

## SECTION 7

### FLEXIBLE WORKING AND PART-TIME WORKERS' RIGHTS

#### Introduction

Many employers believe that providing flexible working arrangements can have a positive impact in terms of improving productivity and reducing costs.

Very often the needs of the business cannot be accommodated within a standard working day. Employees may need to stay late or come in early to get something finished. This is less likely to be a problem if the company offers some flexibility in return. There may also be peaks and troughs within the working day when more or fewer employees are required. It may be in the company's interest to stagger start and finish times.

Certainly some companies have found that employees value flexibility more than the higher salaries offered by competitors. Also employing more staff working fewer hours can allow a company to employ a broader mix of skills.

Offering flexible working can therefore have a positive effect on recruitment, employee commitment and staff retention. Flexibility can enable employees to achieve balance between their work and personal life and can enable companies to respond more quickly to customer demand.

#### Types of Flexible Working

Part-time working	Workers are contracted to work less than standard, basic, full-time hours.
Flexi-time	Workers can vary the time they start or finish, provided an agreed period each day (core time) is spent at work and an agreed total number of hours are worked.
Staggered hours	Workers have different start, finish and break times, allowing a business to open longer hours.
Compressed working hours	Workers can cover their standard working hours in fewer working days.
Job sharing	One full-time job is split between two workers who agree the work pattern between them.
Shift swapping	Workers arrange shifts among themselves, provided all required shifts are covered.
Self rostering	Workers nominate the shifts they would prefer, leaving you to compile shift patterns matching their individual preferences while covering all required shifts.
Term-time working	A worker remains on a permanent contract but can take paid/unpaid leave during school holidays.
Annual hours	Workers' contracted hours are calculated over a year. While the majority of shifts are allocated, the remaining hours are kept in reserve so that workers can be called in at short notice as required.
V-time working	Workers work fewer hours according to a prearranged schedule, with a corresponding reduction in salary and benefits. After a specified time limit, the employees may return to their full time status.
Zero-hours contracts	Workers agree to make themselves available for work as and when required, but have no guaranteed hours or shift patterns. They work only the hours they are needed.
Home working/teleworking	Workers spend all or part of their week working from home or somewhere else away from the employer's premises.
Sabbatical/career break	Workers are allowed to take an extended period of time off either paid or unpaid.

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### The legal right to request flexible working

#### Eligible employees

All employees have a statutory right to ask their employer for a change to their contractual terms and conditions of employment to work flexibly for any reason.

The statutory right is a 'right to request' and not a right to be granted flexible working. An employer must give it serious consideration.

The employee must have worked for the employer for 26 weeks continuously at the date the application is made. Employees can only make one statutory request in any 12 month period.

Employers should also be aware that certain types of people are protected by Equality legislation. These include:

- Women returning from maternity leave who wish to reduce their hours;
- Disabled employees for whom an employer is legally required to make "reasonable adjustments" in order to allow them to do their jobs.

#### The Statutory Procedure

The statutory procedure is summarised in the flow chart shown later in this section and detailed below.

An employee may only make one request under the statutory procedure every 12 months.

Employees have the right not to be treated detrimentally or dismissed by their employer for a reason relating to their flexible working request.

#### Making a request

Eligible employees can make a request to:

- change the hours they work;
- change the times they are required to work; or
- work from home (whether for all or part of the week).

An employee's request must be in writing and dated and must provide:

- as much information as they can about current and desired working pattern, including working days, hours and start and finish times, and give the date from which they want their desired working pattern to start;
- an explanation of what effect, if any, the employee thinks the proposed change would have on the employer and how they feel such effect might be dealt with;
- information to confirm that they meet the eligibility criteria set out above; and
- details of whether they have made a previous formal request for flexible working and, if so, when.

It must also clearly state that the request is being made under the statutory right to make a Flexible Working request.

Flexible arrangements are required to comply with the law on working time.

Employers are required to give serious consideration to such requests.

#### Arrange a meeting

A meeting should be held with the employee within 28 days of receipt of the request to discuss their request. If the requested working pattern cannot be accommodated, there may still be a possibility of finding a working pattern suitable to both parties.

It is possible to accept a request on the basis of the application, without the need for a meeting.

The employee is entitled to bring a fellow colleague to the meeting if they wish to act as a companion.

#### Accepting a Request

The employer may be able to decide at this stage that the proposed pattern is feasible. If accepting an employee's flexible working request the employer is required to write to the employee within 14 days of the meeting:

- detailing the new working pattern;
- stating the date on which it will start;
- ensuring that this notice is dated; and
- stating that the arrangement means a permanent change to their terms and conditions of employment and the employee may not revert back to the previous working pattern unless agreed otherwise.

If the employer needs more time to make a decision, they should ask for the employee's agreement to delay the decision for an agreed period.

#### Trial period

If you and/or your employee are not sure that the proposed flexible working pattern will work in practice, you could think about trying a different working arrangement or alternatively you could consider a trial period.

The statutory procedure does not provide for trial periods and there are specified time limits within the procedure which must be adhered to.

However, a trial period can potentially happen at two stages before a formal agreement:

- Firstly, the employer could give informal agreement to a trial before a formal flexible working request has been made by the employee. If this happens, the formal procedure would still be available to the employee if they wished to use it at some stage in the future.

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- Secondly, if a formal application is made, an extension of time for the employer to make a decision could be agreed and the trial period could take place; in this case the rest of the formal procedure would still be available to the employee.

In addition, a written agreement should be produced, stating the start and end dates for the trial period and also specifying that this is a **temporary** change to terms and conditions. This agreement should also be dated and signed by both parties.

### Refusing a Request

If you decide that you cannot accommodate any kind of flexible working for an employee, you should write to the employee, within 14 days of the meeting:

- Stating which of the listed business ground(s) below apply as to why you cannot accept the request:
  - (i) the burden of additional costs,
  - (ii) detrimental effect on ability to meet customer demand,
  - (iii) inability to re-organise work among existing staff,
  - (iv) inability to recruit additional staff,
  - (iv) detrimental impact on quality,
  - (v) detrimental impact on performance,
  - (vii) insufficiency of work during the periods the employee proposes to work,
  - (viii) planned structural changes.
- Providing an explanation of why the business reasons apply in the circumstances;
- Setting out the appeal procedure.

This written notice must be dated.

### Appeals

If the employee wishes to appeal they must make their appeal in writing within 14 days of receiving the written notice refusing the request. In the appeal notice the employee must set out their grounds for appeal. The notice of appeal must be dated. There are no restrictions on the grounds for appeal.

The employer must then meet with the employee to hear the appeal within 14 days. The appeal should be heard by a different manager. The employee should be informed of the result of the appeal in writing within 14 days.

### Complaints

There are a number of options open to an employee if a request is refused:

- Informal discussions with the employer;
- Use of the internal grievance procedure;
- Assistance from a third party such as a trade union representative.

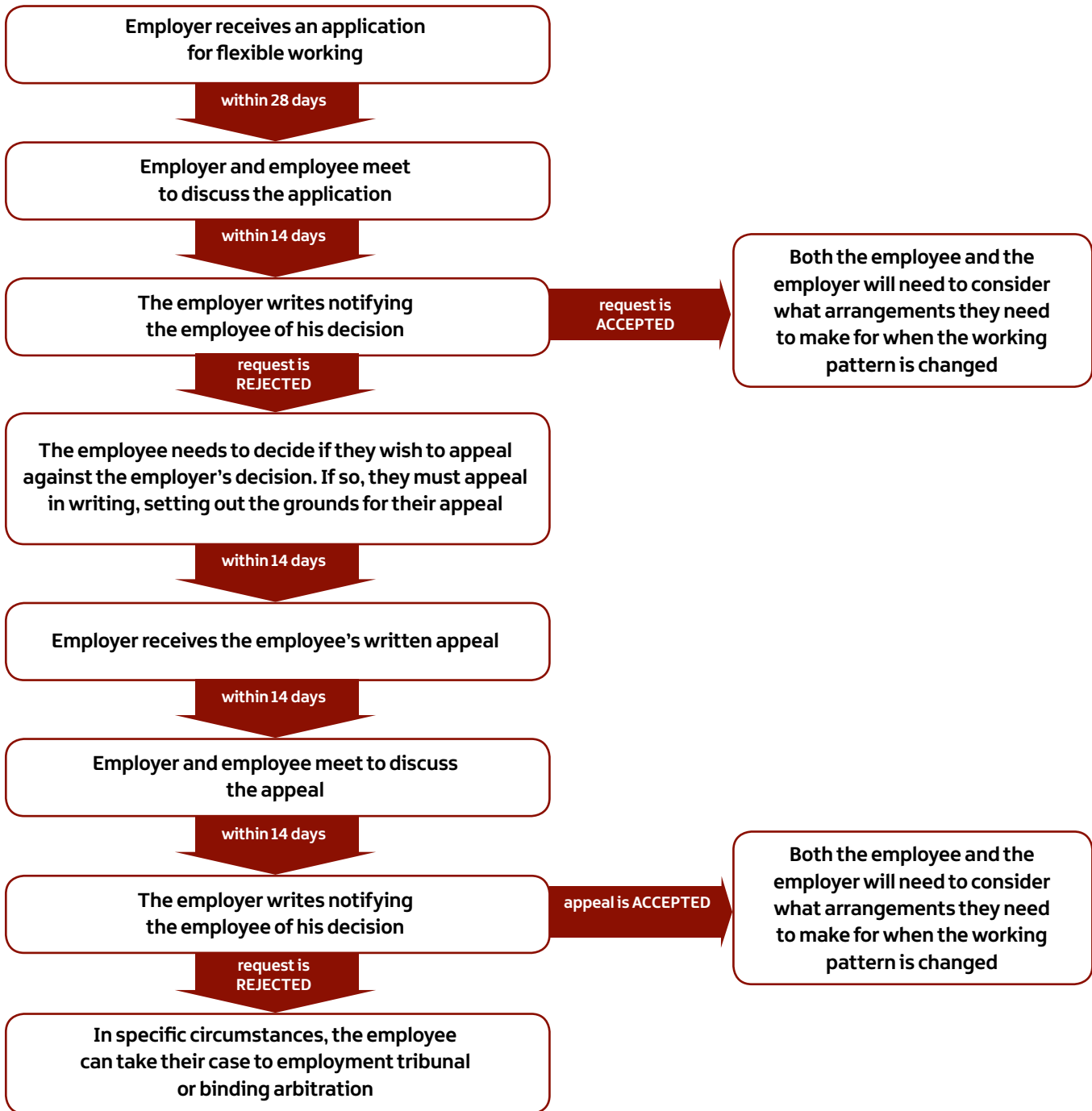
An employee can make a complaint to an Industrial Tribunal on the following grounds:

- the employer has failed to follow the correct procedures;
- the employer has rejected the request for a reason other than the listed business grounds;
- the decision to reject the application was based on incorrect facts.

Once the complaint is lodged at the Industrial Tribunal, it can be determined by either the tribunal or by an arbitrator. If the employer and employee agree to do so, they can refer the complaint for determination under the Labour Relations Arbitration Scheme. An arbitrator's decision is binding in law and has the same effect as a tribunal. Further details of the Labour Relations Arbitration Scheme can be found on the LRA website ([www.lra.org.uk](http://www.lra.org.uk)).

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### Statutory Procedure for dealing with requests for flexible working



**Note:** The employee is entitled to be accompanied by a worker employed by the same employer at the meeting to discuss the application.

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### Changes to flexible working arrangements

When a statutory request is granted, it becomes a permanent change to the employee's contract. If at a later date the arrangement is not working out, the employer does not have the right to change it back to the original arrangement since this would be an unilateral change to the employee's contract (see Section 3). The best option in this case is to discuss the situation with the employee in order to reach a voluntary agreement.

### Flexible working policies

If you do not have one already, consider putting together a policy for dealing with all flexible working requests. This will help you deal with requests consistently and fairly. The Equality Commission has produced a model 'flexible working policy and procedure' which you can download from [www.equalityni.org](http://www.equalityni.org)

It is good practice for the policy to cover recruitment and part-time working, i.e. how you would consider requests to work part time from both internal and external job applicants applying for full-time positions.

### Part-time workers' rights

Part-time employees must not be treated less favourably than comparable full-time employees unless different treatment can be objectively justified.

### Pay for part-time workers

Compared with comparable full-time workers, part-time workers are entitled to receive equal:

- Hourly rates of pay – hourly rates for part-time employees should be equal to those of equivalent full-time employees.
- Overtime premiums – payable once the employee has worked more than the normal full-time hours of a comparable full-time worker, e.g. if a comparable full-time worker normally works 40 hours per week, and their contract offers a premium rate for overtime pay (e.g. time and a half/double time) a part-time worker working 20 hours per week would have to work another 20 hours before receiving the premium rate of overtime pay.
- Enhanced rates of pay - for working outside normal contractual hours, e.g. bonus pay, shift allowances, unsocial hours payments and weekend payments.

### Equal treatment of part-time workers

Compared with full-time workers, part-time workers are entitled to receive equal:

- access to any company pension scheme;
- access to training and career development - when scheduling training courses, employers should do as much as possible to include part-time workers;

- rights to career breaks;
- rights to receive enhanced sick, maternity, paternity and adoption leave and pay;
- parental leave rights; and
- consideration for promotion.

### Pro rata contractual benefits

Part-time workers have the right to receive contractual benefits pro rata, i.e. in proportion to the hours they work.

This applies to benefits such as:

- annual leave above the statutory minimum;
- company cars;
- staff discounts;
- health insurance;
- subsidised mortgages; and
- profit-sharing and share-option schemes.

If you cannot easily divide a benefit, e.g. health insurance or a car, it may be reasonable to withhold it from part-time workers. However, this decision would need to be justified on objective grounds. The best thing to do may be to work out the cash value of the benefit and give the appropriate pro rata amount to the part-time worker. For example, you could calculate the financial benefit of a company car and pay half that amount to part-time workers who work half the number of hours of full-time workers in the same role.

### Justifying unequal treatment

Although it is important to treat full and part-time workers equally, there may be instances where an employer is able to justify unequal treatment on objective grounds if it can be shown that it is necessary and appropriate to achieve a legitimate business objective.

For example, an employer may be justified in withholding a health insurance scheme from a part-time worker because of the disproportionate cost.

In the case of share option schemes, an employer may be able to justify the exclusion of a part-time worker where the value of the share options is so small that the potential benefit to the part-timer of the options is less than the likely cost of realising them.

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### **Complaints of unequal treatment**

Part-time workers who believe their employer has treated them less favourably can ask for a written statement of reasons for this. The employer has 21 days in which to respond.

Part-time workers who still believe they are being treated unfavourably by their employer, and do not believe their employer has objectively justified this, can make a complaint to an Industrial Tribunal that they have been treated less favourably or suffered a detriment. Once the complaint is lodged at the Industrial Tribunal, it can be determined by either the Tribunal or by an arbitrator. If the employer and employee agree to do so, they can refer the complaint for determination under the Labour Relations Arbitration Scheme. An arbitrator's decision is binding in law and has the same effect as a tribunal. Further details of the Labour Relations Arbitration Scheme can be found on the LRA website.

A tribunal/arbitrator can make a declaration, make an employer pay compensation, and recommend that the employer take whatever action it considers necessary to prevent or reduce the adverse effect on the worker if they find in the part-time worker's favour.