



# Flexible Working **Guide for employers**



# We know...

That flexible working is increasingly in demand and, as an employer, it can be hard to balance the needs of the business with the needs of each employee. This guide outlines the key facts to be aware of when approaching flexible working.

## Who can make a request for flexible working?

It is a common myth that only those with caring responsibilities can request the right to flexible working. This changed in 2014 and it is an employee's right to request flexible working without giving a reason.

### Employees with **26 weeks** continuous employment

Only employees with 26 weeks continuous employment with the same employer have the statutory right to have their flexible working request considered. Additionally, employees can only make one statutory flexible working request in a 12-month period. This request must be considered by the employer in a 'reasonable manner'.

### Employees with **less than 26 weeks** continuous employment or who have made a previous request in the last 12 months

Employees without 26 weeks service or who have made a previous request within the last 12 months can still make a request to work flexibly, but there is no right to have their request considered. An employer can consider the employee's request if they want to, but don't have to do so by law.

## What can an employee ask for?

### There are different ways of working flexibly:

#### Job sharing

Two people do one job and split the hours.

#### Working from home

It might be possible to do some, or all, of the work from home or anywhere else other than the normal place of work.

#### Part time

Working less than full-time hours (usually by working fewer days).

#### Flexitime

The employee chooses when to start and end work (within agreed limits) but works certain 'core hours', for example 10am to 4pm every day.

#### Annualised hours

The employee has to work a certain number of hours over the year, but they have some flexibility about when they work. There are sometimes 'core hours' which the employee regularly works each week, and they work the rest of their hours flexibly or when there's extra demand at work.

#### Staggered hours

The employee has different start, finish, and break times from other workers.

#### Phased retirement

Default retirement age has been phased out and older workers can choose when they want to retire. This means they can reduce their hours and work part time.

How should a flexible working request be made?

**An employee should send an email or write a letter including the following information:**

- the date
- a statement that this is a statutory request
- details of how the employee 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

Considering the request

Once a statutory request has been made, an employer has a legal duty to "carefully and reasonably" consider the request and must follow a set process.

**There is a time limit of a maximum of 3 months of receiving a request for you to give a decision, including any appeal.** If you need more time, you can only extend the time limit if your employee agrees.

You can discuss alternatives to the proposed working pattern at the meeting and can also discuss whether a trial period might be something that both parties might be able to agree to.

It is important to be aware that by law there is the right to make a flexible working request and have this request considered fairly and reasonably, however, there is no automatic right to have the request granted.

## Refusing a request

**As an employer, if you decide to refuse a flexible working request, you must provide evidence of at least one of the following statutory grounds for refusal:**

- the 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 proposed periods of work
- planned structural changes

## Communicating the decision

There is a time limit of a maximum of 3 months of receiving a request for you to give a decision, including any appeal.

If you need more time, you can only extend the time limit if your employee agrees. If an extension is agreed, you should get this agreement in writing.

### **Agreeing to the request**

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If you approve the request, it is a good idea to confirm it in writing, including:

- the agreed change
- when the change will start
- how long the change will last, if for a fixed period of time
- a review date, if the change will be looked at to see how it's going

If the change affects anything that must legally be in your employee's employment contract, you will need to put it in writing. You must do this within a month of the change taking effect.

### **This includes changes to:**

- working hours
- pay
- job location
- holiday entitlement

## **If you are turning down the request**

You must let your employee know and give the reason for turning down their request. Again, this should be done in writing.

## If your employee appeals your decision

If an employee makes a flexible working request that is rejected, they have the right to appeal against the decision that has been made. The employee can also appeal against any issues that they may have with the flexible working request procedure.

## How can an employer be pro-active as employees return to the workplace?

As lockdown is relaxed, we expect an increase in the number of flexible working requests. Requests will be made for people to continue to work from home or return to the office or even a hybrid of the two as things return to "normal".

Employers should start to think about their view on how a new working environment could work. Start being pro-active now before employees start making those requests. Think about what has worked over the lockdown period in terms of remote working and what hasn't worked.

Now that people have experienced remote working, some people may want to continue to do so, yet the employer may find it more beneficial to have workers back in a team environment. So, compromises may have to be made.

Employers should be pro-active now to try and get a happy medium for everybody. Make sure key documents are in place and that things are outlined in the staff handbook. Review or write your flexible working policy to ensure that staff are fully aware that there is a clear procedure to be followed when requesting flexible working.

## The benefits of flexible working

Flexible working can offer a number of benefits to both the business and the employee.

Direct benefits to the business can include saving on office costs, extension of operating hours and more efficient processes.

Indirect benefits include improved employee job satisfaction, wellbeing and productivity. Flexible working can also reduce absence rates and allow employees to manage disability and long-term health conditions.

Flexible working can also be attractive to existing and potential employees when considering their overall remuneration package.

A clear and pro-active approach to flexible working will ensure that both your business and your employees can benefit from an appropriate flexible working environment.

**We know** that addressing flexible working can be time consuming and problematic but can also have significant benefits. Our expert employment law team are here to help you manage your flexible working requests and ensure that you can efficiently meet your legal obligations and create the most appropriate working environment for your business.

## Talk to our expert team today



**Katie Ash**  
HEAD OF EMPLOYMENT LAW

EMPLOYMENT LAW



**Sara Patel**  
PARALEGAL

EMPLOYMENT LAW



## Fixed Fee Employer Protection Plan

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