

Model Flexible Working Policy

The Right to Request a Permanent Variation in Terms of Employment in order to Work Flexibly

The Employment Act 2002 introduced the right for working parents to apply to vary their terms of employment in order to work flexibly and thereby balance their childcare responsibilities with their work commitments. This right applies to employees who have a minimum of 26 weeks continuous employment and who are parents of a child under 6 or 18 if the child is disabled.

The Work and Families Act 2006 extended the right to request flexible working, to employees who are carers of certain adults, with effect from 6 April 2007.

The legislation does not provide an automatic right to flexible working. There is an emphasis on the importance of both the employee and the employer considering the terms of the request and attempting to reach an outcome that suits both parties. The employee has a responsibility to think carefully about their desired working pattern when making an application, and the Headteacher / Manager is required to follow a specific procedure to ensure requests are considered objectively.

The procedure note below provides more details about the rights for employees and the procedure for making and dealing with requests for flexible working arising from both pieces of legislation.

Eligibility

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

General:

- be an employee
- have worked with the County Council continuously for 26 weeks at the date the application is made (only service with the current employer will count for continuous service purposes and not previous service with other local government bodies)
- not be an agency worker
- not have made another application to work flexibly under the right during the past 12 months. (This is regardless of whether a previous application was made in respect of a different caring responsibility, eg an employee wishing to make a request to caring responsibility, eg an employee wishing to make a request to care for an adult would still have to wait a year even if their previous request had been made to enable them to care for a child.)

Parents:

- be the parent of a child aged under 17, or under 18 where disabled
- have responsibility for the upbringing of the child and be making the application to enable them to care for the child

- be either:
 - the mother, father, adopter, guardian, special guardian or foster parent of the child; or
 - married to or the partner of the child's mother, father, adopter, guardian, special guardian or foster parent of the child
- make the application no later than 2 weeks before the child's 17th birthday or 18th birthday in the case of a disabled child

Carers of Adults who are in need of care:

- must be, or expect to be , caring for a spouse, partner, civil partner or relative (refer to definitions below); or
- if not the spouse, partner or a relative, live at the same address as the adult in need of care.

Eligible employees will be able to request:

- a change to the hours they work;
- a change to the times when they are required to work; or
- a change to the place where they work - either to work from home or another County Council workplace.

Definitions:

- 'Adopter' – is someone who has been matched with the child for adoption
- 'Disabled child' means a child who is entitled to a disability living allowance within the meaning of section 71 of the Social Security Contributions and Benefits Act 1992
- 'Foster parent' means a foster parent within the meaning of Regulation 2(1) of the Fostering Service Regulations 2002 or Section 2(1) of the Fostering of Children (Scotland) Regulations 1996
- 'Guardian' means a person appointed as a guardian under Section 5 of the Children Act 1989 or Sections 7 and 11 of the Children (Scotland) Act 1995
- 'Special Guardian' means a person appointed as a special guardian under Section 14A of the Children Act 1989
- 'Partner' means the other member of a couple consisting of a man and woman who are not married to each other but are living together as if they were husband and wife; or two people of the same sex who are not civil partners, but are living together as if they were civil partners
- 'Relative' means mother, father, adopter, guardian, special guardian, parent-in-law, son, son-in-law, daughter, daughter-in-law, brother, brother-in-law, sister, sister-in-law, uncle, aunt or grandparent and step-parent, step-son, step-daughter, step-brother and step-sister. Half-blood relatives are also included, as are adoptive relationships and relationships which would have existed but for an adoption, ie an employee's natural relatives.

The Procedure

1. **Written application:** An employee may make 1 application a year and an accepted application will mean a permanent change to the employee's terms and conditions of employment. The employee will have no right to revert back to a previous working pattern (unless otherwise agreed). The application must be made the Council's flexible working request form and passed to the employee's Headteacher / Manager. It will be important that, before making an application, the employee gives careful consideration to which working pattern will help them best care for the child or adult in need of care, whilst taking into account any impact on the school / department and colleagues. The school / department may wish to consider a specified trial period first.
2. **Meeting with employee:** It may be possible for a headteacher / manager to agree to a request simply on the basis of the application itself. If so, the headteacher / manager should write to the employee within 28 days specifying the contract variation agreed to and the start date. Where this is not possible, there is a set procedure to be followed:

After receiving the flexible working request form, a Headteacher / Manager has 28 days in which to arrange a meeting with the employee. This is to provide the Headteacher / Manager and the employee with the opportunity to explore the desired work pattern in depth, and to discuss how best it might be accommodated. It will also provide an opportunity to consider other alternative working patterns should there be problems in accommodating the desired work pattern outlined in the employee's application. The employee has the right to be accompanied at this meeting by a work colleague or trade union representative.

3. **Decision:**
 - 3.1 ***If the application is successful*** - the employee should be notified of the decision within 10 school days of the meeting. This should be done by forwarding the flexible working application acceptance letter. CSF Employment Support must be notified of the decision and details of the new working arrangements in order that a new Statement of Particulars can be issued to the employee where applicable. Should the acceptance involve a change in hours worked, CSF Employment Support must also be notified by way of a completed new starter/variation form in order that any relevant salary adjustments can be made.
 - 3.2 ***If the application is unsuccessful*** - the employee should be notified of the decision within 10 school days of the meeting. This should be done by forwarding the flexible working application rejection letter to the employee. This letter should state the operational reasons for refusal, provide sufficient explanation as to why they apply in these circumstances and provide information about the employee's right to appeal.

There may be a few occasions when it is not possible to properly consider the request within 10 school days and if this is the case

the Headteacher / Manager should inform the employee of this fact and the reasons why further action is necessary before notifying before arriving at a final decision.

Grounds for refusal

In accordance with the legislation, the grounds for turning down an application are that the proposed changes will have 1 or more of the following consequences:

- the burden of additional costs;
- detrimental effect on ability to meet customer demand / the needs of the school;
- inability to re-organise work among existing staff or recruit additional staff;
- detrimental impact on quality or performance;
- insufficient work during the periods the employee proposes to work;
- planned structural changes.

Appeals

The employee has a right of appeal against any decision under this procedure within 20 school days of it being notified to them.

The employee should write to their Headteacher / Manager setting out the grounds for the appeal.

For schools, the Headteacher will arrange for the Appeals Panel of Governors to hear the appeal within 10 school days of receiving the employee's appeal. The applicant has the right to be accompanied by a work colleague or union representative at the appeal hearing and the Appeals Panel may choose to have a member of the schools employee relations team present. A written record of the meeting will be made by the Clerk to Governors.

For business units, the Manager will arrange for a senior manager (who has not been involved in the original decision) to hear the appeal within 14 days of receiving the employee's appeal. If the person hearing the appeal is a Senior Manager, CYPF Personnel should ensure that the Chief Officer has nominated this person to act on their behalf. The applicant has the right to be accompanied by a work colleague or union representative at the appeal hearing and the Senior Manager may choose to have a member of the schools employee relations team present. A written record of the meeting will be made by the manager.

The decision of the appeals panel / manager will be notified to the employee within 5 school days of the date of the meeting. If the flexible working request is accepted, the employee must be informed in writing of the variation agreed (the new work pattern) to and the date upon which it will take effect. If the request is refused, the appeals panel / manager must set out the grounds for the refusal, explaining why they apply in the circumstances.

If the appeal is dismissed and the employee remains dissatisfied they have the right to seek a remedy through the final stage of the grievance procedure, which for schools is the appeals stage of the schools grievance procedure. To do so, the employee should submit their grievance, in writing to the Chair of Governors (for schools) / County Solicitor (for business units), within 10 school days of being notified of the decision taken at the appeal stage within the Flexible Working procedure, detailing the reasons for dissatisfaction and the solution sought. From this point forward the matter will proceed in accordance with the arrangements specified in the grievance procedure.

The decision taken at this stage is final.

Time Limits

There may be a number of reasons why the time limits specified are too short and an extension may be required. For example, more time may be needed to explore an alternative working pattern. Time limits can be extended where the employer and employee agree. For example, for a one term (12 week) trial period, the parties could agree to extend the time for a final decision to be given until the end of the trial period. A written record of the agreement must be made which states which period the extension relates to and the date the extension is to end. This must be dated and sent to the employee.

Time limits will be automatically extended where the person who would ordinarily consider the application is absent because of annual leave or sick leave when the application is received. The 28 day period begins when that employee returns to work or 28 days after the application is made, whichever is the sooner.

Right to be accompanied

The employee has the right to be accompanied at the initial meeting and the appeal by a work colleague or trade union representative. The companion has the right to address the meeting and to confer with the employee during the hearing but not to answer questions on behalf of the employee.

If the employee's chosen companion is not available at the time proposed for the meeting, then the meeting must be postponed and re-arranged at a time convenient to both parties and within 5 schools days (7 days) of the initially proposed meeting; or consider an alternative companion.

The companion is entitled to time off during working hours for the purpose of accompanying the member of staff and a union official is entitled to reasonable paid time off.