FACTSHEET: Flexible Working

By ‘Flexible Working’ the government means altering the way you work. This includes changing your hours, either compressing them or changing to part-time or term-time only or working wholly or partly from home. The rules on how applications are dealt with are different in Northern Ireland.

Making the request

Any employee with 26 weeks service with the same employer has the right to make a request to work flexibly can make a request. This must:

- Be in writing.
- Be dated.
- Explain the change they would like to their working pattern.
- Explain when they would like the change to come into force.
- Explain what effect the change would have on the business.
- Explain how such effects might be dealt with.
- State that it is a statutory request.
- State if the employee has made a request previously and if so when.

We have useful advice on how to present and negotiate your request here.

There is an ACAS guide which sets out what employers have to do and what is good practice. The ACAS guide suggests that employees should state if they are making their request in relation to the Equality Act. We recommended that if you are asking for the change to care for a disabled child or person you state this on your application, with some detail about the impact on family life if it is turned down.

Once you have made the request, there is not much that an employer must do. The employer has three months to give you a decision (although this can be extended by agreement). If the employer turns down your request they must give one of the permitted business reasons. These are:

- Burden of additional costs.
- Detrimental effect on ability to meet customer demand.
- Inability to reorganise work among existing staff.
- Inability to recruit additional staff.
- Detrimental impact on quality.
- Detrimental impact on performance.
- Insufficiency of work during the periods you propose to work.
- Planned structural changes.

There is no legal requirement for the rejection to be in writing (although the code says it is good practice for it to be), and there is no legal requirement for a right to appeal. So the only way an employer can breach the actual procedure is by either not giving permitted reasons, by taking longer than three months to give you a decision or by giving reasons which are not factually correct.
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However, the ACAS code does set out many things that the employer should do as good practice. While there is nothing unlawful in the employer failing to do these things (the code uses the word “should” for things that are recommended but not legally required) a tribunal would take into account whether the employer had followed these steps.

An employer should:

- Arrange to discuss the request with the employee as soon as possible – see “meetings” below.
- Inform the employee if there is likely to be delay in processing the request.
- Consider the request carefully, looking at the benefits (for you but potentially also for the business) and weighing these against any adverse business impact of implementing the changes you request.
- Allow the employee to discuss a refusal where there is new information or if the employee thinks the request wasn’t handled reasonably.
- Deal with appeals as quickly as possible where they are allowed.

Meetings

There is no obligation on the employer to meet with the employee, but where it does so it should be in a place where it isn’t overheard by colleagues. There is no suggestion that the meeting should be face-to-face, a meeting over telephone would be acceptable. The guidance says it is good practice to allow the employee to be accompanied by a colleague but does not say that the employer must or even should allow this.

If you cannot attend a meeting the employer should rearrange it. If you fail to attend two meetings then the employer can take your request to be withdrawn, although they should find out and consider your reasons for not attending first. This guidance applies to initial meetings and (where allowed) appeal meetings.

Trial Periods

It is common for employers to allow a trial period of a flexible working arrangement. If this happens, you can agree with your employer to extend the time for them to make a final decision on your flexible working beyond three months of your original request.

Where an employer says no

Check with your employer to see if they allow appeals. If they do, then appeal. If they do not, it still could be worth writing to them explaining why you think their decision is wrong and asking them to change their mind, but bear in mind the time limits for bringing a claim.

If you think your employer has wrongly turned you down, we recommend that you put in a grievance. While a grievance would have no effect on a claim for breach of the procedure, failure to put in a grievance might reduce any award a tribunal made if you had a claim under the Equality Act, such as sex discrimination. A grievance also gives you another chance to
sort things out with the employer, but don’t forget the time limits for bringing a tribunal claim.

Remember there is no general right to work flexibly but you may be able to make a Tribunal claim if:

- Your employer did not give you an answer within three months.
- Your employer’s reason for refusing is not permitted.
- Your employer’s reason for refusing is not factually correct.

You may also have rights under **sex discrimination law** if your reasons are to do with family responsibilities or disability discrimination law if your reasons are to do with your disabled child.

It is also unlawful to directly discriminate against you because you are associated with someone who has a disability, for example, if the reason you are refused your request of flexible working request is because you care for your disabled child. But this does not give you a general right to time off to care for your disabled child. It is only if your employer has treated you less favourably that they treat parents of non-disabled children that you could complain of direct associative disability discrimination. For instance, in *Coleman v Attridge Law*, the employer did not allow Ms Coleman the same flexibility to look after her disabled son as they did her colleagues (who were parents of non-disabled children) and she was described as lazy when she requested time off to look after her son whereas the other parents were not. But bear in mind that if your employer refuses everyone time off for childcare, whether or not their child is disabled, this would not be direct associative disability discrimination. Other discrimination legislation may also apply, depending on the situation.

If you do not come to an agreement after the grievance, the next stage would be to bring an Employment Tribunal claim. Seek advice before doing this, but bear in mind the **time limit** for bringing claims is three months less a day from what you are complaining of, in this case when your employer first says no to your request.

**Useful contacts:**

- **www.workingfamilies.org.uk**
- Free legal advice helpline: **0300 012 0312**
- Or email **advice@workingfamilies.org.uk**.
- Working Families has set up ‘Waving not drowning’ – a dedicated network and advice service for parents of disabled children who work or wish to work.

We send **free newsletters and monthly e-bulletin** and have a **private Facebook Group** where carers or parents can get support, share their experiences, and ask us questions.

- GOV.uk **www.gov.uk**
- Your local authority
- Citizen’s Advice Bureau, **www.citizensadvice.org.uk**