

ACTION>HR

HR EXPERTISE & SERVICES

Delivered by Kingston and Sutton Shared Services

Guidance for Flexible Working Requests

Right to request flexible working

Guidance

Introduction

Under the Employment Rights Act 1996 employees have a statutory right to ask for flexible working as long as they have 26 weeks continuous service. An employee can only make one statutory request in any 12 month period. As the employer, you must consider any statutory request you receive.

Time Limits

It is a legal requirement that flexible working requests, including appeals, are considered and decided on within 3 months from the date of receipt. However, there may be exceptional circumstances when the employer and employee reach an agreement to extend. Where this is the case the reasons for the extension and the length of the extension should be recorded.

Employee's Statutory Request

An employee submitting a request for flexible working must include the below information for the application to be considered as a Statutory Request.

- The date of the application.
- The change the individual wants to make to their working conditions.
- When the individual wants the change to start.
- What effect, if any, the individual thinks the requested change would have on the School's business and how this could be dealt with (eg if they are not at work on certain days).
- A statement that this is a statutory request.
- A statement saying if and when they have made a previous application for flexible working.

Withdrawing an application

If an employee wishes to withdraw an application they should inform their manager in writing.

A manager may also treat an application as withdrawn if the employee misses two meetings to discuss the application or appeal without good reason, eg sickness. This will be confirmed in writing.

How to respond to a statutory request

Once you receive a statutory request, you must consider it. The Headteacher would normally lead this process, but this can be delegated to another member of SLT.

You should adhere to the following steps:

- Consider if you can accept the request.
- If you are not certain, you must arrange to meet the employee.
- The employee may be accompanied by a work colleague or a union representative.
- You should confirm the details of the meeting in writing, advising the individual of their right to representation.

If you can accommodate the request, you do not need to arrange a meeting and can go ahead to make suitable arrangements to implement the change to working pattern. This will be the variation of contract and must be confirmed in writing as a permanent variation. It is possible to suggest a temporary arrangement with a review period, if this is agreeable to the individual. In this case you would give a temporary variation of contract.

The Assessment Meeting

The purpose of the meeting is to give the employee an opportunity to explain how their proposal might work and describe how they believe this change may be managed in the school.

You can discuss alternatives if on initial consideration there may be a problem accommodating the request. You can also offer a temporary trial period, with a suitable review period. You must discuss any alternative options with the employee before responding to their request in writing.

You do not have to make any decision during this meeting, but should use the time to fully understand the request asking as many questions as you need.

The meeting should take place within 14 working days of the date of the request.

The Decision

You should consider the request carefully looking at the benefits of the requested change to school and any adverse impact. You must ensure that your decision does not discriminate unlawfully against the employee. When considering flexible working applications it is essential that there is no inadvertent discrimination against a particular employee. The Equality Act 2010 makes it unlawful to discriminate against a person because of protected characteristics. These are age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, religion and belief, sex and sexual orientation.

You should also consider precedent within the school and any reference to flexible working that you may have in your pay policy.

If it is your intention to reject the request, it must be for one of the following business reasons:

- The burden of additional costs
- An inability to reorganise work amongst existing staff.
- An inability to recruit additional staff.
- A detrimental impact on quality.
- A detrimental effect on the ability to meet customer demand or services to school.
- A detrimental impact on performance
- Insufficient work available for the periods when they propose to work
- A planned structural change to your business.

You must reach your decision as soon as possible following the meeting, and this should be communicated, in writing, within 10 school days of the meeting.

The letter should include:

- the business reason/s for refusing the request,
- an explanation of why the business reason/s apply in these circumstances,
- details of the appeals procedure.

If you do not agree to the request for flexible working. The employee has the right to appeal against the decision.

Appeal process

The employee should appeal in writing setting out the grounds for appeal, to the Chair of Governors, within 10 school days of receiving the refusal of their request

The appeal will consist of a paper review of the process and decision making. The employee may request to appeal in person at an appeal hearing. If the original decision has been made by the Headteacher then the appeal should be considered by the Chair of Governors. If the original decision has been made by another member of SLT then the Headteacher can consider the appeal. You should consider seeking advice from your HR provider regarding the appeal process.

You should arrange for the appeal to be considered within 14 school days of receipt of the appeal and for the individual to be advised of the outcome in writing within 10 days.

There is no further right of appeal.