

## Responding to a flexible working request

Some employees will have a legal ('statutory') right to ask for a change to their contract with a 'flexible working request'.

For example, they might ask to:

- reduce their hours to work part time
- change their start and finish time
- have flexibility with their start and finish times (sometimes known as 'flexitime')
- do their hours over fewer days ('compressed hours')
- work from home or elsewhere ('remote working')
- share the job with someone else

The change could be for:

- all working days
- specific days or shifts only
- specific weeks only, for example during school term time
- a limited time, for example for 6 months only

## Who has the right to request

Employees have the right to make a flexible working request if:

- you've employed them for at least 26 weeks
- they're [legally classed as an employee](#)
- they've not made another flexible working request in the last 12 months

## If the request is from a parent or carer

The right to request flexible working applies to all employees, including those who are:

- parents
- carers
- women returning from maternity leave

Requests from parents or carers should not be prioritised over requests from other employees.

There might be other ways parents or carers can take time off work. For example, using [parental leave](#) or [time off for dependants](#).

If your employee has the right to make a flexible working request, it's important to:

- ask for the request in writing
- consider the request fairly
- discuss it with your employee
- look at other options if the request is not possible
- make a decision based on facts and not personal opinion
- only turn down the request if there's a valid business reason
- give your employee a decision within 3 months of receiving the request

If you need more time to make a decision, you can extend the time limit if your employee agrees.

If you approve your employee's request, this will usually change the terms of the employment contract.

## 2. The importance of following the Acas Code

When making a decision on a flexible working request, you should follow the [Acas Code of Practice on flexible working requests](#).

If a flexible working request case reaches an employment tribunal, judges will take into consideration whether you have followed the Acas Code of Practice on flexible working requests.

The Acas Code applies to those legally classed as employees with 26 weeks' service.

### **Check your workplace's policy**

You might have your own code or policy with some differences that:

- better suits your workplace
- allows employees with less than 26 weeks' service to make a request
- allows requests from those not legally classed as an employee

It's a good idea to check your policy before making a decision on a flexible working request.

### **If you do not have a flexible working policy**

The [Acas Code of Practice on flexible working requests](#) is the minimum you must follow. It's also a good idea to have your own policy for flexible working requests. It can be stand-alone or part of a wider flexible working or equality policy.

Having your own policy can:

- help you make the process suit your workplace
- help you treat all requests in the same way
- make it easy for employees to find out how to make a request

It's best to get input from your employees when you develop a new policy, including employee representatives or trade unions. This can help make sure your policy supports your business and your employees.

Once you have a policy, it's a good idea to:

- share it with all employees
- train your line managers on how to manage flexible working requests
- review it periodically, for example every 12 months

[Download an example flexible working policy.](#)

## If there's more than one request

You should look at each flexible working request in the order you received them.

### If you get the same request from different employees

If you approve a flexible working request for one employee, you do not necessarily have to approve the same request for other employees.

You should make a decision based on whether the business can support the change they've requested.

#### Example

You get a flexible working request from 2 of your employees at the same time. They've both asked to work the morning shift 5 days a week.

You look at the business and realise you can only support one employee doing the morning shift 5 days a week.

You could either:

- explain your dilemma to the 2 employees and see if a compromise is possible, as long as you get their permission to discuss it with each other
- approve the first request you received
- choose one employee randomly, as long as you've made it clear to your employees your policy is to make a random selection

## Discussing the request

You should set up a meeting to discuss the request with your employee before making a decision.

It can help to talk about:

- the change they're asking for
- why they want the change
- any problems you see with making the change
- any other options, if the change is not possible

It's a good idea to hold the meeting somewhere private, where you can talk confidentially. If you cannot meet face to face, you could

also discuss it over the phone.

## **If your employee wants to bring someone to the meeting**

Your employee might ask to bring someone to a flexible request meeting, for example a co-worker or trade union representative.

There's no legal right for them to bring someone, but it's good practice to allow it.

Allowing the employee to bring someone can:

- show your process is open and fair
- make the meeting more relaxed
- reduce anxiety or stress for your employee
- give your employee someone to talk through their options with

You can only turn down a flexible working request if there's a valid business reason. It's important to make your decision based on facts and not personal opinion.

By law, a request can only be turned down if:

- it will cost your business too much
- you cannot reorganise the work among other staff
- you 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 your employee to do when they've requested to work
- there are planned changes to the business, for example, you intend to reorganise or change the business and think the request will not fit with these plans

### **Example**

Colin works in a small call centre answering calls from customers in the United States. He asks to change his hours, to start at 7am instead of 11am each day so he can finish earlier.

Colin's employer reviews the request and looks at the call patterns. There are only a few calls between 7am and 11am, and making the change would mean there'd be fewer people to cover peak call times later in the day.

Colin's employer cannot agree to the request because there's not enough work for him to do and it would have a negative effect on meeting customer demand.

## **3. Consider other options**

If your employee's request is not possible, there might be a way to find another option.

Trying to find a compromise can help keep good working relationships and keep staff. For example:

- if you cannot make a change permanently, you could look at making the change for 6 months only
- if you cannot have someone working part-time every week, you could look into a fortnightly part-time work pattern
- if you cannot make a change on all working days, you could look at making the change on some working days only

It's a good idea to talk to your employee and:

- explain why you cannot make the changes they initially requested
- listen to their reasons for requesting the change
- suggest any other possible options
- ask if they have any ideas for other options

### **Example**

Angela is an experienced mechanic working at a small garage. She wants to reduce her hours to spend more time with her grandchildren so she makes a flexible working request to her employer.

The other mechanics are junior and Angela's employer is concerned they cannot handle difficult repair jobs yet.

Angela's employer decides to turn down her request because there will be a negative effect on quality and the business' ability to meet customer demand.

But they agree to look at the request again after the other mechanics have been up-skilled. Angela's employer confirms in writing that she can make another flexible working request in 6 months' time.

If you're not sure how a change will work in practice, a trial might help make a decision.

### **Example**

Raj is an estate agent working at a small estate agency. He asks to work compressed hours over 4 days. This means he would work 7am to 7pm over 4 days so he can have Thursdays off to study.

Raj's employer is worried the business will lose sales and get complaints if Raj is not available on Thursdays. For these reasons, Raj's employer considers refusing his request. However, his employer values Raj and wants to keep him.

Raj and his employer agree to try the compressed hours for 10 weeks, and then make a decision.

During the trial, other staff successfully deal with customer enquiries on Thursdays and Raj's meets his sales targets. Raj's employer also finds some customers like being able to reach Raj outside normal office hours Monday to Wednesday.

As the trial is a success, Raj's employer agrees to continue with the new working hours.

## **Discrimination and flexible working requests**

It's usually against the law to turn down an employee's flexible working request because of their:

- age
- disability
- race
- gender reassignment
- marriage and civil partnership
- pregnancy and maternity
- religion or belief
- sex
- sexual orientation

If you cannot make the change your employee has asked for, you should look at other ways to support them and avoid discrimination.

For example, if your employee makes a flexible working request because of a disability they have, you could treat this as a reasonable adjustment request instead. This means you look at your employee's request in context of their disability and how you can best support them.

[Find out more about discrimination.](#)

It's a good idea to give your employee a decision as soon as possible.

There is a time limit of a maximum of 3 months of receiving a request for you to give a decision.

If you need more time, you can only extend the time limit if your employee agrees.

## 4. If you agree to the request

If you approve the request, it's a good idea to confirm it in writing, including:

- the agreed change
- when the change will start
- how long the change will last, if for a fixed period of time
- a review date, if the change will be looked at to see how it's going

### When changes must be in writing

If the change affects anything that [must legally be in your employee's employment contract](#), you'll need to put it in writing. You must do this within a month of the change taking effect.

This includes changes to:

- working hours
- pay
- job location
- holiday entitlement

## If you turn down the request

You must let your employee know, and give the reason for turning down their request.

It's a good idea to do this in writing.

It's a good idea to listen to an appeal if your employee:

- has information that was missed or not available when you made the decision
- feels you did not follow your workplace's policy or the [Acas Code of Practice on flexible working requests](#)

There's no legal right for an employee to appeal a flexible working request. But if you consider their appeal, it can help resolve any issues your employee might have, without them raising a [formal grievance](#).

## If you have an appeal meeting

If you set up an appeal meeting about a flexible working request, your employee might ask to bring someone with them, for example a co-worker or trade union representative.

There's no legal right for them to bring someone, but it's good practice to allow it.

Allowing the employee to bring someone can:

- show your process is open and fair
- make the meeting more relaxed
- reduce anxiety or stress for your employee
- give your employee someone to talk through their options with

## Responding to an appeal

If you look at an appeal, it should be dealt with as quickly as possible.

There is a time limit of a maximum of 3 months of receiving a request for you to give a decision, including any appeal. If you need more time, you can only extend the time limit if your employee agrees.

## 5. If an agreement cannot be reached

### Reaching an agreement through mediation

Mediation can be used to try and reach agreement over a flexible working request.

Mediation involves an independent, impartial person helping both sides to find a solution. The mediator can be someone from inside or outside your business. If they're from outside your business, you might need to pay.

Both sides will need to agree to mediation.

[Find out more about mediation.](#)

## When there might be a risk of legal action

Your employee might be able to make a claim to an employment tribunal if they feel their flexible working request:

- was not handled in line with the [Acas Code of Practice on flexible working requests](#)
- was turned down without [a valid business reason](#) as set out in the Acas Code of Practice on flexible working requests
- was handled in a way that legally discriminated against them

### If an employee is treated unfairly

You must not treat your employee unfairly (cause them 'detriment') or dismiss them because they:

- made a flexible working request
- intend to make a flexible working request

Your employee might be able to make a claim to an employment tribunal if they feel they've experienced detriment or been dismissed because of a flexible working request.

### Instead of going to an employment tribunal

If your employee has made a legal claim or has a potential legal claim, it might be possible to use the [Acas Arbitration Scheme](#) for some flexible working cases. This is instead of going to an employment tribunal.

You can be referred to the Acas Arbitration Scheme by:

- a solicitor
- Acas, if the employee has used [early conciliation](#) to tell Acas they're making a claim to an employment tribunal

Both sides will need to agree to arbitration.

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