Flexible Working Guidance

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1. Introduction

1.1 Flexible working is a phrase that describes any working pattern adapted to suit the employee's needs. There are many forms of flexible working including homeworking, part time or reduced hours, job shares, flexi-time, compressed or annualised hours, career breaks, staggered start and finish times or self-rostering. If employees are considering requesting a change in work pattern, they should speak to their School Leader at as early a stage as possible to explore what opportunities are available.

1.2 The Children and Families Act 2014 amended the Flexible Working Regulations to allow all employees to request flexible working. The purpose of the legislation is to create a structured method for employees to formally request a change in their working pattern enabling them to better manage their personal circumstances.

1.3 The aim of the right is to ensure that requests for flexible working are given serious consideration. There is no legal entitlement to have the request automatically agreed but rather to initiate discussion and consideration.

1.4 In April 2024, the Flexible Working Regulations were amended to give all employees the right to request flexible working from their first day of employment. This guidance document and accompanying forms now provide a model process, rather than a statutory one, which schools and academies can use to help them keep within the timeframe of the whole process including appeal being concluded within two months. Where school holidays would have meant before that one part of the process (e.g. setting up an appeal within 14 working days) would not have been able to be met, now, as long as the two-month completion timeframe is kept to there can be a degree of flexibility around this. Where the two-month timeframe is not possible, extension to time limits can be mutually agreed.

1.5 In 2019, The Government published the Teacher recruitment and retention strategy which encourages schools to create a culture where flexible working is promoted in order to both attract people into teaching but also retain current staff. This should be reflected across both teaching and support staff. Read the Teacher recruitment and retention strategy on gov.uk.

1.6 Headteachers/Heads of School may feel that flexible working is hard to apply in a school environment. There are many misconceptions about flexible working, these can include:

- flexible working is too expensive
- flexible working is impossible to timetable
- job-share or part time working does not work in schools
- part time teachers are less committed to their pupils than full time teachers
- pupils (especially primary) will struggle to cope if they are taught by different teachers throughout the week.

1.7 Some of these are quite obviously untrue (e.g. part time teachers are less committed to their pupils) and others can be overcome by good management, clear communication, making clear expectations from the outset and empowering staff to make it work.

1.8 Flexible working is becoming more and more requested and the Government want to increase the opportunities for flexible working in schools (Teacher Recruitment and Retention Strategy (above) and Flexible working guidance for schools – includes case studies where schools have implemented flexible working successfully). Read the Flexible working in schools

guidance on gov.uk. Enabling employees to work flexibly can benefit the school too. Offering flexible working can help:

- attract and retain teachers and support staff, which provides a sound basis for financial and resource planning
- increase motivation and reduce absenteeism
- increase commitment and improve employee relations
- increase diversity and equality
- reduce the risk of discrimination and grievances
- in small schools by providing a greater number of teaching staff (job sharing, part time teachers) can increase the ability to cover the curriculum
- pupils benefit from more than one experienced teacher through job sharing arrangements
- retain skilled and experienced employees approaching retirement who may wish to reduce their working hours rather than stop working completely.

1.9 Throughout this document, reference is made to "School Leader" but this should be changed where the individual school/academy leader holds the post of "Principal" (or other appropriate title). Where School Leader is mentioned in this document this also means 'Chairs of Governors' where the applicant is the School Leader.

2. Eligibility

2.1 All employees have the right to make a request for flexibility in their working pattern.

2.2 To be eligible to make a request, the employee must:

- be an employee (not an agency worker)
- have not made two applications to work flexibly under the right in the past 12 months.
- not have another current flexible working request live.

3. Applying for flexible working

3.1 Requests for flexible working can be made using *Flexible working application form*. This is the main opportunity for the employee to set out their desired working pattern.

3.2 There is scope to apply for a wide variety of changes to the standard working pattern and the following list of possible examples of flexible working arrangements is not exhaustive:

- Part time working – either by working less than full time hours and/or working fewer days.
- Job sharing – two or more people do one job and split the hours. This can be successful where individual teachers propose and organise their own job-sharing arrangements.
- Compressed hours – working full time hours over less than 5 days. *NB. Consideration would need to be given to an increased workload and that this is being managed appropriately over fewer days.*
- Staggered hours – Different start, finish and break times to other workers. Where this can be timetabled successfully (using usual classroom cover options), this can help those who have caring/childcare responsibilities who may need to drop off or collect children.
- Working from home – If a school feels it can support an employee (including the School Leader) to work from home (e.g. to undertake PPE, write up reports) then the decision is

for the School Leader (or Chair of Governors/CEO where it is the School Leader making the request) to make following the receipt of the request and give it due consideration.

- Part year working - where the employee works only for part of the year but their salary is calculated on a pro-rata basis and paid over the whole year.

3.3 The onus is on the employee to provide a written application to the school well in advance of when they would like the change to take effect.

3.4 The completed application form should be passed to the School Leader.

4. Receipt of a request for flexible working

4.1 Once the completed application form is received by the School Leader, the process cannot take longer than 2 months (with the exception of extension to the timescale mutually agreed by all parties involved), including the time for an appeal where applicable. A request to extend the timescale may be made because extra time is needed to assess the viability of the flexible working pattern requested. The School Leader can do this via email, but Section 2 of the *Flexible working application form* should be signed by both parties to show agreement to an extension.

4.2 The School Leader has a duty to consider the application seriously. A consistent approach to requests is important to remove risk of claims of discrimination and unfair treatment.

4.3 The School Leader should acknowledge receipt of the request in writing (email is acceptable) as soon as is possible. The School Leader will arrange to meet with the employee to either agree with the request or to arrange a meeting with the employee to discuss the request.

4.4 Applications from School Leaders should not be considered by the Chair of Governors alone. It would be appropriate for a group of governors, perhaps the Personnel Committee working with the Chair of Governors, to consider a request for flexible working from a School Leader.

5. Meeting to discuss the request

5.1 A meeting is an effective way to provide opportunity to discuss the proposed change to the working pattern in more detail. If the School Leader anticipates that the proposed change will cause difficulties, alternative suggestions should be considered. It is good practice to allow the employee to be accompanied by a companion (i.e. a work colleague or trade union representative) if they request this. The employee should contact their companion to ensure they are free for the meeting. If the companion is unable to attend the initial meeting, the employee can request the meeting to be rescheduled.

5.2 An employee who does not attend a meeting without giving prior notification should contact their School Leader as soon as possible to explain their absence and to rearrange the meeting. If an employee fails to attend the meeting more than once without a reasonable explanation, the law allows the school to treat the application as having been withdrawn. The School Leader can write to the employee to confirm this.

6. Following the meeting to discuss the request

6.1 It is suggested that within 14 working days of the meeting the employee should receive written notification from the School Leader stating either:

- that the new work pattern is accepted and a date on which the new working pattern will start or;
- that the new work pattern has been rejected on clear business grounds (see point 6.3 below) with an explanation as to why the application cannot be accepted and the reasons why. The School Leader may still wish to explore alternatives to find a working pattern suitable to both parties. Or;
- that further action is needed before notifying the employee of the final decision.

In all cases, Section 2 of the *Flexible working application form* should be used to indicate the decision.

6.2 Any request that is made will be a permanent change to the employee's contractual terms and conditions (unless specifically agreed otherwise). There is no right to revert back to the previous working pattern.

6.3 If there is no clear way of achieving the requested change, the School Leader can refuse requests, supported by a business reason. The business reason must align with one or more of eight prescribed areas (see below). If the application to work flexibly is being declined, before completing the rejection form, the School Leader must ensure that full consideration has been given to the application and the employee has been consulted with. The business grounds for declining the new working pattern and the reasons why the grounds apply in the circumstances must be stated. The School Leader will need to have an argument which justifies the selected grounds for declining the request. The reason for declining the request must be from the following list:

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

6.4 The School Leader should always be aware of refusing requests and the potential for discrimination claims e.g. an employee who wishes to work flexibly to accommodate their religious beliefs or childcare arrangements. They may have a case for indirect discrimination on the grounds of religion or belief or sex if their requests were unreasonably refused.

6.5 If the School Leader intends to refuse a request, it is recommended that advice is sought from their HR provider prior to final decision to ensure that the reason for refusal is sound and does not leave the school open to challenge.

7. Right of appeal

7.1 If the applicant's request for flexible working is being declined, it is good practice to allow them to appeal against the decision. However, this is not a statutory right. Section 3 of the *Flexible working application form* should be used to lodge an appeal.

7.2 If an appeal is requested the School Leader should set up an appeal meeting, and it is suggested that this meeting is set up within 14 working days of receiving the appeal. It is also good practice to allow employees to be accompanied by a companion (i.e. a work colleague or trade union representative) if they request this.

7.3 Where the School Leader is the applicant, appeals should be heard by a panel of governors not previously involved in the consideration of the application.

7.4 The outcome of any appeal can be communicated using Section 3 of the *Flexible working application form* and it is suggested that this is within 14 working days of the appeal meeting.

8. Extension of time limits

8.1 Section 2 of the *Flexible working application form* can be used when confirming agreement from both parties to extend the time limit for part of the procedure. There may be exceptional circumstances when it is not possible to complete the procedure within the specified time limit. It might be appropriate to extend the time limits in the following circumstances:

- the School Leader requires extra time to speak to another employee, who is on leave, about whether they could work the hours left uncovered by the employee's requested working pattern
- the employee is going on leave and as such will not be able to attend a meeting within the time limit.

Such extensions of time can only take place if they are agreed by both parties. The School Leader should confirm agreement to the extension in writing (email is acceptable).

9. Withdrawal of application

9.1 If at any time an employee wishes to withdraw their application, they should notify the School Leader.

10. Other resources

10.1 For further guidance on how to operate a fair and equal flexible working application process and what to consider when deciding to accept or reject a request, visit the Making a flexible working request page on acas.org.uk.

Time wise Flexible Working Consultancy provides free training and practical support on implementing effective working practices. Their webinars were produced in collaboration with DfE and sector experts.