

Swansea Council for Voluntary Service

Your local county voluntary council

6. Employing and managing people

6.14.4 Right to request flexible



Organisations should have a policy setting out an employee's rights to flexible working, which takes into account minimum statutory entitlements.

The following sample policy is provided for guidance only and should not be regarded as an authoritative statement of the law.

Sample right to request flexible working policy and procedure.

It is *<Name of organisation>*'s policy to comply with both the letter and spirit of the law on flexible working rights. To this end its aim is to inform all employees of their entitlement to flexible working rights and to ensure that those rights are understood by employees who qualify.

1. Eligibility to request flexible working

To have the statutory right to make a flexible working request, an employee has to meet certain criteria:

(NB Although to claim a statutory right the employee has to meet certain criteria, the organisation may wish to consider extending the right to request flexible working from all employees.)

To be eligible to make a statutory flexible working request, an employee must:

- have worked for *<Name of organisation>* continuously for at least 26 weeks on the date they make their request
- not have made another statutory request during the past 12 months

The employee can only make an application to care for either:

- a child under six or under 18 if disabled
- an adult who requires care

2. Entitlement to flexible working

Parents

An employee can request flexible working if they are either:

- the mother, father, adopter, guardian, special guardian, foster parent or private foster carer of the child or a person who has been granted a residence order in respect of a child

- married to, or the partner or civil partner, of the child's mother, father, adopter, guardian, special guardian, foster parent or private foster carer or of a person who has been granted a residence order in respect of a child

Carers

An employee can request flexible working if they care, or expect to be caring, for either:

- a spouse, partner, civil partner or relative
 - someone who lives at the carer's address
- ### **3. Frequency of flexible working requests**

Employees can make one application every 12 months even if the second request in this period was for a different caring responsibility.

4. Types of flexible working

Eligible employees can make a request to:

- change the hours they work
- change the times when they are required to work
- work from home (whether for all or part of the week)

The term flexible working covers flexibility in terms of time (eg. part-time work) and location (eg. homeworking) and includes the following:

Part-time working

Employees are contracted to work less than standard, basic, full-time hours.

Flexi-time

Employees have the freedom to work in any way they choose outside a set core of hours determined by the employer.

Staggered hours

Employees have different start, finish and break times, allowing the organisation to open longer hours.

Compressed working hours

Employees can cover their total number of hours in fewer working days.

Job sharing

One full-time job is split between two employees who agree the hours between them.

Time off in lieu (TOIL)

Employees take time off to compensate for extra hours worked.

Term-time working

An employee remains on a permanent contract but can take paid/unpaid leave during school holidays.

V-time working

Employees agree to reduce their hours for a fixed period with a guarantee of full-time work when this period ends.

Zero-hours contracts

Employees work only the hours they are needed.

Home working/teleworking

Employees spend all or part of their week working from home or somewhere else away from the employer's premises.

Sabbatical/career break

Employees are allowed to take an extended period of time off, either paid or unpaid.

(NB flexible arrangements should comply with the law on working time.)

5. Application

An employee's application should set out their desired working pattern and how the organisation can accommodate it.

(NB the organisation should accept the information the employee gives as true unless you have good reason to doubt it.)

In order for a flexible working application to be valid, it must contain certain information:

- be dated and in writing
- state that it is being made under the statutory right to make a flexible working request
- confirm that they have, or expect to have, caring responsibility for a child or adult in need or care
- confirm their relationship with the child or adult in question
- specify the flexible working pattern applied for
- explain what effect, if any, they think the proposed change may have on <Name of organisation> and how <Name of organisation> can deal with any such effect
- state the date on which they want the change to start
- state whether they have made any applications to <Name of organisation> before and, if so, when

(NB the organisation can accept an email or letter, or provide employees with an application form.)

The employee should allow plenty of time between the date of the application and the date they expect the flexible working arrangement to start. This is to allow <Name of organisation> time to look at their application and assess whether or not it can be accommodated.

6. Evidence of parental/caring responsibilities

An employee does not have to give proof of their caring relationship. Therefore the organisation should accept applications in good faith and make the decision on whether or not to grant a request solely on business grounds.

In addition, an employee does not have to show:

- that the child or adult in question requires any particular level of care
- why they themselves must provide that care

However, if you think that an employee is abusing the right to request you can ask for evidence.

(NB under the legislation there is no obligation on the employee to provide proof of their relationship or the level of care required. The organisation should take the decision on whether or not a request can be granted on business grounds rather than the employee's personal circumstances.)

7. Relevant types of adult care

Carers' patterns of care-giving vary widely from individual to individual both in the nature and the extent of the care given.

Examples may include:

- emotional support
- giving/supervising medicines
- escorting to doctors' appointments
- keeping the care recipient company
- help with financial matters or paperwork
- supervision of the person being looked after
- help with personal care
- help with mobility
- housekeeping
- nursing tasks

(this list is not exhaustive)

8. Contract of employment

If *<Name of organisation>* accept an employee's flexible working request, this may lead to a permanent change to their contractual terms and conditions.

If this is the case, then the employee may not revert back to the previous working pattern unless *<Name of organisation>* agree otherwise.

If an employee is concerned about this, *<Name of organisation>* could either suggest that they work flexibly over a trial period or agree that the arrangement will be temporary.

9. Considering an employee's flexible working request

<Name of organisation> will seriously consider all statutory flexible working requests with the aim of deciding whether *<Name of organisation>* can accommodate the requested work pattern.

Under the statutory procedure, the *<insert Line Manager, HR Manager>* should hold a meeting with the employee to discuss their request. If the request cannot be accommodated other alternatives maybe explored to find a working pattern suitable to both the organisation and the employee.

(NB the request for flexible working can be agreed simply on the basis of the application itself without the need for a meeting.)

10. Receiving the application

<Name of organisation> will acknowledge receipt of the employee's flexible working request within *<insert number of>* working days.

If the organisation finds that the application is incomplete, *<Name of organisation>* may ask the employee to resubmit the request.

<Name of organisation> will not consider the request until it is resubmitted

If the employee unreasonably refuses to provide the information needed, *<insert Line Manager, HR Manager>* can treat the application as withdrawn. The employee will not be able to make another application for another 12 months.

(NB there are three circumstances where an employee's application can be treated as withdrawn:

- The employee unreasonably refuses to provide the information you need to consider their application. You should confirm in writing the withdrawal of the application.

- The employee twice fails to attend a meeting to discuss a request (or a meeting to discuss an appeal) without reasonable cause. However, you should be flexible where - on both occasions - the employee cannot attend due to unforeseen circumstances. You should confirm in writing the withdrawal of the application.
- The employee decides to withdraw the application. They should notify you as soon as possible in writing. If you don't receive written notification, ask them to confirm their intention verbally and then confirm this in writing.

The employee will not be eligible to make another application for 12 months.)

11. Discussing the application

<Insert Line Manager, HR Manager> should arrange a meeting with the employee within 28 days of receipt of their valid application. If it is difficult to arrange a meeting within this period, the organisation will seek the employee's agreement to extend it.

Failure to hold a meeting within the 28-day period or any extension, without the employee's agreement, will be a breach of the procedure.

<Insert Line Manager, HR Manager> should arrange the meeting at an appropriate time and place that is convenient for all.

12. Right to be accompanied

The employee has the right to be accompanied by a work colleague or certified trade union representative who works at any other premises which forms part of the business.

The companion can address the meeting and confer with the employee during it, but may not answer questions on behalf of the employee.

If the companion is unable to attend the meeting, the employee must seek to rearrange the meeting. It should take place within seven days of the date of the original meeting.

(NB the organisation must pay both the employee and their companion for the time off from their normal working duties to attend the meeting.)

13. Reaching a Decision

<Name of organisation> must notify an employee of the decision within 14 days of the meeting to discuss their flexible working request.

If an agreement cannot be made for the working pattern asked for, you can still try to reach agreement with the employee on an alternative arrangement.

14. Notifying an employee

Once an employee's flexible working request has been accepted <insert Line Manager, HR Manager> will write to them:

- detailing their new working pattern
- stating the date on which it will start
- ensuring that this notice is dated
- stating that the arrangement means a permanent change to the employee's terms and conditions of employment (unless agreed otherwise)

15. Trial periods

In the event that <Name of organisation> and/or the employee are not sure that the proposed flexible working pattern will work in practice, the organisation may consider trying a different working arrangement or, consider a trial period.

16. Informal temporary flexible working arrangements

In the event that <Name of organisation> and the employee think that a flexible working arrangement resulting in a permanent change to the employee's contract of employment may not be the best solution, <Name of organisation> may consider an informal temporary arrangement.

17. Refusing a flexible working request

Should <Name of organisation> decide that it cannot accommodate any kind of flexible working for an employee, <insert Line Manager, HR Manager> will in writing:

- state which of the listed business ground(s) apply as to why the request cannot be accepted
- provide an explanation of why the business reasons apply in the circumstances
- set out the appeal procedure

(NB You can reject a flexible working request on only a limited number of set grounds.

These are:

- planned structural changes
- the burden of additional costs
- a detrimental impact on quality
- the inability to recruit additional staff
- a detrimental impact on performance
- the inability to reorganise work among existing staff
- a detrimental effect on ability to meet customer demand
- lack of work during the periods the employee proposes to work).

18. Appeal against a decision to reject a flexible working request

Should an employee wish to appeal against a decision to reject a flexible working request the employee must make their appeal in writing within 14 days of receiving your written notice refusing their request, which must set out the grounds for making the appeal.

19. Arranging an appeal meeting

<Insert Line Manager, HR Manager> must arrange the appeal meeting within 14 days of receiving the employee's appeal notice.

<Insert Line Manager, HR Manager> will inform the employee of the outcome of the appeal in writing within 14 days after the date of the meeting.

(NB if you change your mind and choose to accept their request, this notification must:

- be dated
- include a description of the new working pattern
- state the date from which the new working pattern is to take effect

If you choose to still refuse the request, this notification must:

- be dated.
- state the grounds for the decision. These must be in direct response to the employee's grounds for making the appeal.
- explain why the grounds for refusal apply in the circumstances. Your explanation should provide the kind of detail required in your explanation following the initial meeting.)

20. Right to be accompanied at an appeal

The employee has the right to be accompanied by a work colleague or certified trade union representative who works at any other premises which forms part of the business.

The companion can address the appeal and confer with the employee during it, but may not answer questions on behalf of the employee.

If the companion is unable to attend the appeal, the employee must seek to rearrange the appeal. It should take place within seven days of the date of the original meeting.

(NB the organisation must pay both the employee and their companion for the time off from their normal working duties to attend the appeal.)

21. Employment protection rights

<Name of organisation> will not treat an employee detrimentally or dismiss them for a reason relating to their flexible working request.

Employees are protected from suffering a detriment or being dismissed because:

- they made or proposed to make an application to work flexibly
- they exercised or proposed to exercise a right under the flexible working request procedure
- they have made or have stated their intent to make a complaint to an employment tribunal in respect of flexible working application
- they exercised or sought to exercise their right to be accompanied at a meeting to discuss their request or they accompanied another employee to such a meeting

(NB employees who suffer a detriment or are dismissed in these circumstances may make a complaint to an employment tribunal.)

Further information

ACAS

Tel: 08457 474747

www.acas.org.uk

Business Link

Tel: 0845 600 9 006

www.businesslink.gov.uk

HMRC Employer Helpline

Tel: 0845 7143143

WCVA / Wales TUC Cymru

The good employment code

Tel: 0800 2888 329

www.wcva.org.uk

Wales TUC Cymru

Tel: 029 20 347010

wtuc@tuc.org.uk

www.wtuc.org.uk

Disclaimer

The information provided in this sheet is intended for guidance only. It is not a substitute for professional advice and we cannot accept any responsibility for loss occasioned as a result of any person acting or refraining from acting upon it.

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