state whether the request is in relation to the Equality Act 2010, for example, a reasonable adjustment for a disability.

Meeting to discuss the request

On receiving a request a meeting will be arranged with the employee as soon as possible. All requests should be dealt with in a timely manner as the law states the consideration process, including any appeal, must be completed within **three months** of receipt of the application to discuss the request. If for some reason the request cannot be dealt with within three months you can extend this time limit, provided the employee agrees.

The meeting should be arranged at a time and place convenient to the employee and the Headteacher/Line Manager. The purpose of the meeting is to explore the desired work pattern in depth and to discuss how it might be accommodated. It will also provide an opportunity to consider other alternative working patterns should there be problems in accommodating the desired work pattern. The employee may be accompanied to the meeting by a work colleague or trade union representative.

After the meeting the Headteacher/Line Manager will write to the employee to confirm:

- agreement to a new work pattern and a start date, including any compromise or alternative working pattern agreed at the meeting; **or**

- the need / want to take further action / explore options before notification of their decision (in this situation the Headteacher will agree a date with the employee by when a decision will be made). N.B. Remember that the law requires that all requests must be decided on within three months from first receipt.

If the request is rejected it must be for one of the business reasons listed below as set out in legislation.

Refusing a request

The school can only refuse a request if it can show one of the following grounds applies (these are specified under legislation):

- the additional costs involved will impose a burden;
- agreeing to the request will have a detrimental effect on its ability to meet customer demand;
- inability to reorganise work among existing staff;
- inability to recruit additional staff;
- agreeing to the request will have a detrimental impact on quality or performance;
- there is insufficient work during the periods proposed to work;
- planned structural changes.

Appeal against a refusal to the request

An employee should be allowed to discuss a refusal to grant their request if there is new information available or if the employee thinks that the application was not handled reasonably in line with the Flexible Working Policy.

To ensure good practice and fairness an employee may make an appeal on Form FW2 (see Model Letter 5) should be submitted to the Headteacher/Line Manager within 10 working days of notification of the decision.

A meeting will be arranged to hear the appeal as soon as possible taking into account the law requires the process, including any appeal, to be completed within three months. This should be heard by someone independent to the original decision and may be heard by a Governor or Headteacher (if the original request for Flexible Working has not already been considered by the Headteacher). The employee may be accompanied to the hearing by a work colleague or trade union representative.

The employee will be given written confirmation of the outcome of the appeal which will:

- uphold the appeal and specify the contract variation agreed to and state the date from which the variation is to take place, **or**
- dismiss the appeal and give the grounds for the decision and contain sufficient explanation as to why those grounds apply.

If the appeal is dismissed the employee will not have a right to make a further application until 12 months from the date of the original application.

There is no further appeal, however, an informal discussion may take place to help an individual understand the reasons for the refusal. Under legislation there is a right to complain to an Employment Tribunal, where it is claimed the correct procedure was not followed, the reason for refusal was not one of the permitted reasons, or the facts behind a permitted reason are in doubt.

However, a decision to refuse a request to work flexibly could still be challenged at an Employment Tribunal on the grounds of sex, disability or age discrimination.

The application can be withdrawn at any stage using Form FW3 (see Model Letter 8) to formally record the withdrawal. Once withdrawn a further application cannot be made under the legislation until 12 months from the date the original application was made.

If you require any further information please contact HR Consultancy for Schools.

USEFUL CONTACTS AND LINKS

Information about childcare and childcare benefits:

Worcestershire Family Information Service

Tel: 01905 822666

www.worcestershire.gov.uk/familyinfo

Information on Maternity, Adoption, Paternity and Flexible Working legislation:

www.direct.gov.uk

www.gov.uk/government/organisations/department-for-business-enterprise-and-regulatory-reform

The following trade union websites may also include helpful information on the above legislation:

National Association of Headteachers (NAHT)

www.naht.org.uk

National Union of Teachers (NUT)

<http://www.teachers.org.uk/index.php>

National Association of School Masters/Union of Women Teachers (NASUWT)

<http://www.nasuwt.org.uk>

Association of Teachers and Lecturers (ATL)

<http://www.atl.org.uk>

Association of School and College Leaders (ASCL)

<http://www.ascl.org.uk>

VOICE

<http://www.voicetheunion.org.uk>

UNISON

www.unison.org.uk

GMB

www.gmb.org.uk

FLEXIBLE WORKING APPLICATION FORM**Personal Details****Name:****Pay No:****Directorate:****School:****Line Manager:****Contact No:**

Under the right provided under the Children and Families Act 2014 I would like to apply to work a flexible working pattern that is different to my current working pattern.

I confirm I meet the eligibility criteria as follows:

- I have been continuously employed by (insert name of employer e.g. WCC/School/Academy for the last 26 weeks;
- I have not made a request to work flexibly under this right during the past 12 months.

My current working pattern is (days / hours / times worked):

The working pattern I would like to work in future is (days / hours / times worked):

I would like this working pattern to commence from:
(Please give as much notice as possible)

Date:

I think this change in my working pattern may affect the school and my colleagues as follows:

I think the effect on the school and my colleagues can be dealt with as follows:

This request for flexible working is made in relation to the Equality Act as a reasonable adjustment for a disability. *(Please indicate if this applicable to this request)*

Signed:

Date:

WHEN COMPLETED THIS APPLICATION FORM SHOULD BE PASSED TO YOUR LINE MANAGER WHO WILL CONFIRM THE DATE THE APPLICATION IS RECEIVED

**Name &
Address**

Date

Dear **[insert name]**,

Receipt of Flexible Working Request

I write to confirm that I have received your completed application form, requesting a change to your work pattern, on **[insert date]**.

I shall be arranging a meeting to discuss your application and will notify you of the details in due course.

In the meantime you might want to consider whether you would like a work colleague or trade union representative to accompany you at this meeting.

If you have any questions you would like to ask regarding this meeting please do not hesitate to contact me.

Yours sincerely,

Headteacher/Line Manager.

**Name &
Address**

Date

Dear **[insert name]**,

Request for Flexible Working

Following receipt of your application and our meeting on **[insert date]** we have considered your request for a new flexible working pattern.

I am pleased to confirm that we are able to accommodate your application.

OR

We are unable to accommodate your original request. However, we are able to offer the alternative pattern, which was discussed and agreed at our meeting.

Your new working pattern will be as follows:

[insert details]

Your new working arrangements will begin from **[insert date]**. Please note that this will be a permanent change to your terms and conditions of employment.

If you have any questions regarding the information provided in this letter please contact me to discuss them as soon as possible.

Yours sincerely,

Headteacher/Line Manager

**Name &
Address**

Date

Dear *[insert name]*,

Request for Flexible Working

Following receipt of your application and our meeting on *[insert date]*, I have considered your request to work a new flexible working pattern.

I regret to advise you that I am unable to accommodate your request for the following reason(s):

[state the reason(s) and grounds for the refusal which must satisfy one of the grounds specified under the legislation].

We have discussed other work patterns at the meeting but these were inappropriate for the following reasons:

[state the reasons].

If you wish to appeal against this decision you must do so in writing, using Form FW2 within 10 working days of the date of receipt of this letter, i.e. ***[give date]***, stating the grounds on which you are appealing. You are entitled to be accompanied to an appeal hearing by a work colleague or trade union representative.

Yours sincerely,

Headteacher/Line Manager.

FLEXIBLE WORKING APPEAL FORM

Dear

**I wish to appeal against your decision to refuse my application for flexible working.
I am appealing on the following grounds:**

Name:

Date:

School:

**THIS FORM SHOULD BE SENT TO YOUR LINE MANAGER. PLEASE ATTACH COPIES OF
YOUR ORIGINAL APPLICATION AND THE DECISION LETTER WHEREVER POSSIBLE.**

**Name &
Address**

Date

Dear **[insert name]**,

Request for Flexible Working Appeal

I confirm that I received your appeal against the decision concerning flexible working on **[insert date]**.

I shall be arranging a meeting to discuss your appeal. The appeal will be heard by **[insert name]**.

A work colleague or trade union representative may accompany you to this meeting.

If you have any questions you would like to ask regarding this meeting please do not hesitate to contact me on **[insert contact details]**.

Yours sincerely,

Headteacher/Line Manager.

**Name &
Address**

Date

Dear **[insert name]**,

Request for Flexible Working Appeal *insert name*].

I write following the meeting on **[date]** before **insert name** to consider your appeal against the decision to refuse your application to work a flexible working pattern.

The decision is that

[either]

your appeal has been upheld and your original request to change your working pattern has been agreed.

Your new working pattern will be **[state details]** with effect from **[date]**.

Please note that this change will be a permanent change to your terms and conditions of employment.

[or]

your appeal has been dismissed on the following grounds:

[state reasons and grounds which apply].

Yours sincerely,

Governor/Headteacher

FLEXIBLE WORKING – NOTICE OF WITHDRAWAL

(This form may be used by either the employee or the Headteacher)

From:

To:

(Please tick as appropriate)

I wish to withdraw my application to work flexibly which I submitted to you on *[insert date]*. I understand that I will not be able to make another application again until 12 months after the above date.

I wish to advise you that as you have failed more than once to attend the meeting arranged to discuss your application for flexible working, your application is now considered to be withdrawn.

Signed:

Date:

Confirmation if withdrawal

To:

I confirm that I have received notice that you wish to withdraw your application for flexible working / I confirm that I have received notification that my application has been withdrawn*.

Under the right to apply, I / you* will not be eligible to submit another application until 12 months after the above date.

From:

Date:

* Delete as appropriate

REQUEST FOR FLEXIBLE WORKING

MODEL PROCEDURE FOR A MEETING OF THE APPEAL ***(An appeal may be heard by the Headteacher in cases where they have not already considered the request for flexible working)***

1. Introduction of those present by the Governor/Headteacher and explanation of the purpose of the Meeting.
2. All those present should have a copy of the letter to the member of staff declining the request for flexible working and a copy of the appeal form / letter.
3. Member of staff (or representative) to expand upon the reasons for appeal.
4. Questions by:
 - (a) Governor/Headteacher
 - (b) HR Adviser (where appropriate).
5. Response by Headteacher/Line Manager.
6. Questions by:
 - (a) member of staff or representative
 - (b) Governor/Headteacher
 - (c) HR Adviser (where appropriate).
7. Final statement by member of staff or representative.
8. Interested parties withdraw.
9. Consideration of appeal by the Headteacher/Governor with assistance from an HR Adviser, as appropriate.
10. Interested parties return.
11. Announcement of decision and comments.