

**GUIDANCE on FLEXIBLE WORKING:**  
*The Right to Request and  
Duty to Consider*



## **CONTENTS**

	<b>Page</b>
1. Introduction	<b>2</b>
2. Flexible working - key issues	<b>2</b>
3. What is flexible working?	<b>3</b>
4. What are the benefits to employers of flexible working?	<b>4</b>
5. What are the benefits to employees of flexible working?	<b>4</b>
6. Developing a business case	<b>4</b>
7. Introducing a flexible working policy	<b>4</b>
8. Communicating the policy	<b>5</b>
9. The right to apply for flexible working	<b>5</b>
10. Who can apply?	<b>5</b>
11. How must the application be made?	<b>5</b>
12. How must the employer respond to the application?	<b>6</b>
13. On what grounds can applications be refused?	<b>6</b>
14. What can an employee do if an employer refuses an application for flexible working?	<b>6</b>
15. Withdrawal of applications	<b>7</b>
16. Referral to the LRA Flexible Working Arbitration Scheme	<b>7</b>
17. Complaints to tribunals	<b>7</b>
18. Remedies and compensation	<b>7</b>
19. Dismissal and detriment	<b>7</b>
20. Further information	<b>8</b>
21. Other useful sources	<b>8</b>



## 1. Introduction

This document is intended to help employers and employees agree flexible working arrangements that can provide benefits to both individuals and their organisations. It provides **practical options** for flexible working and the basic steps which employers need to take to formulate and implement policies. It also gives guidance to employees on how to request flexible working.

Information contained in this document is correct at the time of going to press and is also available on the Labour Relations Agency (LRA) website at [www.lra.org.uk](http://www.lra.org.uk).

*All information contained in this document is provided for guidance only and should not be regarded as an authoritative statement of the law, which can only be made by reference to the particular circumstances which apply. It may, therefore, be wise to seek legal advice if you are in any doubt.*

## 2. Flexible working - key issues

### Changing workforce

The UK workforce is now more diverse than ever before, reflecting changes in society and the make-up of the population. Women comprise almost half the workforce and this figure is rising. Many of them are working mothers, some are lone parents and overall there are more people at work with caring responsibilities. The workforce is ageing and responsibilities for older people are increasing. The demand for part-time and other flexible working patterns is increasing as a consequence.

### Rights for employees

From April 2003 employees who are parents of children aged under six or of disabled children aged under 18 have had the right to apply to work flexibly and their employers have a duty to consider these requests seriously. The right to apply to work flexibly and the procedures to be followed are outlined later in this document.

### The need to compete

Good working practices and the benefits that employers and employees derive from them are key to the success of modern organisations in an increasingly competitive market. Parents, carers, disabled people and older people may be effectively excluded from employment by the hours or the location of the work. Any barriers to the employment and retention of the best people for the job are very costly for businesses and undermine their efficiency, productivity and competitiveness. Flexible working arrangements can help individuals to balance their work and their home responsibilities; businesses which offer them are better placed to attract and retain the best talent.

The right to apply to work flexibly applies only to eligible working parents but flexible working is relevant to many other people in the workforce at various stages of their working life. Employees may prefer different patterns of work for various reasons such as further education, religious observances, or interests or responsibilities outside the workplace. It makes good sense for employers to develop and implement flexible working policies and practices for all their staff. Those that do will find it easier to deal with requests from employees for flexible working because they will already have a clearly thought-out strategy in place. Businesses which rise to the challenge of a diverse workforce and its changing priorities will be better able to take full advantage of commercial opportunities and respond to the pressures of a society which increasingly demands round-the-clock availability of goods and services in the private and public sectors. A positive response to people's customs and employment needs will also improve relations with local communities and enhance the reputation of the organisation.

### 3. What is flexible working?

Flexible working covers a wide range of options including:

- **part-time working**  
There is no set pattern to part-time working. It may involve a later start and earlier finish time than a full-time position, working mornings or afternoons only, fewer working days in the week or any other arrangement of working time whereby the employee is contracted to work less than normal basic full-time hours.
- **flexi-time**  
Flexi-time allows employees to choose, within agreed limits, when to begin and end work and may be planned to enable individuals to attend to domestic or other responsibilities. Employees may be required to work during some essential periods (known as core times) and must work an agreed number of hours within an 'accounting period' which is typically four weeks. Outside core times are flexible bands when employees may choose whether to be at work or not. This enables employees to vary their start, finish and lunch times and usually, within agreed limits, employees can carry over to the next accounting period any excess or deficit in the number of hours they are required to work.
- **staggered hours**  
This is where employees in the same workplace have different start, finish and break times and can be an effective means of covering longer opening hours.
- **compressed working hours**  
Compressed working hours allow employees to work their total number of agreed hours over fewer working days; often a five-day working week is compressed into four days.
- **job sharing**  
This involves two people carrying out the work which would normally be done by one person. The work is not split but shared. There is no set model for managing time which may involve working a set number of hours each day, each week or alternate weeks.
- **shift working**  
This is the pattern of work in which one employee replaces another on the same job within a 24 hour period. Shift workers normally work in crews which operate as separate shift teams. Shift systems typically operate over morning, afternoon and night shift periods and may provide continuous cover over 24 hours per day, seven days per week.
- **shift swapping**  
This enables employees to negotiate their working times by re-arranging shifts amongst themselves with the proviso that the required shifts must be covered.
- **self-rostering**  
Self-rostering allows employees to nominate the shifts which they would like to work leaving employers to compile shift patterns which match the individual preferences of staff to agreed staffing levels.
- **time off in lieu or banked hours**  
This allows employees to take time off to compensate them for extra hours worked (although employers should be aware of the provisions of the National Minimum Wage Regulations in relation to payment within pay periods where appropriate).
- **term-time working**  
Term-time working enables an employee to remain on a permanent contract but also to be able to take paid or unpaid leave during school holidays.
- **annual hours**  
This is a system whereby the hours which an employee is contracted to work are calculated over a whole year. Usually the annual hours are split into two parts. The larger part consists of set shifts with the remaining shifts unallocated. Usually the employee is paid for unallocated shifts and owes time to the employer. The employer keeps these hours in reserve and can call on the employee to work at short notice as demand dictates.
- **additional leave entitlement**  
Additional leave entitlement may be agreed either unpaid or paid with salary re-calculated to take account of extra leave. Additional leave may also be agreed as part of an annual hours arrangement.
- **V-time working**  
This is a voluntary arrangement whereby an employee reduces the number of hours worked for an agreed period with a guarantee that full-time employment will be available again at the end of this period.
- **working from home**  
This arrangement can cover a wide range of jobs from sewing and assembly work to managerial and professional functions. New technology makes communication with office and customers possible by telephone, fax and e-mail from home, car or other remote locations.
- **unique working patterns**  
These are individually tailored patterns which may involve a combination of options.
- **career breaks**  
Some employers offer unpaid breaks to their employees with a guarantee that they will be able to return to work at the end of the agreed period.



## 4. What are the benefits to employers of flexible working?

Many employers are acknowledging that it makes good business sense to introduce flexible working arrangements to enable their employees to achieve a better work-life balance. They recognise that as well as providing a better quality of life for their employees they can also increase the competitiveness and profitability of the business.

Organisations are under constant pressure to produce goods and services, of the right quality and the right price, as and when customers want them. This pressure can often mean that new ways of working have to be found to make the best use of staff and other resources. For example:

- the cost and complexity of capital equipment may mean that organisations cannot afford to leave it standing idle;
- customers want goods and services outside traditional standard working hours;
- some organisations have seasonal peaks and troughs and a consequent fluctuation in the demand for employees during the year.

Flexible working arrangements can help employers to address these pressures by enabling them to:

- maximise available labour;
- improve customer service;
- increase productivity;
- reduce absenteeism, turnover, sickness and stress;
- attract a wider range of candidates such as part-time workers;
- reduce recruitment costs;
- retain valued employees;
- increase employee commitment, morale and loyalty;
- increase the organisation's ability to deal with change by innovation and creativity.

## 5. What are the benefits to employees of flexible working?

Although the right to apply to work flexibly did not become law until 6 April 2003, many organisations that had previously had flexible working arrangements identified the following benefits:

- greater sense of responsibility, ownership and control of working life;
- better relations with management;
- increased loyalty and commitment;
- improved well-being, less stress;

- more time to focus on life outside work;
- better able to cope with children and other care pressure;
- more opportunity to continue a career.

## 6. Developing a business case

A strong business case will link the company's objectives and business plan with the benefits of providing flexible working arrangements. Both qualitative and quantitative factors need to be taken into account as well as the values and culture of the business. These factors may include:

### Cost savings

- advertising and recruitment;
- training/induction;
- sick absence/unplanned absenteeism;
- agency cover;
- office space;
- fewer disciplinary problems.

### Recruitment and retention

- increased number of applicants for vacancies;
- attracting the best person;
- higher levels of employee commitment;
- retention of valued employees.

### Increased flexibility for customers

- extended opening hours;
- better cover.

### Improved employee relations

- increased staff morale;
- better motivation;
- improved loyalty and commitment.

### Enhanced reputation as a good employer

- policy in line with best practice;
- compliance with legislation;
- better relationship with local community;
- influences potential local customers.

Business objectives can be compromised when employees struggle to balance their family responsibilities with those of their work. Failing to implement flexible working arrangements may add costs to an organisation in terms of:

- poor performance;
- high levels of absenteeism and sick absence;
- high staff turnover, recruitment and training costs;
- failure to attract the best applicants;
- reduced customer service.

## 7. Introducing a flexible working policy

The business case will identify the core operational needs of the organisation and will enable a clearly formulated policy to be produced which will balance

these needs with those of the workforce. Carefully designed policies have many advantages over an *ad hoc* approach. Workers can be more effective when uncertainties about the organisation's intentions and any inconsistencies in management decisions are removed. Involving workers and their representatives in the development, implementation and operation of policies is more likely to make them acceptable and successful. This can be done by conducting employee surveys, discussing ideas openly in consultative meetings and generally seeking employees' views making full use of any existing communications or consultation arrangements - for example joint consultative committees.

**An effective flexible working policy will:**

- identify core business needs;
- demonstrate the commitment of the business to flexible working;
- have the endorsement of senior management;
- be fair, consistent and clearly understood by all users;
- inform managers of the objectives;
- set realistic expectations;
- satisfy legal requirements;
- reduce opportunities for complaints;
- find creative solutions;
- value the contribution of employees;
- monitor and evaluate the results;
- set out training for managers and give them the opportunity to take part.

## **8. Communicating the policy**

Communicating the policy effectively to all employees is vital to its success. Organisations may wish to incorporate flexible working policies into contracts or terms and conditions of employment. Staff handbooks can also be a useful source of reference. On-going training and support will be needed for managers, HR staff and others involved, eg payroll. Good communication within the organisation can help to solve problems by sharing ideas and solutions and therefore it may be beneficial to include regular updates on flexible working arrangements in meeting agenda, newsletters, intranets and so on. The induction process for new employees should include familiarisation with the policy.

## **9. The right to apply for flexible working**

From 6 April 2003 parents of children aged under six and parents of disabled children aged under 18 have had the right to apply to work flexibly and their employers have had a duty to consider such requests seriously. The application can cover:

- working hours;
- times of work;
- place of work (as between home and place of business only).

## **10. Who can apply?**

The following conditions must be satisfied in order for an application for flexible working to be made under the new right. The applicant must:

- be an employee (who has entered into or works under a contract of employment. Agency workers or members of the armed forces are not eligible);
- have a child under six or a disabled child under 18;
- make the request no later than two weeks before the child's appropriate birthday;
- have parental responsibility for the child ( this includes biological parents, legal guardians, adoptive and foster parents and spouses of these, including same sex partners as long as they have parental responsibility for the child);
- be making the application in order to be able to care for the child;
- have worked for their employer for 26 weeks continuously at the date that the application is made;
- not have made another application to work flexibly under the right during the past 12 months.

## **11. How must the application be made?**

The employee must comply with the following requirements:

- the application must be made in writing, stating that it is being made under the statutory right to apply for flexible working;
- the application must confirm that the employee has responsibility for the upbringing of the child and is either: the mother, father, adopter, guardian or foster parent; or, married to or partner of the child's mother, father, adopter, guardian or foster parent;
- the application must set out the employee's proposed flexible working pattern and explain what effect if any, the employee thinks this will have on the employer's business and how this may be dealt with;
- the application must specify a start date for the proposed change giving the employer reasonable time to consider the proposal and implement it. This may take 12-14 weeks;
- the application must state whether a previous application has been made and if so the date on which it was made;



- the application must be dated.

**Employees should be aware that if the employer approves their application, the variation in contractual terms is a permanent one and the employee has no automatic right to change back to their previous pattern of work, unless the application seeks the variation for a specified time period only. A trial period may be agreed.**

## 12. How must the employer respond to the application?

In order to comply with the procedural requirements the employer must:

- hold a meeting with the employee within 28 days of receiving the application to discuss the request. This meeting is not required if the employer agrees to the terms of the application and notifies the employee accordingly within 28 days of receiving the application.
- allow the employee to be accompanied by a work colleague if they so wish. The colleague can address the meeting or confer with the employee during it but is not allowed to answer questions on the employee's behalf. It would be good practice for the employer to advise the employee of this right and check whether or not they wished to exercise it. If the colleague is unable to attend the meeting the employee should re-arrange the meeting for a date within 7 days of the originally proposed time; or, consider an alternative companion.
- notify the employee of their decision in writing within 14 days of the date of the meeting. This notification must be dated and will:
  - accept the request, include a description of the new working pattern and establish a start date and any other action; or
  - confirm compromise agreed at the meeting; or
  - reject the request and set out clear business reasons for the rejection together with notification of the appeals process.
- arrange to hear the employee's appeal within 14 days of being informed of the employee's decision to appeal. The employee must be allowed to be accompanied by a work colleague if they so wish.
- notify the employee of the decision on the appeal in writing within 14 days after the date of the meeting. The notification, which must be dated, will either:
  - uphold the appeal, specify the agreed variation and start date; or
  - dismiss the appeal, state the grounds for the decision and contain a sufficient explanation of the refusal.

Throughout the process, the employer and the employee can agree to extend any of these time limits. The employer must record this agreement in writing, specifying the period to which the extension relates and the date on which the extension is to end. A copy of this record must be sent to the employee.

## 13. On what grounds can applications be refused?

Applications for flexible working arrangements can be refused only where there is a clear business reason. The business ground(s) for refusal **must be** from the following list:

- the burden of additional costs;
- detrimental effect on ability to meet customer demand;
- inability to re-organise work among existing staff;
- inability to recruit additional staff;
- detrimental impact on quality;
- detrimental impact on performance;
- insufficiency of work during the periods the employee proposes to work;
- planned structural changes.

## 14. What can an employee do if an employer refuses an application for flexible working?

Wherever possible it is better to reach agreement on flexible working within the workplace. There are a number of options open if the employer refuses the application at the appeal stage of the procedure including:

- informal discussions with the employer - there may be some simple misunderstanding of the procedure or facts which can be resolved by an informal route;
- use of the employer's internal grievance procedure;
- assistance from a third party such as a trade union representative or some other suitably experienced person;
- contact the LRA for guidance. This could involve the process of conciliation if both parties are agreeable.

Where agreement cannot be reached in-house other options are:

- referral to the LRA Flexible Working Arbitration Scheme - see paragraph 16;
- complaint to an industrial tribunal or the Fair Employment Tribunal- see paragraph 17.

## 15. Withdrawal of applications

There are three reasons why an application may be treated as withdrawn:

- the employee decides to withdraw the application. The withdrawal must be in writing. If the employee makes a verbal withdrawal the employer must confirm it in writing. An employee who withdraws their application will not be eligible to make another application for 12 months from the date their application was made;
- the employee fails to attend two meetings without reasonable cause;
- the employee unreasonably refuses to provide the employer with the required information.

## 16. Referral to the LRA Flexible Working Arbitration Scheme

If both parties agree, the LRA Arbitration Scheme can be used to resolve the dispute. This Scheme is designed to be a speedy, informal, confidential and non-legalistic alternative to a tribunal. An arbitrator hears the case and makes a decision which is binding on both parties. There is no right to go to a tribunal if the parties have opted to use this Scheme instead. The remedies and compensation which an arbitrator can award are the same as those at a tribunal. Unless an application to a tribunal has already been made, the agreed reference to arbitration must be made within 3 months of the notification date of the employer's appeal decision or, in complaints about procedural breaches, 3 months from the date of the alleged breach.

## 17. Complaints to tribunals

Employees must present their complaint to a tribunal within 3 months of the date that the employer's decision is notified on appeal or in complaints relating to procedural breaches, 3 months from the date of the alleged breach. Complaints can be made to a tribunal on the following grounds:

- the employer's failure to comply with the statutory procedure;
- the employer's use of an incorrect fact to explain

why the application has been refused and which the employer failed to address at the appeal;

- the employer's refusal to allow the employee to be accompanied.

Both parties may jointly refer the matter to arbitration instead of a tribunal after a complaint has been made to a tribunal (provided the case has not been heard by a tribunal) but once the paperwork has been finalised and signed there will be no right to refer the case back to a tribunal.

## 18. Remedies and compensation

If a decision is made against an employer by an LRA arbitrator, the employer may be ordered to reconsider the employee's application for flexible working and may also be ordered to pay the employee compensation.

The actual amount of compensation will be determined by the tribunal or the LRA arbitrator on the basis of what is considered to be just and equitable given the circumstances of the case. The maximum level of compensation is eight weeks' gross pay subject to the statutory limit on a week's pay, which is reviewed annually.

If a complaint of refusal to allow the employee to be accompanied is upheld, the tribunal or arbitrator can award two weeks' pay in compensation.

## 19. Dismissal and detriment

Employees are protected from suffering dismissal or detriment in the exercise of their right to apply to work flexibly. Complaints may be made to a tribunal (or via the Arbitration Scheme) if:

- the employee has suffered detriment as a result of exercising or seeking to exercise the right to apply to work flexibly;
- the employee has been dismissed as a result of exercising or seeking to exercise the right to apply to work flexibly;
- a person has suffered detriment or been dismissed as a result of accompanying or seeking to accompany an employee in the exercise of the right to apply to work flexibly.



## 20. Further information

The LRA Enquiry Point provides information on all employment matters, including the rights and duties referred to in this document. Call 028 9032 1442 or text-phone 028 9023 8411 during office hours. Alternatively, you may email the Enquiry Point at [info@lra.org.uk](mailto:info@lra.org.uk).

The LRA website ([www.lra.org.uk](http://www.lra.org.uk)) is a useful source for information on employment matters and contains all of the LRA's publications. It includes case studies on flexible working.

The LRA recommends the Department for Employment and Learning's Employment Rights booklet *ER 36 - Flexible working: The right to request and duty to consider. A quick guide for employers and employees*. The booklet contains sample forms which may be used by employees and employers in relation to requests for flexible working. The booklet can be downloaded from the publications section of the DEL website [www.delni.gov.uk](http://www.delni.gov.uk). Alternatively, copies are available from Job Centres throughout Northern Ireland.

## 21. Other useful sources

Advisory, Conciliation and Arbitration Service  
[www.acas.org.uk](http://www.acas.org.uk)

Business in the Community  
[www.bitcni.org.uk](http://www.bitcni.org.uk)

Chartered Institute of Personnel and Development  
[www.cipd.co.uk](http://www.cipd.co.uk)

Confederation of British Industry  
[www.cbi.org.uk](http://www.cbi.org.uk)

Department for Employment and Learning  
[www.delni.gov.uk](http://www.delni.gov.uk)

Department of Enterprise, Trade and Investment  
[www.detini.gov.uk](http://www.detini.gov.uk)

Employers for Childcare  
[www.employersforchildcare.org](http://www.employersforchildcare.org)

Equality Commission for Northern Ireland  
[www.equalityni.org](http://www.equalityni.org)

Flexible Working Survey  
[www.delni.gov.uk](http://www.delni.gov.uk)

Labour Relations Commission  
[www.lrc.ie](http://www.lrc.ie)

Northern Ireland Committee of the  
Irish Congress of Trade Unions  
[www.ictuni.org](http://www.ictuni.org)

Office of Industrial Tribunals and the Fair Employment  
Tribunal  
[www.industrialfairemploymenttribunalsni.gov.uk](http://www.industrialfairemploymenttribunalsni.gov.uk)

Opportunity Now  
[www.opportunitynow.org.uk](http://www.opportunitynow.org.uk)

Working Families  
[www.workingfamilies.org.uk](http://www.workingfamilies.org.uk)



**Labour Relations Agency**

**Head Office:** 2-8 Gordon Street, Belfast BT1 2LG

Tel: 028 9032 1442 Fax: 028 9033 0827 TDD: 028 9023 8411

**Regional Office:** 1-3 Guildhall Street, Londonderry BT48 6BJ

Tel: 028 7126 9639 Fax: 028 7126 7729

E-mail: [info@lra.org.uk](mailto:info@lra.org.uk) Website: [www.lra.org.uk](http://www.lra.org.uk)

ISBN 1-904401-17-1