

BASSETLAW DISTRICT COUNCIL

FLEXIBLE WORKING

POLICY AND PROCEDURE

HUMAN RESOURCES

1 INTRODUCTION

This guidance sets out the rights of employees to request flexible working, the duty on managers to consider requests seriously, and the processes to follow to ensure adherence to legal requirements.

All employees have the right to request flexible working. This right applies from the first day of employment.

Employees' rights and responsibilities

Rights:

- To apply to work flexibly
- To have their application considered properly in accordance with the set procedure and refused only where there is a clear business reason for doing so
- To be accompanied by a trade union representative or work colleague when meeting the manager to discuss the application
- Where an application is refused to have a written explanation detailing the reason for the refusal
- To appeal against the manager's decision to refuse an application

Responsibilities:

- To provide a carefully thought-out application
- To ensure their application is valid and that they have provided their manager with all the necessary information
- To ensure the application is made well in advance of when they want it to start
- To arrive at meetings on time and to be prepared to discuss their application in an open and constructive way
- If necessary, be prepared to be flexible themselves, to reach an agreement with their manager

Managers' rights and responsibilities

Rights:

- To reject an application when the flexible working request cannot be accommodated within the needs of the service
- To seek the employee's agreement to extend timescales where it is appropriate
- To consider an application withdrawn in certain circumstances.

Responsibilities:

- To consider requests properly in accordance with the set procedure
- To adhere to the time limits contained within the procedure

- To provide the employee with appropriate support and information during the course of the application
- To only decline a request where there is a recognised business reason and to explain to the employee in writing why it applies
- To ensure that any variation to the procedure is agreed in advance with the employee and recorded in writing
- To consult Human Resources before the final decision is made to ensure a consistent approach is achieved throughout the Council.

Equality and Diversity Considerations

The Council will consider all applications for flexible working fairly and equitably and in line with current equality and diversity legislative requirements. It is recognised that a failure to fully, carefully and objectively consider applications against genuine business needs and requirements could lead to indirect discrimination. If considering rejection of an application managers are therefore advised to consult with Human Resources before doing so.

The Council recognises that allowing Flexible Working, where this is reasonable taking into account genuine business needs, can be a positive measure to support equality and diversity in the workplace. For example, it can enable staff with childcare or other caring responsibilities to effectively balance these with work and/or in terms of disability often an appropriate flexible working option can be an effective 'reasonable adjustment' to enable a member of staff to work. Further advice on these considerations is available from Human Resources

2 DEFINITION OF FLEXIBLE WORKING

Flexible working is a broad term used to describe any working arrangement that meets the needs of both the employee and the employer regarding when, where and how the employee works. Examples include, but are not limited to:

- part-time working
- homeworking
- hybrid working
- flexitime
- job sharing
- compressed hours
- annualised hours
- team-based rostering

3 MAKING AN APPLICATION

How often can an application be made?

A maximum of two applications within any 12 month period can be made under the right. Each year runs from the date when the application is made.

An employee may have only one live request for flexible working at any one time. Once a request has been made, it remains live until any of the following occur:

- A decision about the request is made
- The request is withdrawn
- An outcome is mutually agreed
- The statutory two-month period for deciding requests ends.

Application checklist

An application under the right must:

- Be in writing on form FW(A)
- Specify the flexible working pattern applied for
- State the date on which it is proposed the change should become effective
- State whether a previous application has been made to their manager and, if so when it was made
- Be dated

The level of detail required will depend on the desired changes to the existing working pattern. In all cases it is in the employee's interest to be as clear and explicit as possible. The application provides the employee with the opportunity to set out the reasons why their preferred working pattern is compatible with the needs of the service, as far as they are able to tell. It may be helpful to both parties if the employee sets out what effect, if any, they think the application would have on their service and how they feel any such effect might be dealt with.

NOTE: If an employee wishes to make an application and their line manager is currently absent from work it is important to send the application to the line manager's manager, to ensure the timescales within this document can be effectively met.

Any request that is made and accepted under the statutory right will be a permanent change to the employee's contractual terms and conditions (unless otherwise agreed). The employee has no right to revert back to the previous working pattern.

NOTE: this policy sets out the statutory right to request flexible working. The Council has additional non-statutory provisions whereby, in exceptional circumstances, a temporary reduction of working hours and/or changes in working pattern may be considered. This may, for example, be requested by an employee to be able to respond to temporary and urgent caring responsibilities, or as an agreed temporary reasonable adjustment). Requests for such temporary changes can be discussed and agreed with the manager who should consult with Human Resources for consistency purposes.

4 CONSIDERING AN APPLICATION

An application will be considered to have been made on the day that it is received by the manager. For applications sent by e-mail this is taken to be the day of transmission. For applications sent by post it means the day on which it would have been delivered in the ordinary course of post, unless shown to be otherwise. If an employee fails to provide all the required information, the manager should inform the employee what they have missed out and ask them to re-submit the application when complete. The manager should also inform the employee that they are not obliged to consider the application until it is complete and re-submitted.

It is best practice for the manager to acknowledge receipt of the request in writing. The legal right places a duty on managers to consider all applications and establish whether the desired work pattern can be accommodated within the needs of the service. A flowchart summarising the procedure is included at Appendix A. In considering the request if the manager feels they are able to support it without the need to consult the employee then the application can be approved. If the employer cannot agree to the employee's request in full or is considering rejecting the request they must invite the employee to a meeting.

NOTE; All requests, including any appeals must be completed within 2 months. The timescales indicated below are indicative and recommended to ensure that the whole process can be effectively completed within the statutory 2 months' period. Due to required timescales for any potential appeal process, up to 28 days, it is recommended the manager ensures that consideration of the request is completed within one month.

The meeting

A manager must hold a consultation meeting to consider the request when an application is received. The meeting should be held without unreasonable delay, normally within 14 calendar days. Attendance at the meeting can be requested from Human Resources if required.

An employee can, if they wish, be accompanied at the meeting by their trade union representative or a work colleague. The person who accompanies the employee can address the meeting or confer with the employee but they cannot answer questions on the employee's behalf, and if they are unable to attend the meeting, the employee should re-arrange the meeting for a date within seven days of the originally proposed time, ensuring the new time is convenient to all parties or consider an alternative person to accompany them. NOTE: Accompanied in this context means someone who will support the employee not represents them.

Normally the meeting will be held face to face, however it is possible to agree to hold the meeting remotely, e.g. via a Teams Meeting, if this is considered reasonable and appropriate by both parties. The meeting will provide both parties with the opportunity to discuss the desired work pattern in depth and consider how it might be accommodated. Both the manager and the employee should be prepared to be flexible. If the original working pattern cannot be accommodated, the meeting also provides an opportunity to see if an alternative working arrangement may be appropriate.

It may also be in the manager's and employee's interest to agree that the new working pattern will take place for an agreed trial period in order to see how it would suit them both. Advice and further guidance on this should be sought from the HR Adviser.

A manager must write to the employee informing them of their decision within a reasonable timescale after the date of the meeting, normally within 7 calendar days, where possible.

What happens if the employee fails to attend this meeting?

An employee who fails to attend the meeting without notification should contact their manager as soon as possible to explain their absence and to rearrange the meeting at the next mutually convenient time. A manager whose employee fails to attend the meeting more than once and does not provide a reasonable explanation may treat the application as having been withdrawn. In such circumstances the manager should write to the employee confirming that the application is withdrawn. For further information about when an application may be taken as withdrawn see later in this document.

5 REACHING A DECISION

Accepting the Request

If a request is *accepted*, the manager should write to the employee and must:

- Include a description of the new working pattern
- State the date from which the new working pattern is to take effect
- Be dated (refer to form)

Form FW(B): Application Acceptance Form must be used to confirm a new working pattern. The agreed new working pattern will be a permanent change to the employee's terms and conditions of employment, unless agreed otherwise. Where a trial period has been agreed this should also be detailed in the written notice. When implementing the new working pattern other factors that the manager should bear in mind are detailed below:-

- Inform your HR Business Partner of the new working pattern
- Check to see if the employee's pay needs amending
- Check if all health and safety requirements have been satisfied. This will be particularly relevant where the employee is to work from home
- Consider who else you need to inform including your colleagues

Please check with the administration arrangements set out later in this document.

What happens if the manager needs more time to reach a final decision?

All requests, including any appeals, must normally be decided and communicated to the employee within a period of two months from when the employer receives the request. However, the employer and employee may agree to extend this period where necessary. If an extension is agreed the employer should confirm this in writing to the employee

Rejecting the Request

There will always be circumstances where, due to the needs of the service, the manager feels unable to accept a request. **Form FW(C): Application Rejection Form** is provided for refusing the request. In all such circumstances, the manager must in writing:

- State the business reason(s) why the request cannot be accepted
- Provide an explanation of why the business reasons apply in the circumstances
- Set out the appeal procedure
- Ensure the written notice is dated

What is a 'business reason'?

An application can be refused only where there is a clear business reason. The business reason(s) for refusing an application must be from one of those listed below:

- Burden of additional costs
- Detrimental effect on ability to meet customer demand
- Inability to reorganise work among existing staff
- Inability to recruit additional staff
- Detrimental impact on quality
- Detrimental impact on performance
- Insufficiency of work during the periods the employee proposes to work

- Planned structural changes

In addition to providing a specific business reason the manager must include an accurate and clearly relevant explanation about why this applies in the circumstances. An employee who understands why a business reason is relevant is more likely to accept the outcome and be satisfied that their application has been considered seriously despite being disappointed that it has been refused. The reverse is also true, particularly if the explanation is not sufficiently understood.

6 APPEAL

An employee has seven calendar days after the date of notification of the manager's decision to appeal in writing to the relevant Head of Service. This should be done on **Form FW(D): Appeal Form**. When appealing against a refused request an employee will have to set out the grounds for making the appeal and ensure that it is dated. A copy should ideally also be emailed to the HR inbox or sent to the HR Team at the same time

There are no constraints on the grounds under which an employee can appeal. It may be that they wish to bring to attention something their manager may not have been aware of when they rejected the application, eg that another member of staff is now willing to cover the hours the applicant no longer wishes to work. Or it may be to challenge a fact their manager has quoted to explain why the business reason applies.

The Head of Service hearing the appeal must arrange the appeal meeting within 14 days after receiving notification that the employee wishes to appeal. The employee can be accompanied by their trade union representative or a work colleague. The format of the meeting should mirror the meeting to discuss the application and the appeal should be heard by the relevant Head of Service (or other member of Corporate Management Team, as appropriate)

The Head of Service must inform the employee of the outcome of the appeal in writing normally within seven days after the date of the meeting. **Form FW(E): Appeal Reply Form** should be used for this purpose.

If the appeal is *upheld* the written decision must:

- Include a description of the new working pattern
- State the date from which the new working pattern is to take effect
- Be dated

If the appeal is *dismissed* the written decision must:

- State the grounds for the decision. These will be appropriate to the employee's own grounds for making the appeal
- Provide an explanation as to why the grounds for refusal apply in the circumstances. The same principles apply as to what is a sufficient level of explanation at appeal as the amount of explanation that should be given following the initial decision
- Be dated

NOTE: These timescales may need to be adjusted if the first stage has taken longer than one month to conclude.

In circumstances where the employee misses the appeal meeting this should be handled in the same way as for an employee who misses the meeting to discuss the application as described in earlier in this document. An employee who fails to attend the meeting without notification should contact their

Head of Service as soon possible to explain their absence. The Head of Service should rearrange the meeting at the next mutually convenient time. If the employee fails to attend a meeting more than once and does not provide a reasonable explanation then the application can be treated as having been withdrawn. In such circumstances the Head of Service should write to the employee confirming that the application is now considered withdrawn. For further information about when an application may be taken as withdrawn see the next section.

7 EXEMPTIONS TO THE PROCEDURE AND WITHDRAWALS

Time Limit Extensions

There may be occasions when it is not possible to complete the procedure within the specified two months' time limit from when the employer first receives the request. Where necessary and appropriate the employer and employee may agree to extend this period. If an extension is agreed, the employer should confirm this in writing to the employee.

When can an application be treated as withdrawn?

There will be occasions when an application is treated as withdrawn. In all circumstances a written record must be made. **Form FW (F): Notice of Withdrawal** should be used for this purpose.

The employee decides to withdraw the application:

An employee who withdraws their application should be mindful of the limit of a maximum of 2 applications being able to be made within any 12 month period. This will therefore be a factor the employee will want to bear in mind when considering withdrawing their application as it will still count towards as an application. Where the employee decides to withdraw their application they should notify their manager as soon as possible in writing. This is essential to avoid any misunderstandings and **Form FW(G): Notice of Withdrawal** should be used for this purpose.

A manager who is informed verbally that the application is withdrawn by the employee but does not subsequently receive written confirmation should contact the employee to confirm their intentions. Where the manager does not receive confirmation from the employee, the manager should confirm the withdrawal in writing.

The employee fails to attend two meetings:

In cases where an employee misses two meetings without reasonable cause, the manager may treat the application as withdrawn. It is therefore in the employee's best interests to inform their manager as soon as possible if and why they are not able to attend a meeting. The manager should warn the employee that they risk their application being treated as withdrawn if they miss another meeting without reasonable cause when rearranging the meeting.

The employee unreasonably refuses to provide the required information:

There may be occasions where the manager is willing to accept a request for flexible working, but requires the employee to provide them with certain information before they can do so. If an employee unreasonably refuses to provide their manager with the information, then the manager can treat the application as withdrawn. For example, an employee may request to work from home three days a week and the manager may wish to ensure their working space meets health and safety standards. If the employee refuses to comply with this, the manager may treat the application as withdrawn.

8 PROTECTION FROM DETRIMENT AND DISMISSAL

Employee protection

An employer must not subject an employee to any detriment or dismissal because of any of the following:

- the employee has made or intends to make a request for flexible working
- the employee has issued legal proceedings against the employer in relation to their right to request flexible working, or has stated that there are circumstances which could constitute a ground for them doing so.

FW(A): Flexible Working Application Form

1. Name:

Date:

Service:

I would like to apply to work a flexible working pattern that is different to my current working pattern. I confirm I meet the eligibility criteria as follows:

I have not made more than 2 requests to work flexibly under this right during the past 12 months

2a. Describe your current working pattern (days/hours/times worked):

2b. Describe the working pattern you would like to work (days/hours/times worked):

(you may continue on a separate sheet if necessary)

2c. I would like this working pattern to start from:

When completing sections 3 and 4 it will be very helpful to think about what effect your change in working pattern will have on the work you do and on your colleagues.

3. I think this change in my working pattern will affect my manager and colleagues as follows:

4. I think the effect on my manager and colleagues can be dealt with as follows:

THIS APPLICATION SHOULD BE FORWARDED IMMEDIATELY TO YOUR MANAGER (YOU MIGHT WANT TO KEEP A COPY OF YOUR OWN RECORDS).

Manager to return copy of form to employee with below section completed, to confirm receipt of their application

Manager's Confirmation of Receipt (to be completed and returned to the Employee)

Dear

I confirm that I received your request to change your work pattern on _____

I shall be arranging a meeting to discuss your application normally within 14 days following this date. In the meantime you might want to consider whether you would like a trade union representative or work colleague to accompany you at the meeting.

Signed: **Dated**

Form FW(B): Flexible Working Application Acceptance Form

Note to the Manager

This form should be completed normally within 7 days following the meeting (where applicable) when accepting an application to work flexibly. If you cannot accommodate the requested working pattern you may still wish to explore alternatives to find a working pattern suitable to you both.

Please note that Form C: Flexible Working Application Rejection Form should be used if the employee's working pattern cannot be changed, and no other suitable alternatives can be found.

Dear _____

Payroll Number: _____

Following receipt of your application and our meeting on*1 _____ I have considered your request for a new flexible working pattern.

**1delete if not applicable*

I am pleased to confirm that I am able to accommodate your application.

Having discussed your application , I am able to offer the alternative pattern which we have discussed and you agreed would be suitable to you.

Your new working pattern will be as follows:

Your new working arrangements will begin from _____

Please note that the change in your working pattern will be a permanent change to your terms and conditions of employment and you have no right to revert back to your previous working pattern unless this is agreed otherwise. If you have any questions please do not hesitate to discuss with me as soon as possible.

Signed: _____

Dated: _____

THIS FORM SHOULD BE RETURNED TO YOUR EMPLOYEE, WITH A COPY TO YOUR HR BUSINESS PARTNER

FW(C): Flexible Working Application Rejection Form

Note to the Manager

This form should be completed normally , within 7 days following the meeting, when turning down an application. Before completing this form you must ensure that full consideration has been given to the application. You must state the business reasons as to why you are unable to agree to a new working pattern and why the reasons apply in the circumstances. The lists of business reasons under which a request may be refused are detailed within this Guidance document.

Dear

Payroll Number:

Following receipt of your application and our meeting on _____ I have considered your request for a new flexible working pattern.

I am sorry but I am unable to accommodate your request for the following business reasons:

The reasons apply in the circumstances because:

(You should explain why any other work patterns you may have discussed at the meeting are also inappropriate. Please continue on a blank sheet if necessary)

If you are unhappy with the decision you may appeal against it. Details of the appeal procedure are set out within this document

Signed:

Dated:

The Appeal Process

To the Employee

If your request for flexible working is turned down you have the right to appeal against the decision. If you wish to appeal, you must write to the relevant Head of Service, with a copy to the HR Inbox setting out the grounds for your appeal, within 7 days after receiving written notice of my decision. Form FW(D) Flexible Working Appeal should be used for this purpose. .

To the Manager

If you reject your employee's request for flexible working, they have the right to appeal against your decision.

If your employee appeals against your decision to refuse a request for flexible working, your Head of Service must arrange a meeting with your employee to discuss the appeal within 7 days after receiving the appeal letter. This is detailed in the manager guidance.

After the meeting has been held, your Head of Service must write to your employee within 7days to notify them of the outcome of the appeal.

THIS FORM SHOULD BE RETURNED TO YOUR EMPLOYEE WITH A COPY TO YOUR HR BUSINESS PARTNER

FW(D): Flexible Working Appeal Form

Note to the Employee

If your application has been refused, you may appeal against your manager's decision. You should use this form to make your appeal. You should set out the grounds on which you are appealing, and do so within 7 days of receiving written notice that your application for flexible working has been turned down.

Dear

I wish to appeal against my manager's decision to refuse my application for flexible working. I am appealing on the following grounds:

(Please continue on a blank sheet if necessary.)

Signed:

Dated:

THIS FORM SHOULD BE RETURNED TO THE RELEVANT HEAD OF SERVICE, WITH A COPY TO THE HR INBOX

Note to the Head of Service

You have 14 days following your receipt of this form in which to arrange a meeting with your employee to discuss their appeal. . If you are unable to arrange the Appeal within 14 days you should discuss and agree an extenssion to the timescales with the employee or delegate the meeting to a suitable alternative manager or member of CLT (Corporate Leadership Team).

Form FW(E) Flexible Working Appeal Reply Form should be used when responding to this appeal.

FW(E): Flexible Working Appeal Reply Form

Note to the Head of Service

You should complete this form when replying to an appeal that an application to work flexibly has not been properly considered. You must return this form to your employee, giving notice of your decision, normally within 7 days after the meeting at which you both discussed the appeal. If you decide to turn down the appeal, you must state the grounds for your refusal.

Dear

Following our meeting on _____ I have considered your appeal against the decision to refuse your application to work a flexible working pattern.

I accept your appeal against the decision. I am therefore able to accommodate your original request to change your working pattern as follows:

Your new working arrangements will begin from _____

Please note that the change in your working pattern will be a permanent change to your terms and conditions of employment and you have no right to revert back to your previous working pattern unless agreed otherwise.

I am sorry but I must reject your appeal for the following ground(s):

The ground(s) apply because:

(please continue on a separate sheet if necessary.)

Signed:

Dated:

THIS FORM SHOULD BE RETURNED TO YOUR EMPLOYEE, TOGETHER WITH A COPY TO YOUR HR BUSINESS PARTNER

FW(F): Flexible Working Notice of Withdrawal Form

Note to the Employee

This form provides notification to your manager that you wish to withdraw your application to work flexibly.

Note: You are only allowed to make a maximum of two applications within a 12 month period, a withdrawn application will count of one of those.

Dear

I wish to withdraw my application to work flexibly, which I submitted to you on _____ I understand that even though I am withdrawing this application I understand that it still counts of one of the two applications I am able to make within a 12 month period.

Signed:

Dated:

PLEASE RETURN THIS FORM TO YOUR MANAGER, WITH A COPY TO THE HR INBOX

Note to the Manager

Once your employee has completed this form and returned it to you, the application is considered withdrawn.

Confirmation of Withdrawal **(to be completed and returned to employee)**

Dear

I confirm that I have received notice that you wish to withdraw your application for flexible working which you submitted to me on _____

Signed:

Dated:

