

HR Elite



A Guide to Flexible Working

Flexible Working Guide

Introduction – what is flexible working?

Flexible working involves an adjustment to the traditional working arrangements to accommodate employees' preferences or needs. Recognising the benefits of it can help make the most of the workforce and support employee morale, too. Most employees have the legal right to request flexible working.

Flexible working may be an initiative that the organisation decides to introduce across the workforce, bringing in the right to work flexitime, for example. Most commonly, requests come from employees on an individual basis and are considered on a case-by-case basis.

Forms of flexible working

Part-time working

Part-time working can be any number of hours below the organisation's standard working week. It usually involves agreeing a set number of hours to be worked per week or month and there is usually an agreed pattern to the hours of work.

Compressed hours

Compressed hours arrangements allow individuals to work their normal hours of work over a shorter period of time than is standard in the organisation. For example, an individual may work their organisation's standard 40-hour week in four or four and a half days instead of the usual five days. In this way, the employee obtains an extra half or full day off work each week or fortnight.

Term-time working

Term-time working is a form of part-time work where the employee works only during school terms and takes unpaid leave during the school holidays. Continuous service is usually unaffected.

Variable hours

Variable hours usually involve different start and finish times to the organisation's normal working week, with the changes in start and finish times under the employee's control. The employee's overall daily number of hours remains the same, but the working pattern could potentially vary from day to day over the course of a week.

Flexitime

Flexitime is a more structured version of a variable hours scheme. Each employee who is covered by a flexitime arrangement must attend work between 'core hours' such as 10-noon and 2-4pm. Outside of these hours, start times may vary each day with the overall weekly hours being completed by the end of Friday, or hours accrued and taken at a later date, or even owed to the organisation and worked another time.

Job-sharing

Job-sharing is a formalised version of part-time working where a specific job is split between more than one person. Usually, the job is a full-time one that is divided equally between two job-sharers, working at separate times of the week or alternating week on/week off.

Homeworking

Homeworking is also known as teleworking or remote working. If this is done on a permanent full time basis it will usually involve a change to the individual's contract of employment. More information is available on homeworking elsewhere on our resources page.

Combining homeworking and office-based working

This combination is where the employee splits their working time, working part of their hours in the organisation's office and part of their hours from home. This could apply to both full time and part time working patterns.

The benefits

For both parties, permitting some degree of flexible working can bring business and personal benefits.

For the employer, allowing a more flexible approach to how roles are performed can make better use of the available talent, reduce time lost through absence/sickness and attract a wider range of interested candidates for vacancies. Studies have shown that employees who request, and are granted, more flexible working arrangements are more likely to remain with the organisation, have increased levels of commitment and as a consequence impact positively on customer service.

An individual may want to work more flexibly to accommodate personal domestic needs, such as childcare or increased involvement with elderly relatives. An increasingly diverse workforce in the UK will bring different attitudes to the traditional '9 to 5' and as the millennial generation now form a large proportion of the workforce, together with an ageing population, an element of wanting to pursue personal goals and interests as well as have a successful career may influence the increase in requests for flexible working.

Legal position and eligibility

Since 2014, all eligible employees have had the right to make a request to work more flexibly. Prior to this date, the right only applied to those with caring responsibilities – now employees can make a request for any reason.

To be eligible, an employee must have worked for their employer for at least 26 weeks, be legally classed as an employee and has not made any other flexible working requests in the last 12 months. Employers have the discretion to permit requests from all staff, although most do wait for the 26 weeks which incorporates a period of probation and assessment of performance, which will be useful when considering a request to work more flexibly.

A flexible working request covers any request from an employee to change their hours or working patterns.

The change doesn't have to apply to all working days, for example an employee might only want flexibility on a set day for childcare.

Possible Barriers

Organisations may be reluctant to grant flexible working requests. The main barriers to flexible working may include:

- operational difficulties;
- additional pressure on other workers who are not involved in flexible working;
- a detrimental impact on customer service;
- resistance from managers to the necessary changes;
- work-scheduling difficulties;
- additional costs;
- the effect on the quality of work;
- discontent among employees not included in flexible working;
- difficulties in communicating with employees; and

A study by Henley Management College, "Managing Tomorrow's Worker", found that flexible working can make teamworking and communications more difficult to organise and sustain, and performance harder to supervise and monitor. Further information and support on this can be found in our Homeworking Guide on our resources page.

Making a Request

Requests must be made in writing from the employee and must include the following:

1. That the employee is making a statutory flexible working request
2. The date it is being made
3. When the change is requested to start
4. What effects the request would have
5. How the employee would propose these can be overcome
6. If any previous requests have been made— and the date of them if so
7. If the request relates to a disability or anything covered under the Equality Act

It is helpful to include any benefits the change would have for the organisation and any benefits to the team.

Considering the Request

The employer must consider the employee's request fairly, referring to the ACAS guide and/or relevant legislation, then make a decision and communicate this within 3 months of the request.

A meeting should be held to discuss the request, before a decision is made. At the meeting, it is helpful to talk about the request, how issues can be overcome and other options that may be considered.

There is no legal right to representation at a flexible working meeting, however an employee may ask to bring someone with them. It is up to the employer whether to agree.

Employers should ensure that the assessment criteria that are used to decide whether or not to agree to an employee's request to work flexibly are objective and business related to avoid claims of discrimination or inconsistency. The criteria could include considering the nature of the job (tasks, equipment, workload, customer contact), the impact on the business (quality, customer service, increased costs) and/or colleagues, potential savings and other benefits.

Communicating the Decision

The employer should notify of their decision in writing, within a maximum of 3 months from the date of the request.

The decision might be to approve, trial or reject;

Approve - Confirm in writing, including any changes to contract (i.e. pay, working hours, holiday entitlement, working location), the start date, and any review dates.

Trial - The request could be trialled on a temporary basis. Confirm in writing, detailing the measures to assess, (i.e. timescales, targets) and include details of when and how this will be reviewed, and by who.

Reject – Confirm in writing. An application can be rejected but only if it meets one of the criteria detailed below:

- It will cost too much
- Work cannot be organised amongst existing staff
- It is not possible to recruit more staff
- There will be a negative impact on quality
- The business will be unable to meet customer demand
- There will be a negative effect on performance
- There is not sufficient work available at the time requested
- There are planned changes to the business (i.e. changes, restructures)

Appeals

There is no statutory right to appeal a flexible working decision, however it is best practice to allow this in order to demonstrate a fair process. Appeals should be received in writing.

The full process (including the appeal) must be completed within 3 months from the original receipt of the request, unless an extension is agreed. In cases where the process will go outside of the 3 months, it is essential to agree this with the employee and gain their consent.

Even if you do not allow a formal appeal process, an employee is encouraged to discuss their concerns if a request is declined. Concerns may include things such as; explaining why they think the decision is wrong or unfair, any additional or new information to support the application, any evidence process was not followed or suggesting any compromises or alternative proposals.

Following a Request

It is essential that employees are not treated unfairly because they have made a request. Any unfair treatment may result in them making a claim to an employment tribunal.

Only one request can be made every 12 months (however you do have discretion to accept other request, but do not have to).

Statutory Guidelines / Related Legislation

ACAS Guide <https://www.acas.org.uk/acas-code-of-practice-on-flexible-working-requests>

Equality Act 2010 <https://www.gov.uk/guidance/equality-act-2010-guidance>

Government Guidelines <https://www.gov.uk/flexible-working>

Other guides

Guide to homeworking <https://www.hrelite.co.uk/resources/>