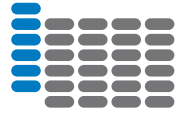


The law on flexible working



Berg Kaprow Lewis

As an employer, you need to know about flexible working. The law says you must 'consider seriously' requests to work flexibly from employees with a child under six or a child with disabilities under 18. From April 2007, this is also likely to apply to employees looking after a dependant adult.

But in fact it may pay you to consider offering flexible working to other employees as well.

This briefing covers:

- The different types of flexible working.
- Who qualifies to apply for flexible working under the law.
- The procedures you must follow if you receive a request to work flexibly.
- What you need to do to introduce new working arrangements.
- Other legislation to be aware of.

1 What is flexible working?

Flexible working is any working pattern other than the normal working pattern — it can involve changes to the hours an employee works, the times they are required to work or their place of work.

1.1 There are a number of working practices that involve changes to the **hours and times** worked:

- A flexitime arrangement requires an employee to be at work during a specified core period, but lets them otherwise arrange their hours to suit themselves.
- With compressed hours, employees work the same hours over fewer days.

- With annual hours contracts, employers and employees agree they will work a given number of hours during the year, but the pattern of work can vary from week to week.
- Staggered hours contracts let employees start and finish work at different times.
- Employees may also wish to take time off in lieu, unpaid sabbaticals or career breaks.

1.2 Employees may request a **job-sharing arrangement**.

- This is where one job is shared between two people, who might work alternate days, half weeks, or alternate weeks, or one person working in the morning and one in the afternoon.

1.3 Shift work, **part-time** work and **term-time** work also count as flexible work, in that

Directors' Briefing

a book in four pages

More than 160 briefings are
now available.

If you need further information or help,
ask the distributor of this briefing
about the services available to you.

they involve variations to the normal pattern of working hours.

1.4 Flexible working may also involve changes in the location of the **workplace**, such as working from home.

- Employees may request to do some or all of their work from home.

You will need to consider your health and safety obligations (see **4.3**).

2 Who qualifies?

Parents requesting flexible working under the statutory right must fulfil certain criteria.

2.1 The **employee** must:

- Be the mother, father, adopter, guardian or foster parent of the child in question, or their husband, wife or civil partner.
- Have responsibility, or expect to have

responsibility, for bringing up the child.

- Make the application as a means of enabling them to care for the child.
- Have worked for you continuously for at least 26 weeks before making the application.
- Have made no other application in the preceding 12 months.
- Be willing to agree a change in their working pattern, with a corresponding drop in pay if necessary (for example, if they want to move from full-time to part-time work). You can agree that it should only be a temporary or transitional change.

2.2 The **employee's child** must be under six or under 18, in the case of a child with disabilities.

- The application must be made before the 14th day of the child's sixth (or 18th) birthday.

“If you do turn down a request make sure you give your employee a sufficiently detailed reason. It is not enough simply to state one of the set grounds — you must explain why it applies in the circumstances.”

**Rachel Roe,
PARENTS AT
WORK**

3 Implementation procedure

Under the law on flexible working, both sides are required to follow the correct procedure.

3.1 It is up to the employee to prepare a **detailed application** well in advance of when they want to change their working pattern.

- The application must be in writing and clearly state what the application is for and when it will be effective from.
- The employee should be able to come up with a clear plan of how the new pattern would work and must show that the changes will not harm your business.
- It must also explain how the employee feels he or she meets the relationship criteria.

3.2 It is **good practice** to acknowledge an application to work flexibly in writing. Once you have received an application from an employee you must:

- Arrange a meeting with the employee within 28 days of receiving it. This is to decide a start date (if you agree), or to consider alternatives (if you do not). The employee has the right to be accompanied at the meeting by a companion. The companion must be a worker also employed by you.
- If you agree, write to the employee within 14 days of the meeting detailing the new working pattern and confirming the start date.
- If you do not agree, you must write within

“The most common problem employers have with requests to work from home concern trust. This is best achieved by good communication and effective monitoring — task completion rather than time management.”

**Jim Givens,
HR Management
Solutions**

Business benefits

Although you only have a legal obligation to provide flexible working arrangements in specific circumstances, you may want to consider introducing it for other employees.

The Government is considering extending the right to ask for flexible working to carers, and parents of older children and dependant adults.

Flexible working can have a number of business benefits.

- A** More flexible working patterns may **attract employees** to your company.
- Having a flexible approach will also help you retain existing staff.
- B** It can help to reduce **employee turnover**.
- C** It may boost **employee morale** and commitment.
- D** The introduction of more flexible working arrangements has also been shown to reduce **absenteeism**.
- E** It has also been proven that flexible working provisions can lead to noticeable improvements in **employee productivity**.

the same time period to give clear business reasons why the proposed arrangement will not work in this case.

You must date your refusal and set out your appeals procedure.

3.3 You can **refuse an application** to work flexibly only if there is a clear business reason.

Valid reasons as set out in the legislation are:

- The burden of additional costs.
- A detrimental effect on the ability to meet customer demand.
- An inability to reorganise work among other employees.
- An inability to recruit additional employees.
- A detrimental effect on quality.
- A detrimental effect on performance.
- Insufficient work when the employee proposes to work.
- Planned structural changes.

3.4 If you refuse an application to work flexibly, the employee may **appeal**.

- He or she must write to do so within 14 days of you sending your letter of refusal.
- You must have another meeting within 14 days of receiving this letter to hear the appeal.

And you must write, accepting or refusing the appeal, within 14 days of this meeting.

3.5 If you still refuse the application, and the

Individual cases

The requests you receive from individuals will often involve forms of flexible working tailored to their specific circumstances. For example:

- A** Fathers (or those with responsibility for bringing up children) may wish to **work hours** that allow them to drop off a child at school in the morning.
- B** The mother of a 14-year-old with disabilities may need some sort of **flexitime arrangement** to allow for absences of a carer or to take the child to special classes.
- C** The mother of a young baby may need the flexibility to **work from home** at short notice.

Individual requests for flexible working don't necessarily entail a reduction in the total hours worked.

employee feels that their application has not been considered seriously, they may want to take **further steps**.

- Try to deal with the problem internally at this stage. An informal discussion between you and the employee may clear up any misunderstandings.

Or, encourage them to use a formal grievance procedure. It will also be much quicker than involving external parties.

- If it is still not possible to resolve the dispute, the employee may decide to involve an external third party. This might be someone from Acas or some other mediator or conciliator. They will try to resolve the problem in an informal manner by mediating discussions between you and the employee.

3.6 In some circumstances, the employee may decide to make a **formal complaint** to an employment tribunal or to the Acas arbitration scheme.

- The employee can only do this if you have failed to follow the correct procedures or if your decision was based on incorrect facts.
- If it is shown that you have not followed the correct procedure, you will have to reconsider the application.
- You may also have to pay compensation to the employee.

The amount payable will be decided by the employment tribunal or the Acas arbitrator and will be limited to a maximum of eight weeks' pay. Each week's pay itself is currently limited to £310.

3.7 The **timescales** may be extended by mutual (written) agreement. If the employee fails to attend two or more meetings (without giving a reasonable explanation) then the employer may treat the application as withdrawn.

4 Moving into flexible working

Once you have accepted a request for flexible working you may need to make some changes.

4.1 You will need to amend the employee's **contract of employment** to reflect the changes.

- You may want to agree a trial period to ensure the changes are working.

See **Employment contracts**.

4.2 If the new flexible working arrangement

“Employees must be able to request changes to their working patterns without fear of dismissal, detriment, or other disadvantage to their career opportunities.”
John Blackwell, John Blackwell Associates

“Be prepared to meet your employee halfway. If the changes requested are not possible, suggest others that are.”
Anna Kavanagh, Time4balance

involves changes to the number of hours worked, you will need to amend the employee's **pay** and **holiday entitlement**.

4.3 If the employee will be working from home, **health and safety** requirements will apply just as they do to those who work in the office.

An initial risk assessment must be carried out although this can be done by the employee. Areas to consider are:

- The seating and layout of the employee's computer workstation.
- Electrical equipment. Has it been tested and certified?
- Extension leads for telephones, PCs and printers. Make sure there are no trailing leads.
- Adequate lighting levels, ventilation and room temperature.

You will need to give employees simple, specific health and safety advice and record what has been done. See **Health and safety**.

4.4 Consider the impact of the changes on **other employees**.

- If an employee will be working fewer hours than previously, make sure you have adequate cover in place. Other employees may become resentful if their workload increases because of the changes.
- You should inform other employees as early as possible.
- You also need to make sure work is allocated fairly. For example, in a job share you need to make sure that both parties have equal responsibilities.

4.5 Make sure you are **consistent** in your approach to flexible working.

- Keep clear records of who has applied to work flexibly, and what your response was.
- Monitor and evaluate how the new arrangements are working so you can put changes in place if necessary.

5 Other legislation

In general, the same legislation applies to employers offering flexible working patterns as to those adopting more conventional arrangements.

You should also take account of some specific forms of protection for employees working flexibly.

5.1 The employee is protected against

dismissal or constructive dismissal under the flexible working rights. It is unlawful to dismiss an employee because:

- They have applied to work flexibly and it has been granted.
- They have made or intend to make a complaint to an employment tribunal.
- In such a case, the 12 month qualifying period of employment is waived and dismissal will be classed as automatically unfair.

5.2 If you are making employees **redundant**, make sure this has nothing to do with their right to work flexibly.

- Employees are protected from dismissal on these grounds.

5.3 When implementing flexible working arrangements you will need to make sure you are not **discriminating** against the employees concerned.

- Under the part-time workers regulations, fixed term and part-time employees are entitled to be treated 'no less favourably' than their permanent, full-time colleagues.
- If you place a requirement on an employee to work full time, the employee may be able to make a claim against you for indirect discrimination or indirect marital discrimination under the Sex Discrimination Act. There is no ceiling on the amount of compensation that can be awarded in such cases. See **Discrimination**.

5.4 People who work on annual hours or term-time contracts are protected by the **working time** and **minimum wage** regulations, just like full-time employees. See **Working time regulations**.

6 Further help

6.1 You can find more detailed guidance in 'Flexible working — the right to request and the duty to consider: a guide for employers and employees' produced by the **Department of Trade and Industry**. Visit www.dti.gov.uk/employment.

6.2 **Acas** has a good guide to forms of flexible working, plus an advice leaflet and various forms on its website at www.acas.org.uk or for further advice call 08457 47 47 47.

6.4 Visit www.direct.gov.uk/Diol1/EmploymentDecisionTrees/fs/en for an **interactive guide** to flexible working rights.

Expert contributors

Thanks to **Chris Reid** (Acas, 020 7210 3689); **Jim Givens** (HR Management Solutions, 01695 421980, www.humanresourcesclick.net); **John Blackwell** (John Blackwell Associates, 01491 628654); **Carol Savage**, Flexexecutive, 020 7636 6744); **Anna Kavanagh** (Time4balance, 020 8549 7949).

Further help

There are other Directors' Briefing titles that can help you. These briefings are referred to in the text by name, such as **Employment contracts**.

© BHP Information Solutions Ltd 2007. ISSN 1369-1996. All rights reserved. No part of this publication may be reproduced or transmitted without the written permission of the publisher. This publication is for general guidance only. The publisher, expert contributors and distributor disclaim all liability for any errors or omissions. Consult your local business support organisation or your professional adviser for help and advice.