



0227 Flexible Working

WEST MIDLANDS FIRE SERVICE

02/27 FLEXIBLE WORKING

Overview of Amendments

1. STRATEGY

West Midlands Fire Service acknowledges that the UK workforce is becoming increasingly diverse and has a high percentage of employees with caring responsibilities.

As a Service we recognise the importance in helping our employees to manage their work and home life by allowing flexible working where possible.

Some of the benefits of this policy at West Midlands Fire Service (WMFS) are:

- a wider pool of employees available;
- retention of part-time employees;
- improved productivity;
- improved attendance; and
- fluctuations in workloads being easier to arrange.
- helps parents manage their family life and work life effectively

Offering flexibility in working arrangements is important in allowing the Service to attract and retain its employees.

2. PROCEDURES

2.1 Who is entitled to flexible working?

All employees have the legal right to request flexible working - not just parents and carers.

If you wish to request flexible working you must:

- Ensure that you submit the request, in writing, to your line manager;
- Have worked continuously for the Service for 26 weeks at the date the application is made; and
- Have not made another application to work flexibly under that right during the last 12 months, under the same circumstances as the current application.

The following points will be considered in the flexible working process:

- Employers will consider all requests in a reasonable manner, however, the organisation has the right to refuse requests on business grounds;
- All forms of flexible working should meet the needs of the organisation and those of the employee;
- Employees who may be affected by the requested changes must be consulted before a decision is confirmed;
- Once the outcome has been delivered, a letter will follow to confirm if the request was accepted or declined and advise on the appeal process;
- If the request has been declined, the appeal process will be outlined in the final letter;
- Contractual changes to terms and conditions of service can only be agreed after careful consideration of the implications, with a thorough understanding of the employee's circumstances;
- Any change to an employee's working pattern should be trialled, where feasible, before a permanent contractual change is agreed;
- Further requests to vary working arrangements, once a permanent contractual change has been agreed, will not normally be considered within 12 months from the date of the application and/or implementation;
- Requests for flexible working may not be made more often than once a year. This is regardless of whether a previous application was made for the same caring responsibility or a different one.
- Pay and benefits will be adjusted to reflect the pro rata changes in hours worked and the effect of the proposed change must be fully explained and agreed with the employee; and written confirmation must be provided to the employee;
- There is no definition of a 'carer' in the legislation, and employers are not entitled by law to ask for proof that an employee has any caring responsibilities; and
- Employees participating on a flexible working arrangement will not be treated less favourably in relation to access to training and advancement opportunities.

2.2 What kind of changes to working practices can be applied for?

Employees can apply for a wide variety of different types of working patterns. They can request to:

- Change the hours that they are contracted to work.
- Change the times when they are required to work.
- Work from home (whether for all or part of the week).
- Working from a convenient/suitable location

A request may be as simple as asking to start 30 minutes later than usual to allow an employee to drop a child off at school or may be a bigger change to their hours in order to better fit their work with their caring requirements.

Flexible working includes a wide variety of working practices - employees will be familiar with patterns such as working part time for reduced pay, but there are other ways of working that employees may consider. Some of these options are detailed in appendix 3. Please note this is not a complete list and other flexible working options may be possible.

2.3 Actions, Timescales, different options and how these may work for you?

- For more details on actions and timescales when making a request, please see appendix 1.
- For more details on how to make a request, please see appendix 2.
- If you want to find out different options of "Flexible Working" and how these options may work for you, please see appendix 3.

2.4 What is the responsibility of the line manager?

Once the request for flexible working has been received, the line manager is required to meet with the employee and discuss the request in greater detail. Line managers are encouraged to support the employees who are requesting flexible working, and if the request is decline then this should be communicated as soon as possible, with solid grounds for their decision and having discussed all options with their Business Partner.

There is further guidance in appendix 4.

2.5 What is the responsibility of the employee?

The employee requesting flexible working must state:

- The effect(s) that the employee thinks the change(s) will have on the employer; and
- How the employee thinks that any such effect(s) might be dealt with.

For example, an employee who wishes to reduce their working hours should be able to foresee if they would no longer be able to fulfil all the job duties.

The employee might suggest that the solution would be to allocate some of the duties to a colleague or to divide them up amongst other members of staff. Alternatively, the employee might suggest that the employer could recruit another part-time employee as a job-share partner and show how the duties and hours of work could be divided up between them.

2.6 Can the procedural time limits be extended?

Managers support their employees to trial different ways in working that benefit their work life balance however, business needs will be first consideration.

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

An extension may be required by either party, for instance, if the employer needs more time to consider the application, or if the employee is on leave.

If the line manager is absent from work on the day the application is made, due to prolonged leave or sickness, the application should be passed to the next level of management by the employee.

If the employee is off due to sickness, then any appeal should be processed and they should be kept informed of progress, via their line manager.

2.7 How is a request withdrawn?

Requests for flexible working will be treated as withdrawn where the employee has:

- Indicated that she or he is withdrawing the application. This should be confirmed in writing by the employee. If, however, a request is withdrawn the employee will not be able to make a further request for 12 months, unless their circumstances have altered;
- Failed to attend two meetings to discuss the application, without reasonable explanation; or
- Unreasonably refused, at any stage, to give the immediate line manager the required information to progress their request.

2.8 Does the employee have a right to be accompanied?

The employee may be accompanied by a trade union, representative body or a work colleague at both the initial meeting to consider the request and at any subsequent appeal, if applicable.

2.9 Triggering the flexible working application process

The law requires an employee who wishes to request flexible working to fulfil certain criteria when making the request. The employee must:

- Make the request in writing (e-mail is acceptable);

- Date the request;
- State that the request is a request for flexible working;
- Explain the employee's relationship to whom they have a caring responsibility;
- Specify the change(s) to working arrangements that the employee would like;
- State the date on which the employee proposes the requested change(s) should start;
- Show the effect(s) that the employee thinks the change(s) will have on the employer and how he or she thinks any such effects might be dealt with; and
- Say if he or she has previously requested flexible working and, if so, when.

A request that does not fulfil the above criteria will not be valid and will not, therefore, require the employer to start the statutory procedure.

There would be little to gain in a line manager rejecting an incomplete request on a technicality, as this would only delay the matter and demotivate the employee. A better course of action would be for the line manager to speak to the employee informally to explain what additional information is needed and to ask the employee to give the missing information writing or to resend the application with all the necessary information.

The manager should be prepared to help the employee to resend the application so that it has all the necessary information. In other words, the manager should work with, rather than against, the employee, so that the request can be dealt with as quickly as possible.

3. [Legislation when dealing with a flexible working request](#)

The law defines the statutory procedure that must be followed whenever an employee requests flexible working.

There is no statutory duty on an employer to agree automatically to an employee's request. The aim of the statutory procedure is to help the employer and the employee communicate and agree practicable changes to the employee's working arrangements.

An employee has the right not to be dismissed, or subjected to any detriment for any reason, because they have submitted, or are proposing to submit, a request for flexible working. Detriment could be, for example, a refusal to promote the employee or a denial of training or even verbal abuse.

If an employee is dismissed because of a request, or proposed request, for flexible working, the employee will be able to bring a claim for unfair dismissal, irrespective of their length of service at the time of dismissal.

The aim of this aspect of the legislation is simply to encourage the employee to think through what he or she is proposing, also to consider whether it is realistic and how the new working pattern requested might be made to work in practice.

4. The statutory procedure

4.1 Written request submitted by the employee

The employee will submit the request in writing. If the manager agrees to the employee's request at the outset, it is not necessary to follow the procedural steps. In this case, the manager just needs to complete the necessary reply form which you can find on HRMS and inform their designated PSS Business Partner, who will arrange to notify the employee, specifying the agreed changes to his or her terms of employment and the date on which the changes are to take effect.

If the employee's work colleague or trade union representative is not available on the proposed date of the meeting, the manager should, within reason, postpone the meeting to allow the employee to bring along that person. Such a postponement need be granted only once and should normally be to a date that falls within one week of the original proposed meeting date.

4.2 Line manager holding a meeting with the employee

The purpose of holding a meeting with the employee is for the manager and employee to discuss how the employee's request might be made to work in practice.

The manager should approach the meeting with an open mind and a positive attitude, rather than viewing the employee's request as a nuisance.

One of the issues that needs discussion is how an employee's pay and terms of employment are affected by any agreement to vary their working hours. Any agreed reduction in hours will mean a proportionate reduction in pay and the manager should make sure that the employee has thought this through properly.

So that changes are workable from a business perspective, it may be necessary for the manager to look for a compromise between what the employee has asked for and their current working pattern.

The conversation at the meeting may, therefore, include discussion of possible alternative arrangements. For example, if an employee, whose workplace is open from 0900 to 1700 hours, has asked to change from full to part-time work 0900 to 1200 hours each day, the manager might discuss the possibility of the employee working from 1000 to 1300 hours, if the first hour of the day is usually quiet. The manager might also recruit a job-share partner to cover the afternoons from 1300 hours, rather than 1200 hours, in order to reduce costs.

4.3 The right of appeal

If the employee believes that their request has not been fairly considered, they may wish to appeal. They have 14 days after the date of notification to appeal in writing, setting out the reasons for their appeal.

The appeal will usually be heard by a more senior manager, than the original decision-maker. Where this is not practical, it will be heard by a manager who has authority to review and, if

necessary, change the original decision.

The employee may be accompanied by a trade union representative or a work colleague.

The appeal hearing manager must inform the employee in writing, within 14 days of the meeting, stating the outcome and reasons for the decision.

This forms the final decision and is the end of the formal procedure within the workplace.

5. The effect of agreed changes

If changes to an employee's working pattern are agreed because the employee has requested flexible working, these will be permanent changes to the terms of the employee's contract, unless the employer and employee expressly agree otherwise.

This has two consequences. First, the employee will have no automatic right to revert to his or her previous pattern of working at a future date. Second, the employer will not be able to insist that the employee reverts to his or her previous working pattern.

However, the employer and employee may mutually agree further variations to the employee's terms of employment in the future, but no such changes can be enforced unilaterally by either party.

6. Trial Periods

The manager and the employee may agree that any changes to the employee's working pattern can be applied for a defined temporary period or a trial period of up to three months.

A trial period can be beneficial, especially where there is some doubt as to the practicality of the requested working arrangements, giving both the manager and the employee an opportunity to see how the arrangements work in practice and if they could create any difficulties for the employee's department or for the business as a whole.

At the end of any agreed trial period, the manager should hold another meeting with the employee to review how the revised working pattern has worked out and whether or not to make the arrangement permanent.

One advantage of agreeing to a trial period is that, if the employee's request ultimately has to be refused, there will be some concrete evidence to support any claim that the pattern of working requested by the employee was not workable in practice.

If a trial period is agreed, the manager should take great care to record clearly that the new working pattern has been put in place as a temporary change to the terms of the employee's contract.

The start and end date of the trial period should be stated, as well as the changes that have been agreed. The manager should show clearly that the employer reserves the right, at the end of the

agreed trial period, to require the employee to revert to his or her previous working pattern if, in management's view, the changes have not proved to be workable.

The Flexible working request form which you will find on HRMS should be signed by both parties.

7. Legitimate reasons for refusing an employee's request

The legislation covering requests for flexible working includes a statutory list of business reasons that an employer may put forward to justify refusing an employee's request. The list is complete, although quite wide in scope.

If a request is declined, the reason for the decline must be one of these reasons:

- Burden of additional costs;
- Detrimental effect on ability to meet customer demand;
- Inability to re-organise work among existing staff;
- Inability to recruit additional staff;
- Detrimental impact on quality;
- Detrimental impact on individual performance;
- Not enough work during periods the employee proposes to work; or
- Planned structural changes.

here should always be evidence to support the reason for a decline - ensure that the PSS Business Partner is supporting this process.

For example, if the reason for decline is due to an adverse impact on performance, the employer would need to show, if challenged, that performance would be negatively affected if the employee was to change their working pattern in the way requested. As an example, an employee, whose job involves answering customers' queries by telephone, might request part-time working and suggest a job-share arrangement. If the line manager thought that this would have a negative impact on quality or performance, their opinion would be insufficient to justify a refusal of the employee's request.

8. Sex discrimination claims

Conforming to the procedure for dealing with a flexible working request does not protect the employer from a sex discrimination claim however this will not stop the employee putting a claim

An employee needs no minimum length of service to bring a sex discrimination claim.

10. CROSS REFERENCES

Useful Organisations

Carers UK: <http://www.carersuk.org>

ACE National Partnership: <http://www.acecarers.org.uk>

Princess Royal Trust for Carers: <http://www.carers.org>

Government websites

Directgov (public services): <http://www.direct.gov.uk>

Department of Health: <http://www.gov.uk>

Department of Work and Pensions: <http://www.dwp.gov.uk>

ACAS: <http://www.acas.org.uk/index.aspx?articleid=1461>

11. KEY CONSULTEES

Joint Consultative Committee

Joint Working Party, which includes all Trade Unions

DICE

People Support Services

12. EQUALITY IMPACT ASSESSMENT

This policy has been shared with DICE team, as no major changes were made, EIA was not necessary.

13. OWNERSHIP

This Policy did not require SET approval.

14. RESPONSIBILITY AND REVIEW/AMENDMENT

DETAILS

14.1 Responsible Department

Strategic Enabler - People.

14.2 Created/fully reviewed/amended

Policy reviewed by PSS October 2018

If you have followed any of the processes included in this Policy please complete the following debrief form by clicking [here](#)

Appendices

[Appendix 1 - Employee guide](#)

[Appendix 2 - How to make a flexible working request](#)

[Appendix 3 - Flexible working options and how these may work](#)

[Appendix 4 - What is the appeal procedure?](#)

[Appendix 5 - Line manager guide](#)