

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. All employees have the legal right to request flexible working – not just parents and carers.

GENERAL ELIGIBILITY CRITERIA

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

- Be an employee
- Have worked for their employer for 26 weeks continuously at the date that the application is made
- Has not made an application for flexible working under these statutory rights during the past 12 months.

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
- Homeworking
- Flexi-time
- Job sharing
- Term time working
- Zero hours contract
- Phased retirement

HOW TO APPLY

Employees can only make one application for flexible working a year.

The employee should email or write a letter to their employer. Employers may ask employees to

use a standard form to make an application. The application must include:

- The date
- A statement that this is a statutory request
- Details of how the employees wants to work flexibly and when they want to start
- An explanation of how they think flexible working might affect the business and how this could be dealt with, for example if they're not at work on certain days
- A statement saying if and when they've made a previous application

WITHDRAWING AN APPLICATION

Employees should tell their employer in writing if they want to withdraw their application. Your application may be considered to be withdrawn if you do not attend 2 meetings to discuss the application without giving suitable reason or if you do not disclose information. If the employer considers your request to be withdrawn they must confirm this in writing to you.

WHAT HAPPENS NEXT

The employer should usually make a decision within 3 months of the date of receipt of the application (or longer if agreed with the employee).

The employer should write to the employee with a statement of the agreed changes and a start date for flexible working. Unless expressly outlined during the agreement, this will be a permanent change to an employee's terms and conditions. They should also change the employee's contract to include the new terms and conditions. This should be done as soon as possible but no later than 28 days after the request was approved.

REASONS FOR REJECTING AN APPLICATION

Employers must tell the employee that they've rejected the application.

Your request can be rejected for any of the following reasons:

- Extra costs that will damage the business
- The work cannot be reorganised among other staff
- People cannot be recruited to do the work
- Flexible working will affect quality and performance
- The business will not be able to meet customer demand
- There's a lack of work to do during the proposed working times
- The business is planning changes to the workforce

RIGHT TO APPEAL

There is no longer a statutory right to an appeal; however, your employer should offer an internal appeals procedure to help demonstrate that they are handling requests in a 'reasonable manner'.

EMPLOYMENT TRIBUNAL

Having gone through the process and you are still not satisfied with the reason/s given for the rejection you may have recourse to an Employment Tribunal but only for the following reasons:

- Did not handle the request in a 'reasonable manner'
- Wrongly treated the employee's application as withdrawn
- Dismissed or treated an employee poorly because of their flexible working request, for example, refused a promotion or pay rise
- Rejected an application based on incorrect facts

Employees cannot complain to a tribunal just because their flexible working request was rejected.

All forms to an Employment Tribunal MUST be lodged within 3 calendar months of:

- Hearing the employer's decision
- Hearing the request was treated as withdrawn
- The date the employer should have responded to their request (but failed to do so)

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: <https://www.gov.uk/employment-tribunals>

WHEN FLEXIBLE WORKING IS UNILATERALLY WITHDRAWN

We always recommend that any application for flexible working is done formally. Where there is a strong paper trail, this always offers extra protection for applicants.

An employer can apply periodical reviews of a flexible working agreement but unless mutually agreed by all parties, they cannot unilaterally withdraw flexible working. Sadly, this does not stop employers doing this and in this case you should seek immediate support from your local Union Branch. If this happens it is likely to constitute a potential breach of contract. Breach of contract complaints cannot be heard at an Employment Tribunal when an individual is still employed – legal recourse can only be sought at a County Court and you are advised to seek advice accordingly.

You can get further advice from:

ACAS – www.acas.org.uk
Government Website – <https://www.gov.uk/flexible-working>

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Source: Government website