

Flexible Working for All Staff in Schools

April 2014

Applicable to all community and voluntary controlled schools (where WCC is the employer) and voluntary aided, foundation and academy schools participating in the Warwickshire Consultation Framework.

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In Support of
Learning



**HR and Payroll
Service**

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1. Introduction

- 1.1 Under provisions set out in the Employment Rights Act 1996 and regulations made under it, all employees have a statutory right to ask their employer for a change to their contractual terms and conditions of employment to work flexibly provided they have worked for their employer for 26 weeks continuously at the date the application is made. An employee can only make one statutory request in any 12 month period. Employees who have been employed for less than 26 weeks and agency workers do not have a statutory right to request flexible working.

Before June 2014 the right only applied to the parents of children under 17 or 18 in the case of parents of disabled children or to those caring for an adult. Now any eligible employee can apply to work flexibly for any reason.

Although there is no automatic right for any employee to work flexibly, there are advantages for both the employer and the employee. These include retaining skills and expertise within the organisation, increasing staff motivation and loyalty, promoting work-life balance, reducing employee stress and improve performance and productivity.

From 30 June 2014, all employees who have a minimum of 26 weeks' continuous service have the right to request flexible working and to have their request considered seriously by their employer. Employees who make a request to work flexibly before 30 June 2014 must do so under the 2009 version of the Flexible Working for all Staff in School Policy.

- 1.2 In order to make an application **for flexible working**, the individual will need to:

- Be an employee
- Have worked for their employer continuously for 26 weeks at the date the application is made.
- Not to have made another application to work flexibly under the right during the past 12 months.
- Have specified the date of the application, the change to working conditions they are seeking and when they would like the change to come into effect.
- Have specified what effect they think the requested change would have on the employer and how, in their opinion, any such effect might be dealt with.

NB: The right applies to **all** eligible employees, regardless of their protected characteristic under the Equality Act 2010. Advice should be sought from the HR provider where there is uncertainty regarding how any of these protected characteristics might relate to the flexible working application and considerations that may need to be taken into account.

- 1.3 Employees will be able to request a change to the hours they work, a change to the times when they are required to start or finish work or to work from home. This covers working patterns such as job sharing, part-time working, term-time working, home-working, flexi-time or annualised hours. Further details in relation to job sharing, for example, can be found in Section 4.5.
- 1.4 It is not be an automatic right to work flexibly as there are likely to be circumstances when the employer is unable to accommodate the employee's desired work pattern.
- 1.5 The right to request a flexible working pattern aims to facilitate discussion and encourage both the employee and the employer to consider flexible working patterns and to find a solution that suits them both.
- 1.6 The employee has a responsibility to think carefully about their desired working pattern when making an application.
- 1.7 The employer is required to follow a specific procedure to ensure requests are considered seriously.
- 1.8 The employer can reject the application on one or more of the following business grounds:
 - The burden of additional costs.
 - Detrimental effect on ability to meet customer demand.
 - Inability to re-organise work amongst existing staff.
 - Inability to recruit additional staff.
 - Detrimental impact on quality.
 - Detrimental impact on performance.
 - Insufficient work during the periods the employee proposes to work.
 - Planned structural changes.
 - The level of supervision that the post holder requires.
 - An analysis of the tasks specific to the role, including their frequency and duration.
 - Other issues specific to the individual's department.

2. Procedure

- 2.1 From 30 June 2014 the government allowed employers to specify their own time limits so long as this is completed within a total of 3 months. It is recommended that the existing timescales from the 2009 process be followed as this allows for completion within the 3 months timeframe. Appendix 1 sets out the process as a flow chart.
- 2.2 The employee makes a considered application in writing, setting out their proposal. They should give careful consideration to:

- the working pattern will help them best to fulfil their flexible working request;
- any financial implications it may have where it involves a reduction in salary;
- any effects it will have on the business; and
- how these might be accommodated.

2.3 Only one request can be made per year.

2.4 This will constitute a change to the employee's terms and conditions of employment. However, if the employer and employee agree, the change can be temporary, for a fixed period, at the end of which it can be reviewed.

2.5 Within **28 days**, the employer will arrange to meet with the employee. This will be the opportunity for them to explore the desired work pattern in depth and to discuss how it can best be accommodated or to consider alternatives. The employee will, if they wish, be able to bring a companion to the meeting.

2.6 Within **14 days** of the meeting, the employer will write to the employee to either agree to the new work pattern and a commencement date or to provide clear business grounds as to why the application cannot be accepted, stating the reasons. It may be necessary for the employer to take further action before notifying the employee of their final decision, e.g. take steps to recruit a job share partner or someone to work the hours that have been relinquished.

2.7 The employee will have the right to appeal against their employer's decision within **14 days** of being notified of it. The appeal process again has the aim of encouraging both parties to reach a satisfactory outcome for both parties. Mediation is strongly recommended as a possible means of resolving any disputes or conflict arising from applications that are not approved. This may avoid the need for the use of further internal or external formal proceedings. Contact WES HR for details of how to access.

2.8 After the appeal is concluded, the employee may feel they have grounds to pursue their application with third party involvement. This may be by referring their application to the Arbitration Conciliation Advisory Service (ACAS), an Employment Tribunal or again by using some other form of dispute resolution.

2.9 An employee has the right to complain to an Employment Tribunal if he or she feels that the employer has turned down the request on unjustified grounds or has failed to follow the procedure time limits. If the Tribunal, after an investigation of the facts, finds against the employer, it may order the employer to reconsider the application or to pay compensation.

3. Schools considering a request for flexible working

3.1 Many schools already look favourably on requests to change working patterns and find ways of accommodating personal commitments, e.g. study requirements, health issues, preparation for retirement, interests outside work.

3.2 In agreeing a flexible working policy, a school must take into account the procedure as detailed in Section 2 above.

In a situation where there are a number of requests and not all of them can be accommodated, it will be necessary to consider employees first who are making the request for reason of a protected characteristic (e.g. in relation to a disability) or carer responsibilities . In such a situation, care must also be taken not to discriminate against any group of employees, e.g. on grounds of sex, race, religious belief, part-time workers and advice should be sought from your HR provider

3.3 When considering applications for flexible working, head teachers and governing bodies will need to take into consideration a number of factors, such as:

- the continuity of education for pupils;
- the school timetable;
- the structure of the department or the school as a whole, e.g. the number of existing part-time staff;
- how the reduction in hours can be accommodated, e.g. is there a part-time employee who would welcome more hours, is it necessary to recruit someone else?
- other staffing issues, e.g. level of vacancies;
- other school initiatives, e.g. impending OFSTED inspection may delay the start of reduced hours;
- the impact on other staff , e.g. a class in a primary school taught by two part-time teachers is also likely to have teaching assistant/s in that class, so it would be necessary to consider communication and management issues;
- management responsibilities; and
- whether or not it is necessary to reallocate certain duties.

3.4 Schools already employ staff on many and varied hours and working patterns. Term-time only working is widely available, as are part-time hours, job share arrangements etc.

3.5 A school does have very specific staffing requirements that need to be considered. Pupils must be taught and supervised during the school day, therefore, working from home for teachers would not be feasible. It may be possible, however, for planned preparation tasks to be undertaken from home in certain circumstances.

- 3.6 If an employee wishes to attend a sports day, for instance, this would tend to be a one-off request not necessitating a permanent change to working pattern.
- 3.7 Employees need to be aware that a governing body and head teacher will determine staffing requirements on the basis of an academic year or a term by term basis. It would therefore be helpful if requests take account of this and are made to coincide with these natural divisions within the school year. For instance, it would not necessarily be practical to accommodate a request to change working hours mid-term because of the impact on the continuity of education for the pupils.
- 3.8 Schools may find it desirable to accommodate temporary changes, for example, for one term or one academic year and subsequently review the situation with the employee. Equally, an employee may also find that this works to their advantage, although this must be by mutual agreement. In the absence of any such agreement, any change to a working pattern will be deemed to be permanent.
- 3.9 The legislation does not remove the employer's right to make reasonable changes to employees' terms of employment where there is a sound business reason for doing so. Similarly, it does not remove a right to impose a requirement or condition on its workforce if it can objectively justify doing so. The key here is the employer's reason for requiring a change to the working arrangements, including flexible working, already in place. For instance, an increase in workloads or the departure of the other half of a job share arrangement may require the employer to review the arrangements in place. In all cases, an employer will have to show that there are no viable alternatives to requiring a change – if increased workloads could be catered for by a new recruit, or a job sharer is easily replaced – an employer may find it difficult to justify such changes.

4. Part-time Working Policy

4.1 What is part-time working?

Part-time working is an arrangement in which an employee works less than a full working week or year on a regular contractual basis. The salary and other benefits are calculated according to the time the employee is contracted to work.

From an equal opportunity perspective, all posts should be considered for part-time employment, although practical difficulties may mean that some senior jobs have to be excluded. Advertisements should state if the post is open to applicants wishing to work part-time.

Each job must, however, be considered on its merits. Schools must not discriminate against part-timers by imposing any condition which is less favourable pro rata than would apply to a full-time colleague. Part-time work

should not be used as an opportunity to use fixed term contracts unnecessarily.

4.2 How can part-time working arise?

A part-time post can arise in various ways, including an existing employee wishing to reduce his/her working hours or a school deciding to advertise a job as a part-time post.

4.3 What are the advantages of part-time?

For both the employee and the school the advantages are similar to those listed under job sharing (see 4.7).

What is the contractual position?

- The part-time employee has the same employment rights as a full-time employee in the same post.
- There needs to be a clear indication in the contract of employment of the responsibilities and the working hours and days as far as is possible to define them.
- Salary shall be paid pro rata to the proportion of full-time worked.
- There is no legal requirement for a part-time employee to attend training days or meetings on days when they are not contracted to work at the school.
- In the case of teachers, part-time employees should enjoy the same entitlement to timetabled non-teaching time for Planning Preparation and Assessment Time (PPA), leadership and management, etc as applies to full-time employees.
- Once the contractual hours have been agreed, they cannot be varied without the agreement of the employee.
- Part-time employees should be encouraged to seek advice about any implications in relation to the pension scheme.

What is job sharing?

Job sharing is a part-time working arrangement in which two employees share the responsibility of one full-time post. The salary and other benefits are divided according to the time each teacher works. The division of work can be flexible and does not necessarily have to be a 0.5/0.5 split and could, for example, be 0.4/0.6.

All posts should be considered for job sharing although practical difficulties may mean that some senior jobs have to be excluded. Each job must, however, be considered on its merit. Where a post is filled on a job share basis, tenure is on the same basis as a single occupant in the post.

4.4 How can job sharing arise?

A job sharing arrangement can arise in various ways:

- two persons may apply for one full-time job;
- an existing employee may wish to reduce his/her working hours and an additional employee is appointed to make up the balance of the job; and
- the governing body may advertise a job as available for job sharing.

4.5 What are the advantages of job sharing?

For the employee:

- greater availability of part-time work;
- an opportunity for employees taking a career break to return to work;
- allows employees to carry responsibilities and duties of a full-time post, on a shared basis, when family commitments or disability, for example, make full-time work inappropriate;
- allows employees to maintain a position in the career structure when full-time work is not appropriate, e.g. following early retirement;
- an opportunity for an employee to reduce his/her workload in advance of retiring;
- an introduction back into the workplace; and
- it may assist with health problems, e.g. stress, tension.

For the school:

- job sharing can aid recruitment and retention;
- greater opportunity for flexibility in timetabling;
- two employees are likely to offer a wider range of skills. This can be particularly important where there are discrete, but complementary, specialisms;
- if one job share partner is absent, the other may be able to cover; and
- it may provide the school with an opportunity to make a reasonable adjustment under the Disability Discrimination Act (1995) legislation.

4.6 What are the implications?

- the effect of job sharing (part-time working) on the employee's eventual retirement benefits;
- the need for communication between job share partners could have slight cost implications, for example, time spent handing over;
- the need to consider the timing of team meetings, training and development events to ensure both job share partners have access;
- the need to ensure that both job share partners have an equal share of bank holidays; and
- the need for continuity and positive working relationships between the two partners.

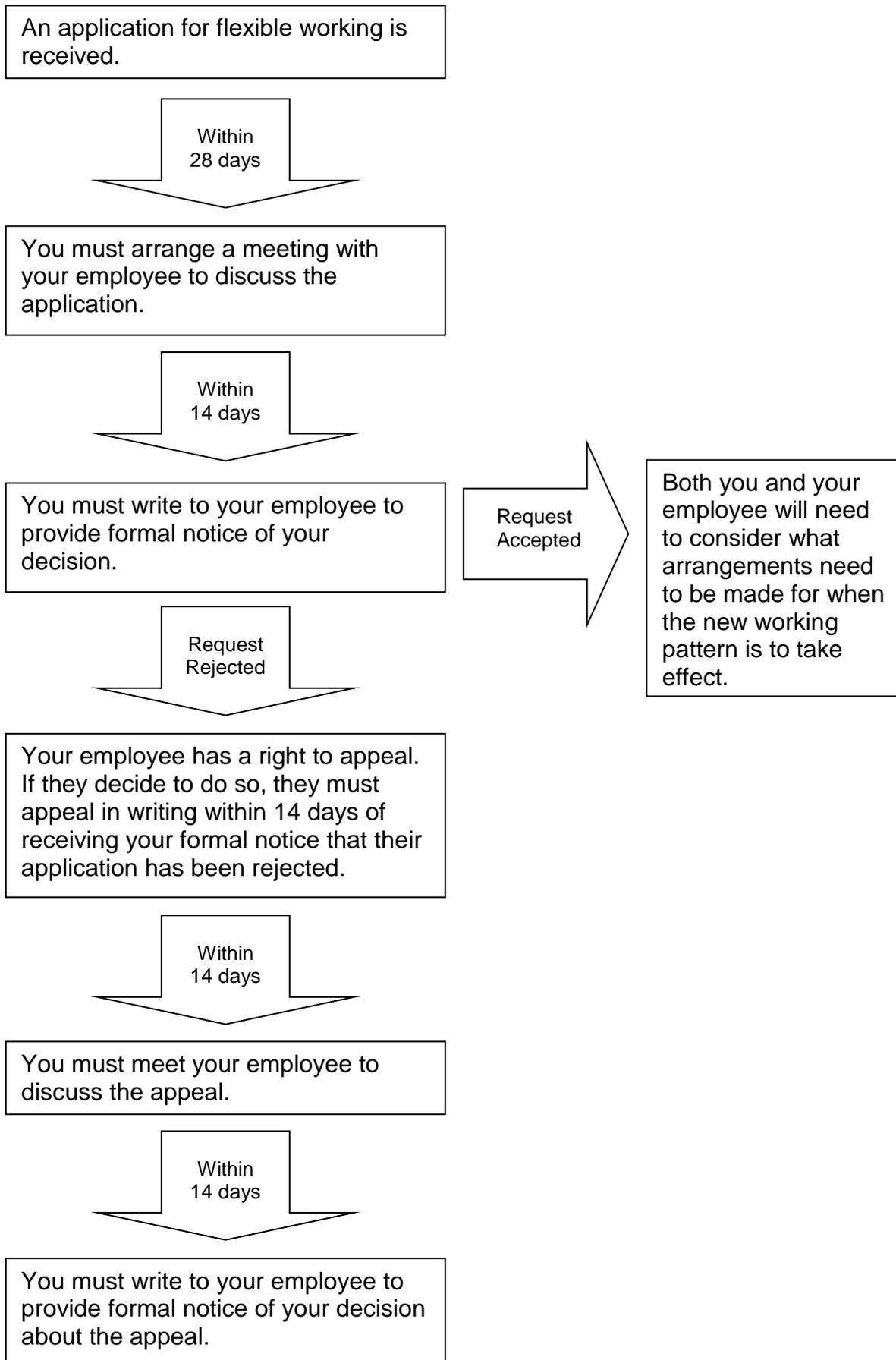
What is the contractual position?

- The job sharing partners will be offered the same employment rights as a full-time employee in the same post.
- There needs to be a clear indication in the contract of employment of how the responsibilities are to be shared and a clear division of working hours and days as far as is possible to define. In the example of a teacher, each job share partner will work the appropriate proportion of 1265 hours “directed time”.
- Salary, including any incentive allowance, shall be paid pro rata to the proportion of full-time worked by the job sharers.

In allocating duties, head teachers must consider the need for communication between the job sharers and for the necessary overlap of working hours. This may involve, for example, employing a little over the full-time hours to build in a regular and structured overlap.

The Application Procedure

Appendix 1



Appeal
Rejected

If your employee is still unhappy with the outcome in certain circumstances they may take further action

Appeal
Accepted

Both you and your employee will need to consider what arrangements need to be made for when the new working pattern is to take effect.

Flexible Working Application Form
Name
Job Title
School
Date

Reason for application

Describe your current working pattern (days/hours/times worked)

Describe the working pattern you would like to work in the future (days/hours/times worked)

Impact of the new working pattern

Describe how the new pattern will affect the service, the section and colleagues

--

Accommodating the new working Pattern

Describe how the issues you have highlighted above can be dealt with by your Head teacher or manager

--

Date you would like new working pattern to start

--

I confirm that:

- I have worked continuously as an employee with Warwickshire County Council/School/Academy for 26 weeks.
- I have not made any other application to work flexibly in the previous 12 months.

Signed _____

Dated _____

Employer's confirmation of receipt of application (to be returned to the employee)

To

I confirm that I have received your application to change your work pattern on

Date

I will now arrange a meeting within 28 days following this date to discuss your proposals. In the meantime you might want to consider whether you would like a fellow colleague to accompany you at the meeting

Signed _____

Dated _____

Model letter accepting an application for flexible working

Dear

Following receipt of your application to [*enter details of the request*] and our meeting on [*date of meeting*]

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

OR I am unable to accommodate your original application. However, I am able to offer the alternative pattern which we discussed and which you agreed would be suitable to you.

Your new working pattern will be [*enter details of times, days etc*].

Your new working arrangements will start from [*enter date*].

EITHER 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 in law to revert back to your previous working pattern

OR As discussed, this is a temporary change to your terms and conditions of employment due to [*enter reason why this is temporary*] which will be reviewed on [*enter date*].

Yours sincerely

Head teacher

Model letter refusing an application for flexible working

Dear

Following receipt of your application to [*enter details of the application*] and our meeting on [*date of meeting*], having carefully considered your request I am sorry that I am unable to accommodate it for the following business reasons [*enter comprehensive details of why the application cannot be granted and also why other working patterns that you may have discussed might also not be suitable*].

If you are unhappy with this decision, you may appeal against it by writing to the Chair of Governors setting out the grounds for your appeal within 14 days of receiving my decision.

Yours sincerely

Head teacher