

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.

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
- 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 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) or they can put the application in writing to their employer. It is very advisable to seek guidance from your local rep/branch when making any such applications. 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.

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Your application may be considered to be withdrawn if you do not attend a meeting without giving a suitable reason or if you do not disclose information. If your line manager considers your request to be withdrawn they must confirm this in writing to you.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

The law requires that from the moment an application is received the request, including any appeal, must be considered and decided on within 3 months from the date of receipt.

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

If your application has been rejected, you have the right to appeal to work flexibly. 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 of the act complained of. 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

THE FEE FOR REGISTERING AN APPLICATION TO THE ET

The fee is likely to fall under the ‘type B category’, which at the time of reissuing this factsheet is **£250**. A further **£950** is payable for the case to progress to a hearing.

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. Unless expressly outlined during the agreement and implementation of a flexible agreement, this will be a permanent change to your terms and conditions. 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 branch. If this happens it is likely to constitute a potential breach of contract scenario. 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

Linda Roy

National Equality Officer

Email: lroy@cwu.org

020 8971 7238