A short guide for employers, working parents and carers

acas

# The right to apply for flexible working

inform advise train work with you

# Acas can help *with your employment relations needs*

Every year Acas helps employers and employees from thousands of workplaces. That means we keep right up to date with today's employment relations issues – such as discipline and grievance handling, preventing discrimination and communicating effectively in workplaces. Make the most of our practical experience for your organisation – find out what we can do for you.

## We inform

We answer your questions, give you the facts you need and talk through your options. You can then make informed decisions. Contact us to keep on top of what employment rights legislation means in practice – before it gets on top of you. Call our helpline 08457 47 47 47 or visit our website www.acas.org.uk.

## We advise and guide

We give you practical know-how on setting up and keeping good relations in your organisation. Look at our publications on the website or ask our helpline to put you in touch with your local Acas adviser. Our Equality Direct helpline 08456 00 34 44 advises on equality issues, such as discrimination.

## We train

From a two-hour session on the key points of new legislation or employing people to courses specially designed for people in your organisation, we offer training to suit you. Look on the website for what is coming up in your area and to book a place or talk to your local Acas office about our tailored services.

## We work with you

We offer hands-on practical help and support to tackle issues in your business with you. This might be through one of our well-known problem-solving services. Or a programme we have worked out together to put your business firmly on track for effective employment relations. You will meet your Acas adviser and discuss exactly what is needed before giving any go-ahead.

# What is flexible working?

There are many different forms of flexible working that cover the way our working hours are organised during the day, week or year. Flexible working can describe the place we work – such as homeworking – or the kind of contract we are on – such as a temporary contract.

Common kinds of flexible working include:

- Part-time working. For example, an employee might start work later and finish early in order to take care of children after school
- Flexi-time. Employees may be required to work within essential periods but outside 'core times' they often get flexibility in how they work their hours
- Job-sharing. Typically, two employees share the work normally done by one employee
- Working from home. New technology makes communication with office and customers possible by telephone, fax and email from home, car or other remote locations
- Term-time working. An employee on a permanent contract takes paid or unpaid leave during school holidays
- Staggered hours. Employees in the same workplace have different start, finish and break times – often as a way of covering longer opening hours
- Annual hours. This is a system which calculates the hours an employee works over a whole year. The annual hours are usually split into 'set shifts' and 'reserve shifts' which are worked as the demand dictates
- Compressed working hours. Employees work their total agreed hours over fewer working days – for example, a five-day working week is compressed into four days
- Shift-working. Shift-work is widespread in industries which must run on a 24-hour cycle, such as newspaper production, utilities and hospital and emergency services.

For more detailed information on the different types of flexible working see the Acas booklet *Flexible working and work-life balance* at www.acas.org.uk/publications.

## What is the law on flexible working?

In April 2003 the Employment Act introduced the right for parents of young and disabled children to apply to work flexibly.

From April 2007 this right has been extended to cover carers of adults.

An application to work flexibly can cover:

- hours of work
- times of work
- place of work (as between home and place of business only)

and must be taken seriously by the employer.

## Who can apply for flexible working?

The applicant making a request for flexible working must be an employee with a contract of employment – agency workers or members of the armed forces are not eligible. The employee must:

- have a child 16 and under (disabled child under 18)
- be the carer for an adult as defined by the Department for Business, Innovation and Skills (BIS)
- have **worked for their employer for 26 weeks** continuously at the date that the application is made
- **not have made another application** to work flexibly under the right during the past 12 months.

Employees can apply to work flexibly to look after a 'relative'. This definition covers parents, parent-in-law, adult child, adopted adult child, siblings (including those who are in-laws), uncles, aunts, grandparents or step-relatives.

*Parents*
To qualify the employee must have parental responsibility for the child. This includes biological parents, legal guardians, adoptive and foster parents and spouses of these, including same sex partners as long as they have parental responsibility for the child.

*Carers*
The Work and Families Act defines a **carer as an employee** who is or expects to be caring for an adult who:

- is married to, or the partner or civil partner of the employee; or
- is a relative of the employee; or
- falls into neither category but lives at the same address as the employee.

For more information visit the BIS website at www.bis.gov.uk or Carers UK at www.carersuk.org.

## How must the application be made?

The employee must comply with the following requirements:

- the application must be made in writing, stating that it is being made under the statutory right to apply for flexible working
- the application must confirm the employee's relationship to the child or adult
- the application must set out the employee's proposal and explain what effect the employee thinks this will have on the employer's business and how this may be dealt with
- the application must specify a start date for the proposed change giving the employer reasonable time to consider the proposal and implement it. This may take 12–14 weeks
- the application must state whether a previous application has been made and if so the date on which it was made
- the application must be dated.

Employees should be aware that if the employer approves their application, the variation in contractual terms is a permanent one and the employee has no automatic right to change back to their previous pattern of work, unless the application seeks the variation for a specified time period only. A trial period may be agreed.

## How must the employer respond to the applicant?

In order to comply with the procedural requirements the employer must:

- arrange a meeting with the employee within 28 days of receiving the application to discuss the request. This meeting is not required if the employer agrees to the terms of the application and notifies the employee accordingly within 28 days of receiving the application
- allow the employee to be accompanied by a work colleague if they so wish
- notify the employee of their decision within 14 days of the date of the meeting. This notification will either:
  - accept the request and establish a start date and any other action or
  - confirm a compromise agreed at the meeting, or
  - reject the request and set out clear business reasons for this and inform the employee of their right of appeal within 14 days of receiving this rejection
- arrange to hear the employee's appeal within 14 days of being informed of the employee's decision to appeal. The employee must be allowed to be accompanied by a work colleague if they so wish
- notify the employee of the decision on the appeal within 14 days after the date of the meeting. The notification will either:
  - uphold the appeal, specify the agreed variation and start date or
  - dismiss the appeal, state the grounds for the decision and contain a sufficient explanation of the refusal.

The employer and the employee can agree to extend any of these time limits. The employer must record this agreement in writing, specifying the period to which the extension relates and the date on which the extension is to end. A copy of this record must be sent to the employee.

## On what grounds can applicants be refused?

Applications for flexible working arrangements can be refused only for the following reasons:

- the 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.

## What can an employee do if an employer refuses an application for flexible working?

Wherever possible it is better to reach agreement on flexible working within the workplace. There are a number of options open if the employer refuses the application at the appeal stage of the procedure including:

- informal discussions with the employer – there may be some simple misunderstanding of the procedure or facts which can be resolved by an informal route
- use of the employer's internal grievance procedure
- assistance from a third party such as a trade union representative or some other suitably experienced person
- ask Acas to help find a solution – by providing information or where appropriate through a process of conciliation.

Where agreement cannot be reached other options are:

- referral to the Acas Arbitration Scheme
- complaint to an employment tribunal.

## Referral to the Acas Arbitration Scheme

If both parties agree the Acas Arbitration Scheme can be used to resolve the dispute. This scheme is designed to be a speedy, informal, confidential and non-legalistic alternative to an employment tribunal. An arbitrator hears the case and makes a decision which is binding on both parties. There is no right to go to an employment tribunal if the parties have opted to use this scheme instead. The remedies and compensation which an arbitrator can award are the same as those at an employment tribunal. The agreed reference to arbitration must be made within three months of the notification date of the employer's appeal decision or, in complaints about procedural breaches, three months from the date of the alleged breach.

## Complaints to employment tribunals

Employees must present their complaint to an employment tribunal within three months of the date that the employer's decision is notified on appeal or in complaints relating to procedural breaches, three months from the date of the alleged breach. Complaints can be made to an employment tribunal on the following grounds:

- the employer's failure to comply with the statutory procedure
- the employer's use of an incorrect fact to explain why the application has been refused and which the employer failed to address at the appeal
- the employer's refusal to allow the employee to be accompanied.

## Remedies and compensation

If a decision is made against an employer by an employment tribunal or an Acas arbitrator, the employer may be ordered to reconsider the employee's application for flexible working and may also be ordered to pay the employee compensation.

The actual amount of compensation will be determined by the tribunal or the Acas arbitrator on the basis of what is considered to be just and equitable given the circumstances of the case. The maximum level of compensation is eight weeks' pay subject to the statutory limit on a week's pay, which is reviewed annually (£380 from 1 October 2009).

If a complaint of refusal to allow the employee to be accompanied is upheld, the tribunal or arbitrator can award two weeks pay in compensation.

## Dismissal and detriment

Employees are protected from suffering dismissal or detriment in the exercise of their right to apply to work flexibly. Complaints may be made to an employment tribunal if:

- the employee has suffered detriment as a result of exercising or seeking to exercise the right to apply to work flexibly
- the employee has been dismissed as a result of exercising or seeking to exercise the right to apply to work flexibly
- a person has suffered detriment or been dismissed as a result of accompanying or seeking to accompany an employee in the exercise of the right to apply to work flexibly.

## Rights for working parents

The table below summarises rights for working parents. For more details go to the Department for Business, Innovation and Skills at www.bis.gov.uk or visit BusinessLink at www.businesslink.gov.uk or Directgov at www.direct.gov.uk.

| | Babies due on or after 1 April 2007 |
|---|---|
| Ordinary Maternity Leave (OML) and | 26 weeks OML. |
| Additional Maternity Leave (ADM) | 26 weeks AML. **All women are entitled to one year's maternity leave in total.** |
| Notice of early return | A woman must give **eight weeks** notice before returning early from OML or AML. |
| Changing an early return date | Eight weeks notice required before the new date. |
| Working during maternity leave – 'keeping in touch' days | A woman can do up to **10 days' work** during her maternity leave without losing any SMP. The employer and employee should agree on payment for time worked. |
| Reasonable contact | Employer and employee are allowed **reasonable contact** during maternity leave – this does not constitute work. An employee should be kept informed about workplace issues – such as job vacancies and training opportunities. |

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|---|---|
| Statutory maternity pay (SMP) | 39 weeks' SMP – six weeks paid at 90% of average weekly earning and 33 weeks at a flat rate (£128.73 a week from April 2011 – reviewed annually). A woman can start to receive SMP on any day of the week. |
| Maternity allowance (MA) | 39 weeks' MA payable by Jobcentre Plus. |
| Statutory adoption pay (SAP) and Adoption leave (SAL) | 39 weeks' SAP the rights that apply to maternity leave – in terms of notice of return to work early, keeping in touch days, and reasonable contact – also apply to adoption leave (see above). |

Other employment rights for parents and carers include:

| | |
|---|---|
| Flexible working | Parents of children 16 and under (disabled children under 18) and carers of adults have the right to apply to work flexibly and their employers have a duty to consider such requests seriously.<br><br>For further information see the Acas advisory booklet *Flexible working and work-life balance* at www.acas.org.uk. |
| Annual leave | Most workers – whether part-time or full-time – are entitled to 5.6 weeks' paid annual leave. There is no statutory right to have bank holidays off as paid leave.<br><br>For further information see the 'Holidays' section of the BIS website at www.bis.gov.uk/. |
| Parental leave | Employees with at least one year's service with their employer are entitled to 13 weeks' unpaid parental leave for each child born or adopted up to the child's fifth birthday. Employees with disabled children can take eighteen weeks unpaid leave up to the child's eighteenth birthday. |
| Paternity leave | One or two consecutive weeks' leave. Fathers of children born on or after 3 April 2011 may also be eligible to take up to 26 weeks' Additional Paternity Leave (APL). For APL to be taken the child's mother must have returned to work. For further information visit Business Link at www.businesslink.gov.uk |
| Time off for dependants | All employees are entitled to reasonable time off without pay to deal with family emergencies. |
| Time off for antenatal care | All pregnant employees are allowed time off with pay to attend antenatal care appointments. |

## Other relevant legislation

If an employee considers that a disputed application to work flexibly also breaches other legislation, a complaint to an employment tribunal can include all alleged infringements. Employers should, therefore, be aware of other relevant legislation when determining an application for flexible working. This includes:

- Sex Discrimination Act 1975 – makes it unlawful for an employer to discriminate against an individual, either directly or indirectly, on the grounds of sex or marital status. In relation to employment it covers discrimination, victimisation and harassment on the grounds of gender, marriage, pregnancy, maternity leave and gender reassignment (trans-sexualism).
- Employment Equality (Age) Regulations 2006 – give protection against discrimination and harassment on the grounds of age. The regulations also introduce a national default retirement age of 65. Employees have the right to request to work beyond this age or any other retirement age set by their organisation.
- Employment Equality (Sexual Orientation) Regulations 2003 – give protection against discrimination and harassment on the grounds of sexual orientation (orientation is defined as 'same sex' – lesbian/gay – 'opposite sex' – heterosexual – and 'both sexes' – bisexual).
- Employment Equality (Religion or Belief) Regulations 2003 – give protection against discrimination and harassment on the grounds of religion or belief.
- Equal Pay Act 1970 – gives individuals the right to receive the same contractual pay and benefits as a person of the opposite sex in the same employment where the man and woman are performing like work, equivalent work or work of equal value.
- Race Relations Act 1976 – makes it unlawful to discriminate, either directly or indirectly, against an individual on grounds of race, colour, nationality (including citizenship) or ethnic or national origin. Individuals are protected from discrimination, victimisation and harassment.

- Disability Discrimination Act 1995 (DDA) – makes it unlawful to discriminate on the grounds of disability and imposes a duty on employers to make reasonable adjustments to practices, policies, procedures and premises to ensure that the disabled person is not at a substantial disadvantage. Individuals are protected from discrimination and victimisation in recruitment, terms and conditions of employment, training, promotion, transfer and dismissal.
- Part-Time Workers (Prevention of Less Favourable Treatment) Regulations 2000 – Part-time workers cannot be treated less favourably in their contractual terms and conditions than comparable full-time workers.
- Fixed-term Employees (Prevention of Less Favourable Treatment) Regulations 2002 – since 1 October 2002, employees on fixed-term contracts have had the right to be paid the same rate as similar permanent employees working for the same employer and in general terms should not be treated less favourably than comparable permanent employees.

## Further information

Acas helplines provide information on all employment matters including the rights and duties referred to in this leaflet. Call 08457 47 47 47 (Minicom 08456 06 16 00) from 8am to 8pm on weekdays and 9am until 1pm on Saturdays. For questions on managing equality in the workplace employers can call Equality Direct on 08456 00 34 44.

For more detailed information about different types of flexible working and how to develop and implement a flexible working policy see the Acas advisory booklet *Flexible working and work-life balance.* You can download/order online at www.acas.org.uk/publications.

Information in this booklet has been revised up to the date of the last reprint – see date below. For more up-to-date information, check the Acas website.

Legal information is provided for guidance only and should not be regarded as an authoritative statement of the law, which can only be made by reference to the particular circumstances which apply.
It may, therefore, be wise to seek legal advice.

Acas aims to improve organisations and working life through better employment relations. We provide up-to-date information, independent advice, high quality training and we work with employers and employees to solve problems and improve performance.

We are an independent, publicly-funded organisation and many of our services are free.

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**08456 00 34 44**
for questions on managing equality in the workplace

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