

FLEXIBLE WORKING SUMMARY

Flexible Working provides a means for employees to balance their work with their family life. By accommodating requests wherever possible, there are benefits to be gained for both the employer and employee.

Flexible working provides employees with children up to the age of 16, parents of disabled children aged 18 and who are in receipt of disability living allowance (DLA), or a carer of an adult as defined by BERR¹, the right to request to work flexible hours. This applies to both male and female.

GENERAL ELIGIBILITY CRITERIA

Under the legislation the applicant must meet the requirements set out below:

- be an employee (not an agency worker)
- have worked for their employer for 26 weeks continuously at the date that the application is made
- be the mother, father, adopter, carer, legal guardian, adoptive and foster parents and spouses of these, including same sex partners, as long as they have parental responsibility for the child
- has not made an application for flexible working under these statutory rights during the past 12 months.

The employee can make an application to care for:

- a child under six, but from 6th April the right will be extended to employees with parental responsibility of a child aged 16 and under;

- a disabled child who is under 18 and who is in receipt of disability living allowance (DLA);
- an adult who requires care.

TYPES OF FLEXIBLE WORKING ARRANGEMENTS

There are different types of flexible working arrangements but the main principle should be that it covers flexibility in terms of time and location. The following list is not exhaustive.

- Part time work
- Shift work
- Home working
- Flexi time
- Job sharing
- Term Time working
- Zero hours contract.

HOW TO APPLY

The employee can make an application by using the form FW(A) supplied by BERR or they can put the application in writing to their employer. You will have to consider how your request can be fitted into your unit or work area, so give as much detail as possible relevant to your case. Complete and submit your application form requesting Flexible Working. Sign and date the form confirming you meet the eligibility criteria and then hand it to your line manager. Once you have handed in the completed form your manager should arrange a meeting within 28 days of your application.

You may withdraw your application if your circumstances have changed since handing in the form, but you will need to do this in writing.

¹The Work and Families Act defines a carer as an employee who is or expects to be caring for an adult who: is married to, or the partner or civil partner of the employer, or is a relative of the employer; or falls into neither category but lives at the same address as the employee.

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Your application may be considered to be withdrawn if you do not attend a meeting without giving a suitable reason or if you do not disclose information. If your line manager considers your request to be withdrawn they must confirm this in writing to you.

WHAT HAPPENS NEXT?

Within 14 days after the meeting the employer must write to you either to agree to a new work pattern and a start date; or to provide clear business grounds as to why the application cannot be accepted. However, time limits can be extended for example if there is an agreement in place between the trade union and the business which states otherwise or the person dealing with the request is absent from work due to leave or sickness absence.

REASONS FOR REJECTION

Your request can be rejected if you are unable to tick all the boxes on the application form to show you are eligible or the information you provide is incorrect. The line manager must have explored all avenues available to accommodate your request. If they are unable to accommodate your request the reason for rejection MUST be one of the following outlined:

- detrimental effects on the ability to meet customer demands i.e. customer contracts could not be met
- detrimental impact on performance, i.e. a performance measure would be damaged by incorporating the proposed work method
- burden of additional costs
- inability to reorganise work among existing staff i.e. other staff do not have the skills required to perform the existing persons role.
- inability to recruit additional staff i.e. difficulty to fill the applicants position
- insufficiency of work during periods the employee proposes to work i.e. there would not be enough workload at that time/place.

YOUR RIGHT TO APPEAL

You have within 14 days of being notified of your rejection to work flexibly to appeal against the decision. You will need to fill in an appeals form outlining your reasons for appealing, sign and date the form and hand it to your line manager. The employment manager will arrange for the appointment of an independent person to hear your appeal.

Having gone through the appeals process – informal and formal - and you are still not satisfied with the reason/s given for the rejection of your application; you may have recourse to an Employment Tribunal. All forms to the Employment Tribunal MUST be lodged within three calendar months starting with the date your employment ends. This applies even where you have lodged an appeal. An ET1 and an explanatory booklet “How to apply to an Employment Tribunal” and other booklets can be obtained from your local Employment Office. The form is also available on the Employment Tribunal website (www.employmenttribunals.gov.uk)

You can get further advice from:

BERR: www.berr.gov.uk/employment/workandfamilies/flexible-working
www.direct.gov.uk/en/Employment/Employees/WorkingHoursAndTimeOff

ACAS: www.acas.org.uk

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