

## **New duty to consider requests from employees for flexible working**

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From 6 April 2003 requests by working parents of young or disabled children to work flexibly must be considered seriously by their employers. This Factsheet provides some basic details of the legal obligations employers will have under the duty. These rights will apply in England, Scotland, Wales and Northern Ireland. Although Northern Ireland has its own separate legislation, the rights apply in the same way as in the rest of the United Kingdom.

Parents of children aged under six or of disabled children aged under eighteen will have the right to apply to work flexibly providing they have the qualifying length of service. Employers will have a statutory duty to consider their applications seriously.

This right enables mothers and fathers to request to work flexibly. It does not provide an automatic right to work flexibly as there will always be circumstances when the employer is unable to accommodate the employee's desired work pattern. The right is designed to meet the needs of both parents and employers, especially small employers, and aims to facilitate discussion and encourage both the employee and the employer to consider flexible working patterns and to find a solution where possible that suits them both. The employee has a responsibility to think carefully about their desired working pattern when making an application, and the employer is required to follow a specific procedure to ensure requests are considered seriously.

### **Who can apply?**

In order to make a request under the new right an individual will:

- be an employee
- have a child under six, or under eighteen in the case of a disabled child
- be either; the child's mother, father, adopter, guardian or foster parent; or married to the partner of the child's mother, father, adopter, guardian or foster parent
- have worked with their employer continuously for at least 26 weeks at the date the application is made
- make the application no later than two weeks before the child's sixth birthday or eighteenth 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
- not be an agency worker
- not be a member of the armed forces
- not have made another application to work flexibly under the right during the past twelve months

### **What kind of changes can be applied for?**

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

This covers working patterns such as annualised hours, compressed hours, flexitime, homeworking, job-sharing, self-rostering, shift working, staggered hours and term-time working (further information on different types of flexible working and the potential business benefits can be found at [www.dti.gov.uk/work-lifebalance](http://www.dti.gov.uk/work-lifebalance))

## How to deal with a request by an employee for flexible working

In summary, the procedure is as follows:

- It is up to the employee to make a considered application in writing. Although the use of forms is not statutory, best practice forms have been provided (please see the Further information section below for more details). They are able to make one application a year under the right, and accepted applications will mean a permanent change to the employee's own terms and conditions of employment unless otherwise agreed with the employer. It is important therefore that, before making an application, the employee gives careful consideration to which working pattern will help them best care for their child; any financial implications it might have on them in cases where the desired working pattern will involve a drop in salary; and any effects it will have on their employer's business and how these might be accommodated.
- Within 28 days of receiving the request, the employer must arrange to meet with the employee. It is possible to extend this where there are exceptional circumstances and where both parties agree. This provides the employer and the employee with the opportunity to explore the proposed work pattern in depth, and to discuss whether it can be accommodated. It also provides an opportunity to consider other alternative working patterns should there be problems in accommodating the work pattern outlined in the employee's application. The employee can, if they want, bring with them to the meeting a worker employed by the same employer as a companion. An application can be considered as withdrawn when an employee fails to attend two meetings without providing reasonable notice or reasonable explanation for their non-attendance. The employer must confirm any withdrawal of an application in writing.
- Within 14 days after the date of the meeting the employer must write to the employee to either agree to a new work pattern and a start date; or to provide clear business grounds as to why the application cannot be accepted and the reason why the grounds apply in the circumstances and set out the appeal procedure. The procedure also provides for occasions when the employer will want to take further action before notifying the employee with their final decision. In the majority of cases this will be the end of the matter.

### Grounds for refusing a request

The business grounds for refusing a request made by an employee for flexible working must come from at least one of those listed below:

- 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 period the employee proposes to work
- planned structural changes

Further details on the business grounds is available in the detailed guidance on the duty available at [www.dti.gov.uk/er/workingparents.htm](http://www.dti.gov.uk/er/workingparents.htm)

## **How should the refusal be explained?**

An explanation should briefly but clearly set out the reasons for the refusal, though the actual length of explanation necessary to demonstrate why the business ground applies will differ depending on each individual case. It is not a requirement for you to provide a lengthy and complex explanation looking to cover each argument in fine detail. The aim is for you to explain to the employee, in terms that are relevant, why the required working pattern cannot be accepted as a result of the business ground applying in the circumstances.

## **Can an employee appeal against the decision?**

Yes. The procedure provides an employee with the right to appeal against their employer's decision within 14 days of being notified of it. The appeal process is designed to be in keeping with the overall aim of the right of encouraging both employer and employee to reach a satisfactory outcome at the workplace. In small businesses where senior managers are limited in number, it is acceptable for the same person who made the original decision to deal with the appeal.

In a minority of cases some employees will have grounds to pursue their request with third party involvement. This may be by referring their request to Acas, (or in Northern Ireland to the Labour Relations Agency "LRA") or to an employment tribunal, or by using another form of dispute resolution. An employee is only able to take their claim to an employment tribunal in specific circumstances. In such cases, the employer must be able to demonstrate to the tribunal that they have followed the procedure correctly.

The new law providing parents of young or disabled children with the right to request a flexible working pattern will be in addition to, and applies completely independently from, other legislation such as sex, disability, or race legislation.

## **Where can I get further information?**

Detailed guidance and copies of the best practice forms to accompany the duty to consider is available on the ER [website](#). They are also available direct from the DTI Publications Orderline on Tel 0870 150 2500 and may be a useful source of information.

You can also check the Acas interactive guidance site ([www.tiger.gov.uk](http://www.tiger.gov.uk)) for the latest updates.

The Advisory, Conciliation and Arbitration Service (Acas) provides information and guidance on a wide range of employment and industrial relations matters. Their national helpline (Tel 08457 474747) service is confidential and impartial. You can get 'Employing People – a handbook for small firms' (price £4.95) and free leaflets about Acas and their services from Acas Publications on Tel 0870 242 9090.

In Northern Ireland advice, information and guidance is available from the Labour Relations Agency Tel 028 9032 1442.

Acas (and in Northern Ireland the LRA), can also conciliate in actual or potential complaints to employment tribunals. This is free, voluntary, and uses discussion to help the people involved in a dispute reach their own agreement.

You can order further copies of this leaflet from the DTI Publications Orderline. Please quote the title and URN number (URN 03/524) when ordering.

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For further advice, visit the Business Link Directory to find details of your local Business Link office (see the Related items section below for a live link).

You can also use our National Contact Number, which is available from 8am to 8pm, Monday to Saturday to connect you with your local Business Link operator.

- By telephone on 0845 600 9006
- By Minicom on 0845 606 2666
- By email at [enquiries@businesslink.org](mailto:enquiries@businesslink.org)

Other business support organisations:

- In Wales - Business Connect  
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- In Scotland (Lowlands) - Small Business Gateway  
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