

## **GUIDANCE ON FLEXIBLE WORKING: THE RIGHT TO APPLY - STATUTORY RIGHTS**

1. Parents of children aged under the age of 17 or of disabled children under the age of 18 and employees with adult dependants have the right to apply to work flexibly. Employers have a statutory duty to consider their applications seriously.
2. This right enables eligible mothers and fathers and employees with adult carer responsibilities to request to work flexibly. It does not provide an *automatic* right to work flexibly as there will always be circumstances when the employer is unable to accommodate the employee's desired work pattern. It aims to facilitate discussion and encourage both the employee and the employer to consider flexible working patterns and to find a solution that suits them both. The employee has a responsibility to think carefully about their desired working pattern when making an application, and the employer is required to follow a specific procedure to ensure requests are considered seriously.

### **Eligibility**

3. In order to make a request an individual will:
  - be an employee
  - have a child under 17, or under 18 in the case of a disabled child/have caring responsibilities for an adult aged over 18 who is the employee's spouse, civil or live-in partner, relative or someone living at the same address as the employee;
  - have worked with their employer continuously for 26 weeks at the date the application is made
  - make the application no later than two weeks before the child's 17th birthday or 18<sup>th</sup> birthday in the case of a disabled child
  - have or expect to have responsibility for the child's upbringing/have or expect to have to care for an adult in need of care;
  - be making the application to enable them to care for the child/adult
  - not be an agency worker
  - not be a member of the armed forces
  - not have made another application to work flexibly under the right during the past 12 months

### **Scope of a request**

4. Eligible employees are able to request:
  - a change to the hours they work
  - a change to the times when they are required to work
  - to work from home.
5. This covers working patterns such as annualised hours, compressed hours,

flexitime, home working, job-sharing, self-rostering, shift working, staggered hours and term-time working.

6. Applications for a change in working pattern will not always require a significant alteration. For example, a parent may simply wish to start work half an hour later to take their child to school and make up the time later in the day.

### The procedure

7. In summary, the procedure will be as follows:

- The initial onus will be on the employee to make a considered application in writing. They will be able to make only one application a year under the right, and an accepted application will mean a **permanent** change to the employee's own terms and conditions of employment. It will be important therefore that, before making an application, the employee gives careful consideration to which working pattern will help them best care for their child or adult in need of care; any financial implications it might have on them in cases where the desired working pattern will involve a drop in salary; and any effects it will have on their employer's business and how these might be accommodated.
- Within **28 days** the employer will arrange to meet with the employee. This will provide the employer and the employee with the opportunity to explore the desired work pattern in depth, and to discuss how best 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 outlined in the employee's application. The employee will, if s/he so wishes, be able to bring a companion to the meeting.
- Within **14 days** after the date of the meeting the employer will write to the employee to either agree to a new work pattern and a start date; or to provide a clear business ground(s) as to why the application cannot be accepted and the reasons why the ground(s) applies in the circumstances. The procedure will also provide for occasions when the employer will want to take further action before notifying the employee with their final decision.

8. The model procedure provides an employee with the right to appeal their employer's decision within **20 days** of it being notified to them. The appeal process is designed to be in keeping with the overall aim of the right of encouraging both parties to reach a satisfactory outcome at the workplace.

9. In a minority of cases some employees will have grounds to pursue their request with third party involvement. This may be by referring their request to ACAS, to an employment tribunal, or by using another form of dispute resolution. An employee will only be able to take their claim to an employment tribunal in specific circumstances. In such cases, the employer

will have to demonstrate to the tribunal that they have followed the procedure correctly.

Note: The law providing parents of young or disabled children, or an employee who has responsibility for the care of a dependant adult, with the right to request a flexible working pattern is in addition to, and will apply completely independently from, other legislation such as sex, disability, or race legislation.

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## **NPS FLEXIBLE WORKING REQUEST – MANAGEMENT CHECKLIST**

1. Parents of children aged under 17 or of disabled children aged under 18 or an employee who is the carer for an adult over 18 (who is the employee's spouse,, civil or live-in partner, a relative or someone living at the same address as the employee) have the right to apply to work flexibly and employers have a statutory duty to consider their applications seriously. Each board or trust is required to monitor such requests for equality of opportunity.
2. It is therefore important that managers are aware of their responsibility in this respect and that they give due consideration to all applications for flexible working arrangements.
3. The types of working arrangement that may be requested include:
  - a change to the hours they work
  - a change to the times when they are required to work
  - to work from home
4. This covers working patterns such as annualised hours, compressed hours, flexitime, home working, job-sharing, self-rostering, shift working, staggered hours and term-time working.
5. To assist you and to facilitate monitoring the following forms have been developed:
  - Flexible Working Application Form and Manager's Confirmation of Receipt (Appendix A)
  - Flexible Working Acceptance Form (Appendix B)
  - Flexible Working Rejection Form (Appendix C)
  - Flexible Working Appeal Form (Appendix D)
6. Below is a check list of things you should consider when an employee requests flexible working arrangements (this is not exhaustive):
  - The applicant's workload
  - Management and supervision of the applicant (and by the applicant if appropriate)
  - The effect that this change will have on colleagues and the team's workload and how this could be managed including, where appropriate, transfers
  - Alternative patterns which may be suitable for the applicant
  - Subsidiary benefits which may accrue from the change (e.g. increased workforce flexibility)
  - Training and career development issues
  - The effect that such a change will have on the applicant's pay, pension and other benefits having sought guidance from HR and pensions if appropriate
  - Health, safety and welfare issues

- Data and personal security issues
7. If you require assistance or advice on these matters the Human Resources Department should be consulted. It is also important to keep them informed of all applications for flexible working arrangements to ensure legal compliance and for monitoring purposes.