

Flexible Working Toolkit for SME Employers

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Introduction

The UK Government's Women's Health Strategy published in 2022 highlighted the importance of supporting women's reproductive health in the workplace and the impact it has on productivity, health and wellbeing, staff retention and development.

Women's Workplace Wellness is one project designed to put this strategy into practice. By providing access to information and developing resources the project aims to support SME leaders and their teams to introduce and adopt policies and practices that address women's reproductive health in the workplace. including the introduction of flexible working practices.

This toolkit has been developed as part of the Women's Workplace Wellness project, and is a freely available resource designed to address the needs of SMEs and small employers across England. It is the result of a collaboration between The Women's Organisation and Morecrofts LLP.

The Women's Organisation is an award winning women's economic development agency and lead for the Women's Workplace Wellness project.

Morecrofts Solicitors has successfully served the business community for over 200 years with expertise in Employment and Commercial Law.

Women's Workplace Wellness project is supported by the VCSE Health and Wellbeing Fund, part of a partnership programme between Department of Health & Social Care, NHS England and UK Health Security Agency.

1. What is flexible working?

The Gov.UK website defines flexible working as “a way of working that suits an employee’s needs”. Effectively, it can entail a change to how, when and where an employee works. <https://www.gov.uk/flexible-working>.

Enabling employees to work from home and providing flexibility of working hours may be beneficial for employers in terms of lessening the need for workspace and boosting productivity. Giving staff more control over their work-life balance can improve their general health and wellbeing.

2. Types of flexible working

There are many types of flexible working scenarios which an employee could possibly request from their employer. These include the following:-

- **Working from Home** – the employee works remotely, typically from their own home instead of an office
- **Part Time** – the employee works reduced hours or days
- **Flexitime** – the employee works a set number of hours with the starting and finishing times chosen within agreed limits by the employee/employer.
- **Job share** – working with another employee and sharing the work and pay of a single full-time job.
- **Compressed hours** – the employee works their total contracted hours over fewer working days.
- **Hybrid working** – the employee works from home and the office – splitting time between each
- **Annualised hours** – employee’s work hours calculated annually not weekly or monthly

3. Changes to flexible working requests

From 6th April 2024 there are changes to the flexible working rules:-

BEFORE	AFTER
Employee to be employed at least 26 weeks	Available from day one of employment
One request every 12-month period	Two requests every 12-month period
Employee must explain how the changes will affect the employer	Employee does not have to provide this information
Employer can make decision without consultation with Employee	Employer must consult with Employee
Employer must provide decision within 3 months of request (unless extension is agreed)	Employer must provide decision within 2 months of request (unless extension is agreed)

4. Statutory Application

In order to request flexible working formally, an employee must make what is called a 'statutory application'. As mentioned earlier, this request can include a change to their hours, days, place of work or their start and end times. This application should include the following:-

- Name of employee and date
- Include the wording to confirm that you are making a 'statutory' request for flexible working
- An outline of the requested changes
- The commencement date for the changes
- Whether the employee has made a previous request for flexible working to the employer

You can find a prompt of a [Flexible Working Request Application Form](#) here.

5 What happens next?

The Employer must consider the application in a 'reasonable' manner, taking no longer than two months to do so before they provide an outcome to the employee. The employer must have a meeting with the employee in order to discuss the proposed changes and to listen to the employee's comments and, if necessary, suggest any alternatives.

6. Agree to request:-

If the employer decides that the request is viable, they should inform the employee in writing, no later than 28 days after the request has been approved. They should also confirm the agreed start date for the changes to take place and provide a written statement of the agreed changes or an amended contract of employment.

7. Reject request:-

If the changes are not agreed, following consultation with the employee, the employer can refuse the request on any of the following grounds:-

- it will cost the business too much
- the work cannot be reorganised among other staff
- the employer cannot recruit more staff
- there will be a negative effect on quality
- there will be a negative effect on the business' ability to meet customer demand
- there will be a negative effect on performance
- there's not enough work for the employee to do when they have requested to work
- there are planned changes to the business, for example, the employer intends to reorganise or change the business and thinks the request will not fit with these plans

There is no longer a statutory right to appeal the rejection of a flexible working request, however, ACAS still recommends that it can be good practice to offer the right of appeal. Where possible, the appeal should be handled by a manager who has not previously been involved in considering the request.

If the appeal is accepted, the employer would write to the employee informing them of the acceptance as soon as possible, keeping in mind the two-month deadline, and follow point 6 above.

If the appeal is rejected, again on the grounds of point 7 above, the employee can decide to take the matter to an employment tribunal, within 3 months of the notification of rejection, on the following grounds:-

- The employer has failed to handle the request reasonably
- The employer has wrongly treated the application as having been withdrawn
- The application was rejected by the employer on incorrect facts
- The employee was treated less favourably or dismissed after submitting a request for flexible working and as a result of submitting that request

9. Employment Tribunal:-

An employee cannot make a claim to a tribunal merely because they have had their flexible working request rejected; the rejection must fall within one of the four areas above.

10. Withdrawing an Application

If an employee decides, at any point within the process, to withdraw their application for flexible working, they must inform their employer in writing.

If an employee fails to attend a meeting to discuss an application or appeal on two occasions, without good reason, for example sickness, their employer can treat their application as having been withdrawn.

The employer must inform the employee they are treating the request as having been withdrawn.

11. Flexible Working process flowchart

Employee writes to Employer requesting changes



Employer considers the flexible working application in consultation with employee

Within 2 months of meeting

AGREE

change terms and conditions of contract of employment



REJECT

in writing giving business reasons for rejection



Issue Contract of Employment



Appeal - this can be offered, even though it is no longer a statutory right



Appeal Successful



Appeal rejected - Employee can take matter to employment tribunal



12. Can a worker be accompanied to a flexible working meeting?

Whilst there is no statutory right of accompaniment at these meetings the ACAS Code of Practice states that allowing an employee to be accompanied is good practice. Employers should advise the employee before the meeting that they may request a companion – usually a work colleague or trade union representative.

For more information on ACAS Code of Practice, click [here](#).

13. Deciding requests within the statutory decision period

Flexible working requests, including any appeals, must be decided, and communicated to the employee within the two-month period starting from when the employer first receives the request. This period can be extended if both parties agree, and the extension should be confirmed in writing by the employer.

14. Considerations for Employers

There are many considerations that an employer has to make when dealing with a flexible working request. These can include:-

- Will the organisation's service needs still be met?
- How will the additional hours be backfilled?

- If the employee will now be working from home – how will communications with that member of staff be met adequately? How will they be managed and how will any health and safety or confidentiality issues at home be addressed?
- If a job share is being considered, what will the work split look like and how will the duties be split fairly?
- How will the new arrangements affect work rotas/impact on other staff?
- How will this arrangement fit in with any other flexible working agreements that have been made prior to this one?
- What combination of expertise is required throughout the working day to adequately run the business?
- Are the company’s core hours covered by enough staff if the request is allowed?

15.

Helpful links

- [Flexible Working Request - Application Form](#)
- [Flexible Working Policy](#)



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