

## Flexible and part-time work

### What are your rights?

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**Employees now have the right to request flexible and part time working from their employer.**

#### Types of flexible and part- time working

Flexible working is any working pattern that is tailored to suit your needs. Types of flexible working include:

- **part time:** working less than the standard hours, perhaps by working fewer days per week
- **flexi time:** choosing when to work (there is usually a core period during which you have to work)
- **staggered hours:** different starting, break and finishing times for employees in the same workplace which allows a business to open for longer hours
- **annualised hours:** your hours are worked out over a year (often there are set shifts and you decide when to work the other hours)
- **compressed hours:** working your agreed hours over fewer days
- **job sharing:** sharing a job designed for one person with someone else
- **home working:** working from home
- **shift swapping:** workers arrange shifts amongst themselves, provided all shifts are covered
- **self rostering:** workers nominate shifts they would prefer, leaving you to compile shift patterns matching their individual preferences while covering all required shifts
- **time off in lieu:** workers take time off to compensate for extra hours worked
- **term-time working:** where you remain on a permanent contract but can take paid/unpaid leave during school holidays

- **v-time working:** workers agree to reduce their hours for fixed period with a guarantee of full time work when this period ends
- **zero hour contracts:** workers work only the hours they are needed
- **sabbatical:** workers are allowed to take an extended period of time off either paid or unpaid

#### Eligibility – who can apply for flexible working

Anyone can ask their employer for flexible work arrangements, however some employees have the legal right to request a flexible working pattern.

To be eligible you must:

- be an employee, but not an agency worker or in the armed forces
- have worked for your employer for 26 weeks' continuously before applying
- not have made another application to work flexibly under the right during the past 12 months

You will then have the legal right to ask if you:

- have or expect to have parental responsibility of a child aged 16 or under or a disabled child under 18 who receives Disability Living Allowance (DLA)
- are the parent/guardian/special guardian/foster parent/private foster carer or as the holder of a residence order or the spouse, partner or civil partner of one of these and are applying to care for the child
- are a carer who cares, or expects to be caring, for an adult who is a spouse, partner, civil partner or relative; or who although not related to you, lives at the same address as you

If you do not have the legal right to request flexible working you can still ask your employer if you can work flexibly.

#### Procedure for applying for flexible and part-time working

It is up to you to propose a flexible working arrangement in terms of hours, time and place of work and explain how the employer could be affected by the arrangement and how this might be dealt with. Under the law your employer must consider the request seriously, meet with you and confirm its decision within a set timeframe.

When making your application you must confirm that you either:

- have responsibility for the upbringing of the child and you are either the mother, father, adopter, guardian or foster parent or are married to or the partner of them.
- care for, or expect to be caring for, a spouse, partner, civil partner, relative or someone who, though not related to you, lives at the same address as you.

Your application must:

- be made well in advance of when you want it to take effect
- be in writing (on paper or electronically)
- be dated
- state that the application is made under the statutory right to request a flexible working pattern
- give details of the flexible working pattern you are applying for, including the date from which you want it to start
- explain what effect you believe the new working pattern would have on your employer, and how any effects might be dealt with
- state whether you have made a previous application and, if so, when?

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The more notice you give your employer, the more likely they will be able to implement the change when you want it. The statutory process can take up to 14 weeks or longer where a problem arises.

You do not have to:

- provide evidence that you have a parental or caring responsibility
- demonstrate why the care cannot be provided by someone else

You can make an application by:

- filling in a form given to you by your employer
- filling in the standard form provided
- sending the required information to your employer in a letter or email

Your employer has 28 days from receipt of your application to let you know if you can work flexibly. If they agree they can either confirm this in writing or alternatively they should meet with you to discuss your application. This time limit may be extended if the person who would usually consider your request is absent due to illness or leave and the 28 day time limit will normally run from when they return.

You are allowed to bring a fellow worker or workplace union representative to the meeting. They can talk with you and address the meeting, but they cannot answer questions on your behalf. If they are unable to attend the meeting, you should re-arrange it with your employer to take place within seven days of the cancelled meeting. Employers must allow their workers time off during work hours to act as a companion and pay them for this time.

#### The employer's decision

If your request for flexible working is granted, the changes will amount to a permanent change to your employment contract and a new contract should be issued incorporating the flexible working arrangements.

If your request is refused, your employer must give you written reasons for refusal. There are set limited grounds for refusal. Employers should give a business reason for their decision to refuse, with an explanation why the particular ground relied upon applies.

Valid grounds for refusal are:

1. The burden of additional costs
2. Planned structural changes
3. A detrimental effect on quality
4. A detrimental effect on performance
5. A detrimental effect on the ability to meet customer demand
6. An inability to reorganise work amongst existing staff
7. An inability to recruit additional employees
8. Insufficient work when the employee proposes to work

#### Appealing your employer's decision

Employees may appeal against the employer's decision and the appeals must be dealt with within 14 days of your appeal notice. If practicable the appeal should be heard by a different manager. If your employer still refuses your application and you feel it has not been considered seriously there are further steps you can take.

You can:

1. deal with the problem informally to clear up misunderstandings;
2. lodge a formal written grievance;

3. try using an external 3rd party mediator or conciliator (e.g. Acas or a union representative)
4. in some circumstances make a formal complaint to an employment tribunal. You will be able to do this if your employer has failed to follow correct procedures, if their decision was based on incorrect facts or if there has been possible discrimination against you. For example, you are caring for a disabled relative and your employer's refusal amounts to disability discrimination.

It should be noted therefore, that your employer does not have to accept your application.

The potential compensation recoverable by an employee if their employer fails to deal properly with an application to work flexibly is up to 8 weeks' pay capped at £350 per week (from 1 February 2009).

There is a separate award of up to two weeks' pay if your employer failed to allow you to be accompanied at a meeting.

#### Part-time worker discrimination

If your employer allows you to work flexibly part-time they also need to adhere to further legislation. They must not treat part time workers less favourably than comparable full time workers unless there is an objectively justifiable reason. A part-time worker is still entitled to the same pay and benefits (on a pro-rata basis) as a full time employee as well as access to training and promotion.

**For further information please contact Philip by telephone on 020 7357 9494 or email:**

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