



# **The Right to Request Flexible Working Guidelines**

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# 1 Introduction

The Employment Act 2002 provided parents of children under six, or of disabled children under eighteen, the right to *request* to work flexibly and placed a duty on employers to *consider* such requests seriously. The Work and Families Act 2006 which came into effect on 6<sup>th</sup> April 2007 extended the right to request flexible working to employees who are carers of certain adults.

## 2 Eligibility Criteria:

To be eligible to make a request under the statutory right, a person must:

- Be an employee
- Have 26 weeks continuous Local Government service at the date the application is made
- Not be an agency worker
- Not have made another application to work flexibly under the right in the previous 12 months
- Be the parent\* of a child aged under six or under eighteen where disabled, have responsibility for the upbringing of the child and be making the application to enable them to care for the child OR
- Be the carer\*\* or expect to be the carer\*\* of an adult in need of care

*\* For the purpose of the legislation, a 'parent' is defined as the mother, father, adopter, guardian, special guardian or foster parent of the child. Spouses, civil partners or partners of these individuals are also eligible, including partners of the same sex as long as they have or expect to have responsibility for the upbringing of the child.*

*\*\* For the purpose of the legislation a 'carer' is defined as a spouse, partner, civil partner or relative; or if not the spouse, partner or a relative, live at the same address as the adult in need of care. A relative for this purpose is a mother, father, adopter, guardian, parent-in-law, son, son-in-law, daughter, daughter-in-law, brother, brother-in-law, sister, sister-in-law, uncle, aunt or grandparents. Step-relatives and half-blood relatives are also included, as are adoptive relationships and relationships which would have existed but for an adoption, i.e an employee's natural relatives.*

## 3 The Application Process:

### 3.3 Making a request:

Employees can make a request to change the hours, time and/or place at which they work. An employee's application must:

- Be in writing
- Be dated\*
- State that the application is being made under the statutory right to request a flexible working pattern
- Stipulate that the employee has or expects to have caring responsibility for an adult or child and has a relationship with that adult or child, as defined in the eligibility criteria above.
- Specify the employees desired flexible working pattern
- Explain what effect, if any, the employee thinks the proposed change would have on the organisation and how, in their opinion, this effect might be dealt with. (This includes the effect on colleagues, customers and service provision)
- State the date on which it is proposed the change should become effective (allowing sufficient time for the application to be considered and implemented).
- State whether a previous application has been made to the employer and when

Employees are *not required* to provide evidence of the caring relationship, or the level of care needed, when making a request. However employees should bear in mind that it is generally helpful for their line manager to have as much information as possible about their situation.

In addition, employees thinking about changing their working pattern should:

- speak to their head teacher/line manager as early as possible in order to explore what opportunities may be available
- be aware that under the statutory procedure, the process of making and considering a request can take up to 14 weeks.
- understand that if a flexible working request is agreed, this represents a *permanent* change to the employment contract (unless a trial period has been agreed). This means that employees have no right to revert back to the previous working pattern.
- be aware that only one application every 12 months can be made under the right. This is regardless of whether a previous application was made in respect of a different caring responsibility

All employees making a flexible working request should complete the form at **Appendix A**. This ensures that all the minimum necessary information under the legislation is provided and gives line managers all the information they will need to fully consider any application made.

Employees who fail to provide all the information requested will be told which information has been omitted and asked to re-submit the application when complete. Employees should be aware that their line manager is not obliged to consider the application until it is complete and re-submitted.

*\* The date is important because the head teacher/line manager has a duty to follow a specified procedure in considering applications to work flexibly and each step is time-dependent. The Regulations take the date when an application is made to be the date on which it is received by the line manager. Where an application is transmitted by e-mail it is deemed to be received on the day on which it is sent. Where an application is sent by post, it is deemed to be received on the day on which it would be delivered in the ordinary course of post.*

## 3.4 Considering the application:

The following guidelines set out the process that will be followed when considering a flexible working request and reflect the procedural requirements set out in the legislation.

### Step 1: Application Received

On receipt of the application, the head teacher/line manager **MUST** complete the Proforma attached at **Appendix B** and arrange to meet with the employee to discuss his/her application within **28 days** following receipt of the request.

### Step 2: Meeting held to consider application

The meeting provides both parties with the opportunity to discuss the desired work pattern in depth and consider how it might be accommodated. The employee has the right to be accompanied at the meeting by a Trade Union representative or a work colleague.

If an employee fails to attend the meeting they should contact the head teacher/line manager as soon as possible and re-arrange the meeting at a mutually convenient time. Employees should be clear that if they fail to attend two or more meetings, their application will be treated as withdrawn (see **Section 6**).

### Step 2a: Consider alternatives

If the requested pattern cannot be accommodated, the meeting also provides an opportunity to discuss alternative working arrangements that may be appropriate. This could include a **trial period** of the new working pattern, for, say 12 weeks, in which case, time for a final decision to be given by the head teacher/line manager, will be extended until the end of the trial period. The employee will be informed of the extension, in writing, using the proforma at **Appendix H**.

In other circumstances, for example where an employee is going to be caring for an adult with a terminal illness or fluctuating condition, it may be concluded that an **informal agreement**, allowing an employee to work flexibly for a limited period may be more appropriate. Where possible, informal agreements should still be put in writing, so that both the employee and their head teacher/line manager are clear about the arrangements.

### Step 3: Confirm the outcome

The head teacher/line manager **MUST** confirm their decision, in writing with the employee within **14 days**, following the meeting.

If the requested working pattern can be accommodated, or an alternative arrangement can be found the head teacher/line manager completes the Proforma attached at **Appendix C**.

Where appropriate, the head teacher/line manager should also:

- Inform School HR Officer of the new working pattern
- Amend the employee's pay
- Inform colleagues and anyone else affected, of the new working pattern
- Follow the Home Working Policy ([see school model policy on pen drive](#)) if an employee will be working from home

Or

If the requested working pattern cannot be accommodated, the head teacher/line manager completes the Proforma attached at **Appendix D**.

### **3.5 Rejection of a flexible working request:**

An application can and will only be refused where there is a clear business reason for doing so. The grounds on which a request for flexible working can be rejected are as follows:-

- The burden of additional costs
- Detrimental effect in ability to meet customer demands
- 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 periods the employee proposes to work
- Planned structural change

As stated above the head teacher/line manager must write to his/her employee, using the Proforma attached at **Appendix D**, within **14 days** following the meeting to discuss the request for flexible working. The head teacher/line manager will have to state the business grounds as to why he/she is unable to agree to the requested working pattern.

The head teacher/line manager must also lay out the reasons why the grounds apply in the circumstances. The explanation should be brief, but accurate and include the key facts about why the business ground applies. This is useful as experience shows that an employee who understands why the business reason is relevant, will accept the outcome and be satisfied that their application has been taken seriously, even if they are disappointed that the application has been refused.

## 4 The Appeal Procedure:

An employee has a right of appeal against his/her head teacher/line manager's decision not to agree to the request to flexible working. If an employee opts to appeal against his/her head teacher/line manager's decision to refuse an application, the following procedure will apply:

### Step 1: Employee Submits Appeal

The employee must write to his/her Chair of Governors, using the Proforma attached at **Appendix E**, setting out the grounds for his/her appeal within **14 days** of receiving his/her head teacher/line manager's written notice of the decision.

### Step 2: Appeal Meeting Held

The Chair of Governors will arrange to meet with the employee within **14 days** of receipt of the Proforma attached at **Appendix E**.

### Step 3: Appeal Outcome Confirmed:

Following the meeting the Chair of Governors must confirm in writing, within **14 days** of the meeting his/her decision using the Proforma attached at **Appendix F**.

If an employee remains dissatisfied with the outcome of his/her appeal he/she has recourse to the formal School Grievance Procedure. An employee also has recourse to an Employment Tribunal if he/she continues to be aggrieved following the exhaustion of all internal procedures.

## 5 Notice of withdrawal of application form:

In the event that an employee chooses to withdraw his/her application to work flexibly the Proforma attached at **Appendix G** must be completed by the employee and sent to his/her head teacher/line manager. The head teacher/line manager will confirm receipt of an employee's wish to withdraw his/her request, using the tear of slip at the bottom of the form.

A head teacher/line manager can also treat an application as withdrawn if:

- The employee fails to attend two meetings to discuss the application or an appeal, without reasonable cause.
- The employee unreasonably refuses to provide the employer with the required information e.g if an employee requests to work from home but does not provide sufficient access or information to enable the head teacher/line manager to ensure their work space meets health and safety standards.

In all circumstances the head teacher/line manager should make a written record of the withdrawal and the employee will not be able to submit a further application to work flexibly for twelve months from the date at which the application was withdrawn.

## **6 Extension of time limits**

Through mutual agreement a head teacher/line manager and an employee where appropriate can seek to extend any of timescales above using the Proforma attached at **Appendix H**.

Where a head teacher/linemanager, who will deal with a request to work flexibly, is absent from work due to annual leave or sickness, an automatic extension applies. In such circumstances a head teacher/line manager will arrange a meeting on either the date he/she returns to work, or 28 days after the application is made, whichever is the sooner.

## **7 Dismissal or Detriment:**

An employee will be protected from suffering dismissal or detriment if he/she exercises, or proposes to exercise his/her right to work flexibly. A complaint can also be made to an Employment Tribunal if:

- An employee has suffered detriment as a result of exercising or seeking to exercise his/her right to apply to work flexibly;
- An employee has been dismissed as a result of exercising or seeking to exercise his/her right to apply to work flexibly;
- A fellow employee has suffered detriment or been dismissed as a result of accompanying a work colleague exercising his/her right to apply to work flexibly.

## **8 Abuse of the Right:**

Employees should be aware that if they are suspected of abusing the right to request flexible working, for example if a head teacher/line manager has reason to believe an employee does not genuinely have a qualifying relationship with the adult or child in question, their head teacher/line manager can reasonably request evidence to verify the relationship and in some circumstances may invoke the disciplinary procedure.



## APPENDIX A

### FLEXIBLE WORKING APPLICATION FORM

DATE OF REQUEST:

#### 1. PERSONAL DETAILS

Name: Pay No:  
School: Head Teacher/Line Manager

I would like to apply to work a flexible working pattern that is different to my current working pattern in accordance with the Employment Act 2002 and the Work and Families Act 2006 – Right to Request Flexible Working.

Please specify how you meet the eligibility criteria:

#### Parents:

- Do you have parental responsibility for the upbringing of either a child under 6 or a disabled child under 18? YES/NO
- What is your relationship to the child? .....
- Are you making this request to help you care for the child? YES/NO
- What is the child's date of birth? YES/NO

#### Adult Carer:

- Are you or do you expect to be the carer of an adult in need of care? YES/NO
- What is your relationship with that adult?
- Are you making this request to help care for that adult? YES/NO
- When did you start work with xxxxx School/Bolton Council
- Have you made a request to work flexibly under this right in the previous 12 months? YES/NO
- If 'YES' please state the date on which the request was made .....

**2A. DESCRIBE YOUR CURRENT WORKING ARRANGEMENTS  
(PLACE/DAYS/HOURS/TIMES WORKED)**

.....  
.....  
.....

**2B. DESCRIBE THE WORKING PATTERN YOU WOULD LIKE TO WORK  
(PLACE/DAYS/HOURS/TIMES WORKED)**

.....  
.....  
.....

**2C. I WOULD LIKE THIS WORKING PATTERN TO COMMENCE FROM:**

.....  
.....

**2D. IF YOU WISH TO AMEND YOUR WORKING HOURS ON A TEMPORARY BASIS.  
PLEASE STATE THE DATE WHEN YOU WOULD BE LOOKING TO RETURN TO YOUR  
CURRENT WORKING HOURS:**

.....  
.....

**3A. IMPACT OF THE NEW WORKING PATTERN**

I think that the change in my working pattern will affect the school (including my head teacher/line manager, colleagues, children and/or service provision) in the following ways:

.....  
.....  
.....  
.....  
.....

Applicants may also wish to include details of ways in which the change in working pattern may benefit the school and/or any additional information in support of their application:

.....  
.....  
.....  
.....

**3B. ACCOMMODATING THE NEW WORKING PATTERN**

I think the effect(s) described above can be dealt with in the following ways:

.....  
.....  
.....  
.....

**(TO BE COMPLETED BY THE EMPLOYEE WITH A COPY TO HEAD TEACHER/LINE  
MANAGER AND SCHOOL HR OFFICER)**

# Bolton Council

## APPENDIX B

### HEAD TEACHER/LINE MANAGER'S CONFIRMATION OF FLEXIBLE WORKING REQUEST

DATE.....

Dear

I confirm that I have received your request dated .....to change your working pattern from ..... \*

I understand you wish to amend you working hours on a temporary basis from ..... to ..... when you will revert to your current working hours\*

I shall be arranging a meeting to discuss your application within 28 days of receipt of your letter. You have the right to be accompanied by a Trade Union Representative or a colleague at the meeting. Should you wish to be accompanied, you will be responsible for making the appropriate arrangements for them to attend the meeting.

Yours sincerely

\* Delete as applicable

**(TO BE COMPLETED BY THE HEAD TEACHER/LINE MANAGER, WITH A COPY TO THE SCHOOL HR OFFICER)**

## APPENDIX C

### ACCEPTANCE OF FLEXIBLE WORKING APPLICATION

DATE.....

Dear

Following receipt of your application for flexible working and our meeting on ..... I have considered your request to work a flexible working pattern.

- I am pleased to confirm that I can accommodate your application\*

**OR**

- I am unable to accommodate your original request. However, I am able to offer the alternative pattern, which we have discussed, and you agree would be suitable to you.

Your new working arrangements are as follows:

and will begin from:

Please note that the change to your working pattern will be a permanent change to your terms and conditions of service and you have no right in law to revert back to your previous working pattern. The only exception to this is when you only wish to seek the variation for a specified time period only.

Please sign and date the attached copy letter as an acceptance of your revised working pattern.

Yours sincerely

\* Delete as applicable

**(TO BE COMPLETED BY THE HEAD TEACHER/LINE MANAGER, WITH A COPY TO THE SCHOOL HR OFFICER AND RETURNED TO THE EMPLOYEE)**

# Bolton Council

## APPENDIX D

### REJECTION OF FLEXIBLE WORKING APPLICATION

DATE.....

Dear

Following receipt of your application to revise your working pattern and our meeting on ....., where alternative working patterns to your request were also discussed, I have considered your request for a flexible working pattern.

I am sorry but I am unable to accommodate your request for the following business reasons:

These grounds apply in the circumstances because:

If you are unhappy with my decision you have the right of appeal to the Chair of Governors, **insert address**. You must complete the attached Proforma setting out the grounds of your appeal within **14 Days** of receipt of this letter

Yours sincerely

**(TO BE COMPLETED BY THE HEAD TEACHER/LINE MANAGER, WITH A COPY TO THE SCHOOL HR OFFICER AND RETURNED TO THE EMPLOYEE)**

# Bolton Council

## APPENDIX E

### FLEXIBLE WORKING APPEAL FORM

DATE.....

Dear

I wish to appeal against the decision of ..... to refuse my application for flexible working. I am appealing on the following grounds:

Yours sincerely

**(TO BE COMPLETED BY THE EMPLOYEE AND RETURNED TO THE CHAIR OF GOVERNORS WITH A COPY TO THE SCHOOL HR OFFICER AND HEAD TEACHER/LINE MANAGER).**



# Bolton Council

## APPENDIX G

### FLEXIBLE WORKING NOTICE OF WITHDRAWAL OF APPLICATION

DATE.....

Dear

I wish to withdraw my application to work flexibly which I submitted to you on .....

I understand that I will not be able to make another application until twelve months from the above date.

Yours sincerely

**(TO BE COMPLETED BY THE EMPLOYEE, WITH A COPY TO THE SCHOOL HR OFFICER AND HEAD TEACHER/LINE MANAGER)**

### HEAD TEACHER/LINE MANAGERS CONFIRMATION OF EMPLOYEE WITHDRAWING REQUEST TO AMEND WORKING HOURS

Dear

I confirm I have received notice that you wish to withdraw your application for flexible working which you submitted to me on .....

In accordance with the Flexible Working (Procedural Requirements) Regulations you will not be able to make another application until twelve months from the above date.

Yours sincerely

**(TO BE COMPLETED BY THE HEAD TEACHER/LINE MANAGER, WITH A COPY TO THE SCHOOL HR OFFICER AND RETURNED TO THE EMPLOYEE)**

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# Bolton Council

## APPENDIX H

### FLEXIBLE WORKING EXTENSION OF TIME LIMIT FORM

DATE.....

Dear

In accordance with the Flexible Working (Procedural Requirements) Regulations I wish to extend the amount of time to respond to your request to work flexibly in order to allow me to:

- Arrange a meeting to discuss your application (28 days)\*
- Facilitate a trial period of the requested working arrangements\*
- Notify you of my decision regarding your application (14 days)\*
- Arrange a meeting to discuss your appeal (14 days)\*
- Notify you of my decision regarding your appeal (14 days)\*

I wish to extend the time limit to ..... days. This means that I will have until ..... to complete the necessary action. I need the time for the following reasons:

If you agree to this extension please complete the slip below and return to me.

Yours sincerely

\* Delete as applicable

**(TO BE COMPLETED BY THE HEAD TEACHER/LINE MANAGER, WITH A COPY TO THE SCHOOL HR OFFICER AND RETURNED TO THE EMPLOYEE)**

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### EMPLOYEES AGREEMENT TO TIME EXTENSION

I accept your request to extend the time limit to .....

Signed:

Date:

**(TO BE COMPLETED BY THE EMPLOYEE, WITH A COPY TO THE SCHOOL HR OFFICER AND RETURNED TO THE HEAD TEACHER/LINE MANAGER)**

## REQUEST FOR FLEXIBLE WORKING FLOWCHART

### How does the process work?

