



GUIDE TO FLEXIBLE WORKING

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In March 2020, the government mandated that, as the UK went into lockdown, employees who could work from home had to do so.

This meant that many employers had to make arrangements and purchase new equipment for employees who had not ordinarily worked from home.

Recent surveys suggest that up to 60% of employees would like to continue to work from home for at least some if not all of their working week beyond lockdown. As a consequence, employers are likely to face an increase in requests to work flexibly.

Employees with at least 26 weeks of continuous service have a right to request flexible working. It is a right to *request*, not necessarily to *have*, a change to the way they work.

The right used to be limited to those with children under the age of 18 but this changed to include all employees in 2014.

What can an employee request?

An employee can request any change to their working pattern including a reduction in hours, a variation in the days that they work, their start and finish times, job sharing, flexitime, compressed hours, staggering working hours, changing the working week from 5 to 7 days, term time only working or working from home.

The request can specify a defined duration or that the proposed new terms are a permanent change to their terms and conditions of employment.



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How do I recognise a flexible working request?

There are certain requirements of a statutory flexible working request. It must:

- be in writing;
- be dated;
- state that it is an application under the statutory procedure;
- state what their proposed change of working pattern is;
- state when they would like the proposed changes to take effect;
- confirm whether they have made a request in the past 12 months;
- explain the potential effect of the changes on the business

If it doesn't satisfy the criteria, you could deal with it anyway, refer the employee to your flexible working policy in your handbook or to the [ACAS guide to flexible working](#) and ask them to fill in the gaps

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Do I need a flexible working policy?

You don't have to have one and you can simply refer to the ACAS Guide to Flexible Working but if you have one, make sure you follow it, particularly if you have inadvertently made it a contractual policy.

Any flexible working policy should be clear to employees what they need to do when they are making the request and how you should deal with the requests when they are received. It should:

- explain to employees how they make a flexible working request; it should include who the request should be made to and what information the application should include;
- include a statement from the employer which tells the employee that their request will be dealt with and will only be rejected for a business reason;
- state the employee can be accompanied by an employee or trade union member if you choose to allow that;
- explain how the employee can appeal a decision; and
- set out the time limits that the employer will deal with the request

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What should I do when I receive a formal flexible working request?

If the request satisfies the conditions, you must follow the statutory process and provide an outcome to the employee within a reasonable time frame and in a reasonable manner and certainly within 3 months of the request.

You'll need to consider who is the best person to assess the request on behalf of the business. Usually this is the employee's line manager as they are best placed to consider the impact of the request in the context of the employee's role.

The employee has a right of appeal against any rejection later in the process and so it's a good idea to think about who will hear any appeal and this may determine who will hear the application in the first place.

Unless you plan to just accept the request on the terms suggested by the employee, you should write to them to acknowledge the request and schedule a meeting to discuss it.

You are not obliged to hold a meeting but it's good practice to do so in the interests of fairness, just in case there is a dispute later.

If you hold a meeting, there is no right for the employee to be accompanied to the meeting although you have a discretion to allow this if you wish to do so.

The meeting can take place over the phone or via a video call if both parties agree but it should be a private conversation.

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What should happen at the meeting?

Here is an outline guide for you to follow:

Tell the employee that the purpose of the meeting is to discuss their flexible working request.

Ask the employee to take you through it with reference to their letter. If they don't have a copy, let them have one or read each point to them and give them an opportunity to elaborate.

Allow the employee to explain the changes that they are requesting and how they think the revised working pattern will work in practice

Ask the employee to clarify any points if necessary

Ask them if they have considered the impact on the business and discuss any concerns that you have about the proposed new arrangements

Suggest alternative changes that may be viable. For example, if the employee has requested to change their start time from 9am to 10am, you could suggest a 9.30am start.

If not clear from the request, ask the employee when they would like the changes to start.

Ask the employee if they want to add anything else in support of their application for your consideration.

You don't have to make a decision at the meeting and it may be worthwhile adjourning the meeting with a commitment to consider their request and get back to them by a specified date in order to give you the opportunity to speak to others and assess whether their request is viable for the business.

If you do want to make a decision at the meeting, you can of course agree the terms and tell the employee that you will follow up with a letter confirming what has been agreed and when it will take effect.



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If there is a significant delay in providing your response, for whatever reason, make sure you keep your employee informed about that and when you anticipate being in a position to respond to their request.

Make sure you document the process and your considerations just in case the employee appeals or there is a subsequent dispute.

Flexible working doesn't work for us

There is a stereotype of flexible workers being less committed, more difficult to manage and that their working pattern causes increased workload to their colleagues. The COVID-19 lockdown may have proven that this stereotype isn't true for your business.

Some organisations that were resistant to flexible working prior to COVID-19 may have to culturally adjust to the idea that flexible working may be the way forward, It may be worthwhile conducting a management review of working practices to consider the benefits of flexible working. Managers can be blockers or enablers of flexible working patterns and the company needs to ensure that there is a balanced approach.

I don't want to set a precedent for everyone to else to request flexible working

This is a reasonable fear but one that should be challenged.

Each request should be assessed on its own merits and just because you accept one request, it does not necessarily mean that you have to accept every other request and they should be judged on their own merits.



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I don't want to commit to a permanent change

That's fine, you could agree a trial of the new arrangement before you formally respond to the request. The length of the trial should be long enough to assess the impact of the new arrangement on the business, say, 3 to 6 months so this will mean agreeing an extension of the time to respond to the flexible working request too as this should ordinarily be provided within 3 months.

Make sure the parameters of the trial are clearly defined and you take the opportunity to connect with the employee and assess how it is going during the trial so that you can put a reasoned response together at the end, particularly if you want to reject the application or propose an alternative arrangement.

I've considered the request and I just don't think it will work for our business

If you decide to refuse the request, the reason must fall into one of the following reasons:

- excessive additional costs;
- detrimental effect on meeting customer demand;
- detrimental impact on performance;
- insufficient staff; or
- planned structural changes.

You can choose to hold another meeting with the employee to explain your reasons or write to them with the outcome. Whichever option you choose, make sure you provide your reasons for rejecting their application.

You need to provide the employee with a right of appeal against the outcome to a more senior person who was not involved in the decision process.



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What happens if they appeal?

If the employee appeals the outcome, the person named as the appeal officer should get in touch to set up a call or meeting to discuss the grounds of appeal and why the employee thinks that it was the wrong decision.

The person hearing the appeal can uphold the original decision, overturn it and agree to the employee's application, agree a trial or suggest an alternative working arrangement.

Again, the appeal officer should document the process and their considerations. The outcome to the appeal should be formalised in writing.

What do I do if the employee asks to withdraw their request?

If an employee chooses to withdraw a flexible working request, they have the right to do so. They won't be able to make another flexible working request for the next 12 months.

You can treat a request as withdrawn if the following situations apply:

1. the employee fails to attend the meetings which have been arranged by the employer in order to discuss the request;
2. the employee fails to attend appeal meetings which have been arranged as a result of the employee appealing the flexible working request.

What should I do if I receive multiple requests?

Logically, if you receive multiple flexible working requests from multiple employees, they should be dealt with in the order in which they are received, however, this might not make sense if the requests impact on each other.



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If the requests do impact on each other, perhaps because they are both in the same team or do the same or similar roles, you need to work out how to handle the requests in the most sensible way for the business.

Perhaps the same manager could consider each request and you run the process for each at the same time with a view to providing the outcomes in the context of the other request(s).

What can the employee do if they are still not happy after the appeal process has been concluded?

The employee can raise a grievance or apply to ACAS for early conciliation and if that doesn't resolve the matter, they can make claims to the Employment Tribunal if you have refused their request by:

- failing to comply with the procedural rules on how to handle the request; or
- rejecting the application on the basis of incorrect facts;
- treating the request as withdrawn when you weren't entitled to do so.

An employee can also claim that they have suffered a detriment or been unfairly dismissed because they asked for flexible working or because they made a claim to the employment tribunal in relation to a flexible working request.

The tribunal's role is merely to verify that you have followed proper procedures and examine any disputed facts. They don't have the power to question the commercial validity of your decision. If a tribunal finds that your refusal to accept the flexible working request was not justified, it will make a declaration to that effect and may also order you to reconsider your request and award the employee compensation of up to eight weeks' pay.

An employee may also claim constructive unfair dismissal or unlawful discrimination.



I NEED SOME HELP...

No problem, we're here to help. Get in touch with our legal team to discuss your flexible working issue:

0115 870 0150
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