

# Flexible Working Rights in the UK



CRODA

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## **Introduction**

The right to request flexible working came into force in April 2003 and was amended in 2006 and 2009. The right provides eligible employees with children under 16, or disabled children under 18, or adult carers who have responsibilities for an adult aged 18 or over with the right to request a flexible working pattern and places a duty on employers to consider their requests seriously. The initial onus is on the employee to prepare a carefully thought-out application well in advance of when they would like the desired working pattern to take effect. The employer then follows a set procedure to help ensure a request is considered seriously. The request can be turned down for a number of business reasons.

Flexible working is limited to requests to vary the hours, times or place of work. It does not extend to a request to vary duties.

This booklet gives general guidance only and should not be regarded as a comprehensive or authoritative statement of the law.

The information given is correct as at April 2013 and applies to UK employees only.

## **Company policy on Flexible Working**

It is company policy that eligible employees should receive all rights due under the legislation relating to flexible working. The company will provide information to employees so that rights can be understood and accessed. It will ensure that managers are aware of their responsibilities in this respect. The company supports working families and will not tolerate any form of discrimination against them.

The company does not provide any rights or contractual benefits or arrangements over and above those given under the legislation.

## What is Flexible Working?

Flexible working is changing the current terms and conditions of employment in respect of:

- the number of hours worked
- the time when work is done
- the pattern of work
- the place of work

A flexible working pattern can be any working pattern other than the normal pattern worked. Examples of changes that could be considered are work patterns such as flexitime; homework; jobsharing; teleworking; term-time working; shift working; staggered hours; annualised hours; compressed hours; self-rostering.

## Ways of Working

**Annualised hours** describes working time organised on the basis of the number of hours to be worked over a year rather than a week; it is usually used to fit in with peaks and troughs of work. Pay will depend on the hours worked each pay period.

**Compressed hours** allows individuals to work their total number of agreed hours over a shorter period. For example, employees might work their full weekly hours over four rather than five days. They would be paid for a full time job but would not receive overtime payments for the agreed extra hours they work in any one day.

**Flexitime** gives employees choice about their actual working hours, usually outside certain agreed core times. Individuals are paid for the hours that they work.

**Homeworking** does not have to be on a full-time basis and it may suit an employee to divide their time between home and office. What individuals are paid for depends on the hours they work. Employers are required to carry out a risk assessment of the activities undertaken by homeworkers, identifying any hazards and deciding whether enough steps have been taken to prevent harm to them or anyone else who may be affected by their work.

**Job-sharing** typically involves two people employed on a part-time basis, but working together to cover a full-time post. Both receive pay for the hours they work.

**Shift working** gives employers the scope to have their business open for longer periods than an eight-hour day. Agreed flexible working arrangements may mean that a shift premium is not needed.

**Staggered hours** allows employees to start and finish their day at different times. This is often useful in the retail sector, for example, where it is important to have a greater number of staff over the lunch period but less at the start and end of each day. Pay will depend on hours worked in total rather than the time at which they are worked.

**Term-time working** allows employees to take unpaid leave of absence during the school holidays.

## Eligibility for Flexible Working

An employee who meets the following criteria is eligible to make a request. They must:

- be the parent, adoptive parent, guardian, special guardian or foster parent of a child under the age of 17 or 18 if the child is disabled or
- be the carer for an adult aged 18 or over who is the employee's spouse, civil partner or live-in partner, a relative<sup>1</sup>, or someone living at the same address as the employee.

The employee must:

- have worked for the company continuously for 26 weeks at the date the application is made
- make the request no later than two weeks before the child's appropriate birthday (17 or 18)
- have responsibility for the upbringing of the child and be making the application to enable them to care for the child or, where the application is being made in relation to an adult, care for, or expect to care for, an adult in need of care
- not have made another application to work flexibly under the right during the past 12 months, regardless of whether the previous application was made in relation to the same caring responsibility or a different one.

There is a legal duty on employers to consider all applications and establish whether the desired work pattern can be accommodated within the needs of the business. This is demonstrated through following a set procedure.

## How to Make an Application

Applications must be made in writing. This means on paper, by email or by fax. The application should be given to the employee's line manager.

The application must:

- clearly state that it is an application under the statutory right to request a flexible working pattern
- state that it is an application for a change to the employee's terms and conditions of employment
- state the change applied for and the date on which it is proposed the change will become effective
- explain what effect (if any) the employee thinks making the change applied for would have on his or her employer and how, in the employee's opinion, any such effect might be dealt with
- explain the employee's relationship to the child or adult in question
- state whether a previous application has been made, and if so, when it was made
- be dated.

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<sup>1</sup> A relative for this purpose is a mother, father, adopter, guardian, special guardian, parent-in-law, son, son-in-law, daughter, daughter-in-law, brother, brother-in-law, sister, sister-in-law, uncle, aunt or grandparent. Step-relatives and half-blood relatives are also included.

In relation to all the relatives mentioned, this includes adoptive relationships and relationships which would have existed but for an adoption i.e. the employee's natural relatives.

## **Types of Relevant Care for Adult Carers**

Carers' patterns of care-giving will vary considerably from individual to individual, both in the nature and the extent of the care given. The sort of care-giving activities that carers of adults who request flexible working are likely to be involved in to a greater or lesser extent include:

- help with personal care (e.g. dressing, bathing, toileting);
- help with mobility (e.g. walking, getting in and out of bed);
- nursing tasks (e.g. daily blood checking; changing dressings);
- giving/supervising medicines;
- escorting to appointments (e.g. General Practitioner (GP), hospital, chiroprapist);
- supervision of the person being looked after;
- emotional support;
- keeping the care recipient company;
- practical household tasks (e.g. preparing meals, doing shopping, domestic labour);
- help with financial matters or paperwork.

This is not an exhaustive list: some activities feature more prominently for some groups of carers than others. Carers of older people, for example, may need to ensure proper eating, while carers of people with mental health problems may need to order and supervise medication. Carers of people who have mental problems and who are in paid work may also need to help the person they care for with routine tasks such as getting to work.

## **Procedure for Considering an Application**

There is a 2-stage procedure followed by an appeals procedure - if needed.

1. The company must hold a meeting with the employee to discuss the request. This meeting must be held within 28 days of receiving the application.
2. The company must give its decision in writing within 14 days of the meeting.

If the employee is dissatisfied with the company's decision then they must appeal in writing within 14 days of receiving it. An appeal meeting will be held, again within 14 days. The appeal decision must be given in writing within a further 14 days.

## **Meeting to Discuss the Application**

Experience shows that the best way for both parties to understand each other's position and identify a solution that suits them both is to hold a face-to-face meeting to discuss the request. The meeting will provide both parties with the opportunity to discuss the desired work pattern in depth and consider how it might be accommodated. If the suggested pattern is not practicable then alternatives can be discussed.

The employee has the right to be accompanied at the meeting by a fellow worker employed by the company. Where the chosen companion will not be available at the time proposed by the company for the meeting, and the employee proposes an alternative time convenient for all three parties that falls no more than seven days after the date originally proposed, the company is required to postpone the meeting until that date.

## **Considering the Request**

The company has 14 days following the discussion meeting to consider the request. If the company needs more time it must talk to the employee and agree an extension. The decision must be notified in writing.

If a request is accepted the notification must:

- Include a description of the new working pattern
- State the date from which the new working pattern is to take effect
- Be dated

If a request is rejected the notification must:

- State the business grounds for refusing the application
- Provide a sufficient explanation as to why the business grounds for refusal apply in the circumstances
- Provide details of the employee's right to appeal
- Be dated

Any appeals must be lodged in writing within 14 days of receiving the decision. The company must hold a meeting within 14 days of receiving the appeal to discuss it. The employee again has the right to be accompanied. The company will then give its decision in writing within 14 days of the appeal meeting. If the appeal is upheld, the letter must specify the contract variation as detailed above. If the appeal is rejected then a letter from the company should explain why, as above.

Employees cannot submit another request for flexible working within a 12 month period.

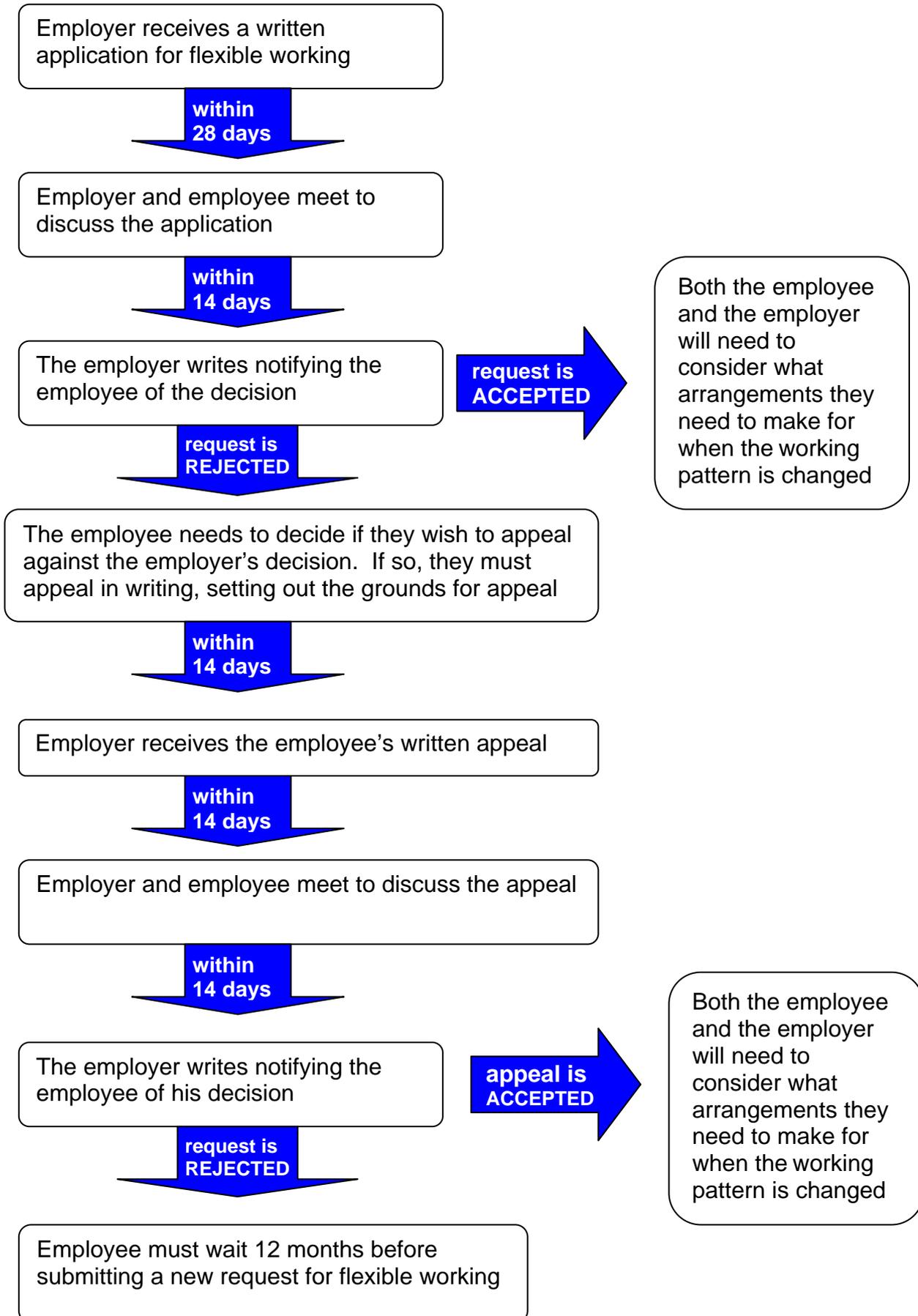
## **Withdrawal of Application**

The company may treat an application for flexible working as having being withdrawn if the employee in question has:

- Notified it orally or in writing that they are withdrawing the application
- Without reasonable cause, on more than one occasion failed to attend a meeting to discuss the application or a meeting to discuss an appeal where the application has been refused; or
- Without reasonable cause, refused to provide information necessary in order for the company to assess whether or not it should agree to the contract variation

Except where the employee has provided written notice of their withdrawal of the application, the employer should confirm the withdrawal in writing.

## How the Process Works - Flowchart



## **The Grounds to Refuse a Request**

An application can only be refused where there is a clear business reason from one of those listed below:

- Burden of additional costs
- Detrimental effect on ability to meet customer demand
- Inability to re-organise 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**

Trial periods can help both employees and the company because they provide an opportunity – without commitment - to test a particular working pattern to see if it works out to the satisfaction of both. An employee may, for example, be concerned about making what will be a permanent change to his or her contract of employment, while the company might have concerns about the potential impact of the proposed change in the employee's working pattern on the business. A trial period of, say 12 weeks, will give both the employee and the employer a chance to find out whether the chosen pattern of working will really work out well in practice.

Trial periods can potentially happen at two stages before a formal agreement is reached:

- Firstly, the company could give informal agreement to a trial before a formal flexible working request has been made by the employee; if this happened, the formal procedure would still be available to the employee if they wished to use it at some stage in the future;
- Secondly, if a formal application is made, an extension of time for the company to make a decision could be agreed and the trial period could happen before a final agreement takes place; in this case the rest of the formal procedure would still be available to the employee.

## **Temporary Arrangements**

In some circumstances, particularly where caring for an adult is involved, a permanent change to an employee's contract of employment may not be the best solution for them. Where, for example, an employee suddenly becomes the carer of an adult with a terminal illness, the company might consider that a temporary period of flexible working, agreed informally outside the formal procedure, might be appropriate. Alternatively the company and employee might agree to a time-limited change after which they would revert back to the original pattern.

An informal temporary arrangement might also be more appropriate where the demands on an employee's time are unpredictable, for example if caring for someone with a fluctuating condition like Parkinson's Disease.

## **Frequency of Applications**

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

## **The Impact on Terms and Conditions**

The contract of employment continues. If the change reduces the number of hours worked then pay will be reduced pro rata. Similarly the number of annual holidays may be changed by reducing the number of days worked in each week. Other conditions that are not related to pattern of work continue unchanged e.g. pension scheme membership, share scheme membership, sick pay, notice periods etc.

## **Reversing the Change**

Any change agreed is permanent. There is no right to revert to the original working pattern at any time in the future (unless the change is a trial period or agreed as temporary as detailed on page 9).

## **Protection from Detriment and Dismissal**

The right not to suffer detriment or dismissal starts as soon as the employee tells the company they are considering applying for flexible working. The protection applies regardless of length of service.

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

The company must not subject an employee to unfair treatment at work because:

- An application to work flexibly has been granted
- They made an application to work flexibly under the right

Furthermore it is unlawful for the company to dismiss an employee or select him or her for redundancy in preference to other comparable employees for the same reasons.

## **Rights and Responsibilities**

### **Employees' rights**

- To apply to work flexibly.
- To have their application considered properly in accordance with the set procedure and refused only where there is a clear business ground for doing so.
- To have a companion when meeting the employer to discuss the application.
- Where an application is refused to have a written explanation of the reasons.
- To appeal against the employer's decision to refuse an application.

### **Employees' responsibilities and best practice**

- To provide a carefully thought-out application.
- To ensure their application is valid by checking that all the eligibility criteria are met and that they have provided all the necessary information.
- To ensure the application is made well in advance of when they want it to take effect.
- To arrive at meetings on time and to be prepared to discuss their application in an open and constructive manner.
- If necessary, be prepared to be flexible themselves, to reach an agreement with the employer.

### **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 withdrawn in certain circumstances.

### **Employers' responsibilities and best practice**

- 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.

## **Effective Meeting Tips**

### **Manager**

You might want to:

- ✓ Make a list or draft an agenda of the issues you want to discuss at the meeting, e.g. if you are already aware that the request can be granted, you may want to discuss a suitable start date before formally accepting the request.
- ✓ Inform your employee of anyone you have asked to join the meeting.
- ✓ Ask your other workers if they would want to cover any extra hours that may be created as a result of granting the request.
- ✓ Speak to Group HR so that you are clear about your options.
- ✓ Familiarise yourself with this guidance and the different types of flexible working.
- ✓ If it would be helpful to involve external expertise, be open to the proposition.

### **Employee**

You should:

- ✓ Be prepared to expand on any points within your application.
- ✓ Prepare to be flexible. Your manager may ask if there are any other working patterns you would be willing to consider or if you would consider another start date or a trial period.
- ✓ If you are taking a companion along, make sure they are fully briefed on your request beforehand, provide them with a copy of your application, and inform your manager that a companion will be present. This will enable their attendance to be arranged save time during the meeting.
- ✓ Familiarise yourself with this guidance and other sources of information on flexible working before the meeting.

The manager must ensure that the meeting is held at an appropriate time and place that is convenient to both parties. In most cases, this will probably be the usual place of work, but again, both parties should be prepared to be flexible about this. For example, if the employee is a mother who is about to return to work from maternity leave, it may be that she will find it difficult to travel to her workplace. In such circumstances, discuss the meeting place with her and consider whether there is an easier place to meet.



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