

NASUWT

The Teachers' Union

FLEXIBLE WORKING FOR PARENTS AND CARERS

Flexible Working
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The largest teachers' union in the UK

This booklet explains the Flexible Working Regulations. Flexible working incorporates a wide variety of working practices. A flexible working arrangement can be any working pattern other than the normal full-time working pattern in the school/college. Applications for a change in working pattern may not always require a significant alteration, although usually it will be a move from full-time to part-time work.

Flexible Working Regulations

Since 6 April 2003, parents of children aged under seven or of disabled children aged under 18 have had the right to apply to work flexibly. This was extended to parents of children aged 16 or under from 6 April 2009. Since April 2007 there is also the right to request flexible working for employees who have a caring responsibility for a person, aged 18 or over, who lives with them or who is a near relative.

There is no automatic right to work flexibly, only a right to make the request, but employers now have a statutory duty to consider these requests seriously.

Eligibility

In order to make the request an individual will:

- be an employee;
 - have worked with the employer continuously for 26 weeks at the date the application is made;
 - not have made another application to work flexibly under the right during the past 12 months;
 - not be an agency worker;
- and will either be a parent and:

- have a child of 16 or under, or under 18 in the case of a disabled child;
- be the mother, father, adopter, guardian, special guardian, foster parent, private foster carer,¹ or a person in whose favour a residence order is in force in respect of the child,² or be the partner of such a person;
- make the application no later than the day before the child's 17th birthday or 18th birthday in the case of a disabled child;
- have or expect to have responsibility for the child's upbringing;
- be making the application to enable them to care for the child;

or be making an application in order to care for a person aged 18 or over who is:

- a spouse, a partner, a civil partner; or
- a near relative – mother, father, adopter, guardian, special guardian, son, daughter, brother, sister, aunt, uncle, grandparent, including relatives-in-law, step relatives and adoptive relatives; or
- someone who does not fall into the previous categories but who lives at the same address.

1 Included in Regulations that came into force on 1 October 2007.

2 Included in Regulations that came into force on 1 October 2007.

Eligible employees will be able to request:

- a change to the hours they work;
- a change to the times when they are required to work;
- to work from home, whether it be for all or part of the week.

The application

Any request for flexible working must be made in writing on paper, e-mail or fax. It must be dated and state:

- that it is a request made under the Flexible Working Regulations;
- that you have worked for the school/college for at least 26 weeks at the date of the application;
- the date of any previous request;
- a description of the current working pattern;
- the working pattern being applied for, i.e. reduced number of days or sessions, later starting time, earlier finishing time, and the date that you want this change to start;
- confirmation of the responsibility either for the upbringing of a child or caring for an adult;
- what effect, if any, this is likely to have on the employer;
- how this could be dealt with;
- how the eligibility criteria are met;
- in respect of a request due to caring responsibilities, whilst you do not have to prove that a caring relationship exists it may help your application if you give as much information as possible.

An example of an application form can be found at the end of this booklet.

An application is taken to have been made on the day it is received. Where the person who would ordinarily consider an application is absent due to holiday or sickness on the day on which the application is made, the 28-day period (see below) commences on the day they return or 28 days after the application is made, whichever is the sooner.

The procedure

The employee will need to make a considered application in writing. Only one application can be made in a year and an accepted application will mean a **permanent** change to the employee's terms and conditions of employment, i.e. it will not revert back to the original contract when the child reaches age 17 or you are no longer a carer. However, by mutual agreement the change could be for a specified period of time.

Within 28 days the employer will arrange to meet with the employee to discuss the application, unless the employer agrees in writing to the change within this time limit. The employee can be accompanied at this meeting by their NASUWT Representative or a fellow worker. Under the Regulations, the person

accompanying the employee must be employed by the same employer unless the employer agrees.

Within 14 days of the meeting, the employer will write to the employee either:

- agreeing to the request and suggesting a start date;
- rejecting the request, and providing the grounds for the refusal (see below) and an explanation why those grounds apply in the particular circumstances. The appeal procedure must also be explained;
- suggest further action necessary before a decision can be reached. If more time is needed, this must be agreed with the employee and the details documented.

If the request is accepted, the notification must:

- include a description of the new working pattern;
- state the date from which the new working pattern is to take effect;
- specify that the new working pattern is for a trial period or is time-limited in circumstances where this has been mutually agreed between the employee and the employer;
- be dated.

If a request is rejected, the notification must:

- state the grounds for refusing the application (see below);
- provide a sufficient explanation for the refusal in the circumstances;
- provide details of the right of appeal;
- be dated.

The request can only be rejected on one or more of the following grounds:

- the burden of additional costs;
- detrimental effect on ability to meet customer demand;
- inability to reorganise work amongst 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.

Appeals

If the request is rejected, the employee has a right of appeal within 14 days of the notification that the request has been rejected. This must be in writing, set out the grounds of appeal and must be dated. The employer must hold a meeting to discuss the appeal within 14 days after receiving notice of the appeal. The employee may be accompanied at the meeting. An example of an appeal application form can be found at the end of this booklet.

The employer must notify the employee in writing of the decision within 14 days of the meeting. Where the employer dismisses the appeal the grounds for the decision must be stated and contain a sufficient explanation as to why those grounds apply. In the event that the appeal is upheld, the employer must follow the same steps as for agreeing the request.

Application withdrawn

An application is treated as withdrawn if the employee:

- withdraws it orally³ or in writing;
- unreasonably fails to turn up for two meetings;
- unreasonably fails to provide the employer with information to back up the request.

It is important to note that an employee who withdraws their application will not be eligible to make another application under the formal statutory procedure for 12 months from the date of the application.

Detriment and dismissal

The employee has the right not to be subjected to any detriment by any act, or deliberate failure to act, by their employer attributable to the fact that they exercised or sought to exercise the right under these Regulations. The person accompanying the employee also has the same protection.

Unresolved application

In circumstances where an application remains unsatisfactorily resolved, an employee should consider the following options:

- speaking to the employer informally;
- seeking support and assistance from the NASUWT school/college representative or Local Secretary;
- utilising the employer's grievance procedure;
- involving, through the NASUWT, a third party such as an ACAS official.

Complaint to an employment/industrial tribunal

An employee can bring a complaint to an employment/industrial tribunal or ACAS arbitration service if the employer fails to comply with the Regulations or the employer's decision is based on incorrect facts. **THIS MUST BE WITHIN THREE MONTHS OF THE DATE OF THE FAILURE.** Where a tribunal finds that a complaint is well-founded it will order the employer to pay compensation to the employee an amount not exceeding eight weeks' pay (the statutory figure for a week's pay is £350 from 5 April 2009) and order the employer to reconsider the application.

3 An employer must confirm the withdrawal of the application to the employee in writing unless the employee has provided him with written notice of the withdrawal.

The tribunal can order compensation of up to two weeks' pay if the employer fails to allow the employee to be accompanied at meetings. The tribunal does not have the power to order an employer to implement a flexible working arrangement.

Under the Flexible Working Regulations a complaint can only be taken to an employment tribunal for failure to comply with the Regulations. However, the Sex Discrimination Act can be used by women and men to bring direct or indirect discrimination claims where requests for flexible working have been unreasonably refused. **AGAIN IT MUST BE STRESSED THAT ANY CLAIM WOULD HAVE TO BE MADE WITHIN THREE MONTHS OF THE REFUSAL.**

If you are unclear about any aspect of making a request for flexible working, you are advised to seek advice before submitting any application. Advice should be obtained from your Regional Centre. Details can be found in the NASUWT diary or on the website: www.nasuwt.org.uk.

APPLICATION FOR FLEXIBLE WORKING

NAME:

JOB TITLE:

NAME OF SCHOOL/COLLEGE:

This request is made under the Flexible Working Regulations. I confirm that I have worked continuously for the school/college for the last 26 weeks. I have not made a request for flexible working in the last 12 months and I meet the following criteria:

Either

I have responsibility for the upbringing of a child 16 or under (under 18 if disabled)

I am the mother, father, adopter, guardian or foster parent

I am married to, or the partner or civil partner of, the child's mother, father, adopter, guardian or foster parent

and I am making this request to help me care for the child

or

I am, or expect to be, caring for an adult

I am the spouse, partner, civil partner or relative of the adult in need of care

I am not the spouse, partner, civil partner or relative of that adult, but live at the same address

and I am making this request to help me care for the adult in need of care

Date of any previous request to work flexibly under this right:

Describe your current working pattern (days/hours/times worked):

Describe the working pattern you would like to work in future (days/hours/times worked):

I would like this working pattern to commence from:

Impact of the new working pattern:

I think this change in my working pattern will affect my employer and colleagues as follows:

Accommodating the new working pattern:

I think the effect on my employer and colleagues can be dealt with as follows:

(consider issues such as the impact on services to pupils, your own workload and that of your colleagues and suggest ways these could be addressed)

SIGNED:

DATED:

Employer's Confirmation of Receipt (to be completed and returned to employee)

Dear:

I confirm that I received your request to change your work pattern on:

I shall be arranging a meeting to discuss your application within 28 days following this date. In the meantime, you might want to consider whether you would like a trade union representative/colleague to accompany you to the meeting.

From:

APPEAL APPLICATION FORM

Note to the employee

If your application has been refused, you may appeal against your employer's decision. You can use this form to make your appeal. You should set out the grounds on which you are appealing, and do so within 14 days of receiving written notice that your application for flexible working has been turned down.

Note to the employer

This is a formal appeal made under the legal right to apply for flexible working. You have 14 days following your receipt of this form in which to arrange a meeting with your employee to discuss their appeal.

Dear:

I wish to appeal against your decision to refuse my application for flexible working. I am appealing on the following grounds:

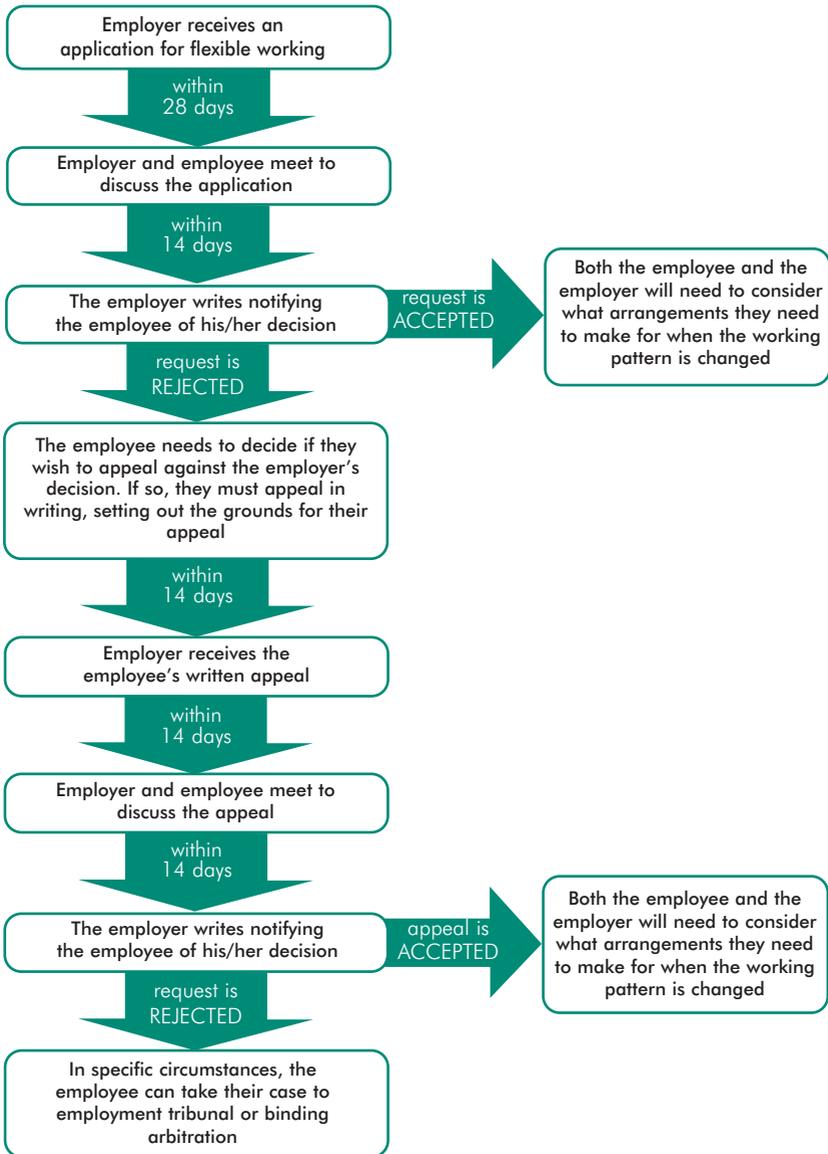
(Please continue on a blank sheet if necessary).

Name:

Date:

RETURN THIS FORM TO YOUR EMPLOYER.

Summary Flowchart of Process



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