

FLEXIBLE WORKING Under the Employment Act 2002

From 6 April 2003 parents of children aged under six or of disabled children aged under 18 will have the right to apply to work flexibly providing they have the qualifying length of service. Employers will have a statutory duty to consider their applications seriously.

The right enables mothers and fathers to request to work flexibly. It does not provide an *automatic* right to work flexibly as there will always be circumstances when the employer is unable to accommodate the employee's desired work pattern. The right is designed to meet the needs of both parents and employers, especially small employers, and aims to facilitate discussion and encourage both the employee and the employer to consider flexible working patterns and to find a solution that suits them both. The employee has a responsibility to think carefully about their desired working pattern when making an application, and the employer is required to follow a specific procedure to ensure requests are considered seriously.

Who can apply?	What kind of changes can be applied for?
<p>In order to make a request under the new right an individual will:</p> <ul style="list-style-type: none">• be an employee• have a child under six, or under 18 in the case of a disabled child• be either<ul style="list-style-type: none">- the child's mother, father, adopter, guardian or foster parent, or- married to or the partner of the child's mother, father, adopter, guardian or foster parent• have worked with their employer continuously for at least 26 weeks at the date the application is made• make the application no later than two weeks before the child's sixth birthday or 18th birthday in the case of a disabled child• have or expect to have responsibility for the child's upbringing• be making the application to enable them to care for the child• not be an agency worker• not be a member of the armed forces• not have made another application to work flexibly under the right during the past twelve months	<p>Eligible employees will be able to request:</p> <ul style="list-style-type: none">• a change to the hours they work• a change to the times when they are required to work• to work from home <p>This covers working patterns such as annualised hours, compressed hours, flexitime, homeworking, job-sharing, self-rostering, shift working, staggered hours and term-time working (further information on different types of flexible working and the potential business benefits is available by clicking the link below).</p>

The procedure

In summary, the procedure is as follows:

- It is up to the employee to make a considered application in writing. They are only able to make one application a year under the right, and accepted applications will mean a **permanent** change to the employee's own terms and conditions of employment unless otherwise agreed between both parties. It is important therefore that, before making an application, the employee gives careful consideration to which working pattern will help them best care for their child; any financial implications it might have on them in cases where the desired working pattern will involve a drop in salary; and any effects it will have on their employer's business and how these might be accommodated.
- Within **28 days** of receiving the request, the employer must arrange to meet with the employee. This provides the employer and the employee with the opportunity to explore the proposed work pattern in depth, and to discuss how best it might be accommodated. It also provides an opportunity to consider other alternative working patterns should there be problems in accommodating the work pattern outlined in the employee's application. The employee can, if they want, bring with them a worker employed by the same employer as a companion.
- Within **14 days** after the date of the meeting the employer must write to the employee to either agree to a new work pattern and a start date; or to provide clear business grounds as to why the application cannot be accepted and the reason why the grounds apply in the circumstances and set out the appeal procedure. In the majority of cases this will be the end of the matter.

All time periods can be extended where both the employer and the employee agree. Any extensions must be recorded in writing by the employer and copied to the employee.

Can an employee appeal against the decision?

Yes. The procedure provides an employee with the right to appeal against their employer's decision within 14 days of being notified of it. The appeal process is designed to be in keeping with the overall aim of the right of encouraging both employer and employee to reach a satisfactory outcome at the workplace.

In a minority of cases some employees will have grounds to pursue their request with third party involvement. This may be by referring their request to ACAS, to an employment tribunal, or by using another form of dispute resolution. An employee is only able to take their claim to an employment tribunal in specific circumstances. In such cases, the employer must be able to demonstrate to the tribunal that they have followed the procedure correctly.

The new law providing parents of young or disabled children with the right to request a flexible working pattern will be in addition to, and will apply completely independently from, other legislation such as sex, disability, or race legislation.