

people:skills:jobs:



Department for
**Employment
and Learning**
www.delni.gov.uk

ER 36 Flexible Working : A Guide for Employers and Employees



Introduction

The right to request flexible working was introduced in 2003 for parents of young and disabled children, and the scope of the law was extended to carers of certain adults in 2007.

From **18th July 2010**, the right extends to parents of children aged 16 and under. This Guidance is intended to explain how the law works.

Flexible working essentially means what the words imply: arrangements which provide employees with opportunities to carry out work for their employers in ways that better suit their own needs, whilst of course taking into account the needs of the business. Flexible working refers to a whole range of possibilities from homeworking to part-time hours, from job-sharing to flexi-time. More details are provided later in this guidance booklet.

Flexible working opportunities can benefit everyone: employers, employees and their families. As more and more employees do two jobs – working and looking after children or elderly relatives for example – the ability to balance competing demands at home and at work can be crucial if employers are to retain valued staff and their employees are to be able to continue making an active and productive contribution to the labour market.

Many employers know that it makes good business sense to provide flexible working opportunities for their staff. These employers know flexible working arrangements enable them: to retain skilled staff and reduce recruitment costs; to raise their staff morale and decrease absenteeism; to react to changing market conditions more effectively; and to make the best use of available staff. They are open to considering requests to work an alternative working pattern and may have an established procedure above and beyond the statutory minimum for handling requests. For individuals, the opportunity to work flexibly can greatly improve their ability to balance home and work responsibilities.

Anyone thinking about changing their work pattern should speak to their employer as early as possible in order to explore what opportunities are available. When doing so, employees should bear in mind that, under the statutory procedure, the process of making a request and having the employer consider it can take up to 14 weeks.

The right to request flexible working is available to parents of young and disabled children, to carers of adults and, from 18th July 2010, to parents of children up to and including the age of 16. These groups in particular can face challenges in juggling caring responsibilities with work.

This booklet has been designed to provide advice for employers and employees about how the right to request flexible working operates and the duty on employers to consider requests seriously. It details the rights and responsibilities of all parties, giving examples showing the benefits flexible working can bring. A series of forms based on good practice is reproduced at [Annex C: Good practice forms](#) (page 50) to aid the employee in making their

application and the employer when considering their request. Copies of the forms can be downloaded from the Department for Employment and Learning website (www.delni.gov.uk) or by telephoning 028 9025 7580.

The right to request flexible working allows eligible employees to ask their employer for a flexible working pattern and places a duty on the employer to consider the requests seriously. Employees may be eligible if:

- *(before 18th July 2010) they have a child under six;*
- *(from 18th July 2010) they have a child aged 16 or under;*
- *they have a child under 18 who receives Disability Living Allowance (DLA);*
- *they are the spouse, partner or civil partner or near relative of an adult for whom they are providing care, or live at the same address as an adult for whom they provide care.*

It is important to bear in mind that, if an employer agrees to an employee's request, this will result in a permanent change to the employee's contract of employment.

The initial onus is on the employee to prepare a carefully thought-out application well in advance of when they would like the desired working pattern to take effect. The employer then follows a set procedure to help ensure a request is considered seriously, which seeks to facilitate discussion and enables both parties to gain a clear understanding of each other's thinking. An employer may only refuse a request where there is a recognised business ground for doing so. The basic rights and responsibilities under this legislation are set out below.

Rights and responsibilities

Employees' 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 ground for doing so.
- To have a companion when meeting the employer to discuss the application.
- Where an application is refused, to have a written explanation of the refusal.
- To appeal against the employer's decision to refuse an application.
- To take a complaint to a tribunal in certain circumstances.

- To be protected from detriment or dismissal for making an application under the right.

Employees' responsibilities and good practice

- To provide a carefully thought-out application.
- To ensure their application is valid by checking that all the eligibility criteria are met and that they have provided all the necessary information.
- To ensure the application is made well in advance of when they want it to take effect.
- To arrive at meetings on time and to be prepared to discuss their application in an open and constructive manner.
- If necessary, to be prepared to be flexible themselves, to reach an agreement with the employer.

Employers' rights

- To reject an application when the desired working pattern cannot be accommodated within the needs of the business.
- To seek the employee's agreement to extend time scales where it is appropriate.
- To consider an application withdrawn in certain circumstances.

Employers' responsibilities and good practice

- To consider requests properly in accordance with the set procedure.
- To ensure they 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 decline a request only where there is a recognised business ground and to explain to the employee in writing why it applies.
- To ensure that any variation from the procedure is agreed in advance with the employee and recorded in writing.
- To ensure that they do not subject the employee to detriment or dismissal for making an application under the right.

This right for employees to request flexible working and the duty on employers to consider requests seriously is one of a package of rights designed to help parents balance their work responsibilities with family responsibilities to the

benefit of employers, employees and other members of the employee's family. Other employment rights that may be of interest to working parents, and sources of information relevant to carers, are listed at [Annex B: Additional rights and sources of information](#) (page 47). A full list of guidance booklets on employment rights is at [Appendix 1: Booklets in this series](#) (page 52).

Please note that this booklet gives general guidance only and should not be regarded as a complete or authoritative statement of the law. Authoritative interpretations of the law can only be given by the courts. Readers should be alert to the possibility of developments in case law that may affect the rights described.

Further information can be obtained from the Labour Relations Agency (LRA). For the addresses of its two offices see [Appendix 2: Useful addresses](#).

The contents of this booklet apply equally to men and women. For simplicity, however, the masculine pronoun is used throughout.

Any reference throughout this booklet to Jobs and Benefits offices includes JobCentres.

This booklet, [others in the series](#) and [related publications](#) are free to download from the Departmental website at www.delni.gov.uk/erpublications. Alternatively they may be obtained upon request from your local [Jobs and Benefits office](#). For information on [Jobs and Benefits offices](#): FREEPHONE 0800 353530.

Upon request, consideration may be given to making this booklet available in alternative formats and in other languages for people who are not proficient in English.

The Employment Rights ('ER') series of booklets is updated on a regular basis. As part of this updating process the Department would welcome any comment/s from members of the public regarding the content of these booklets.

All comments should be addressed to:

Department for Employment and Learning
Employment Relations Policy and Legislation Branch
Room 203
Adelaide House
39-49 Adelaide Street
Belfast
BT2 8FD

Alternatively, comments may be sent via e-mail to: erbooklets@delni.gov.uk

This booklet was last updated: **July 2010**

Contents

Introduction	1
Rights and responsibilities	2
Contents	1
Eligibility to request flexible working in Northern Ireland	1
Eligibility checklist	1
Under what circumstances can an application be made?	2
Why make an application?	2
Who can make requests under the right?	3
<i>Parents</i>	3
<i>Carers</i>	3
What are the age limits?	3
<i>Parents</i>	3
<i>Carers</i>	3
Which staff are covered?	4
How often can an application be made?	4
What kind of changes can be applied for?	6
Ways of working	6
Making an application	10
Application checklist	10
What information should an application contain?	11
Providing evidence to the employer	11
What types of care are relevant?	12
Impact on the employer's business	13
How long the change in working pattern will last	13
Points to bear in mind when making an application	14
<i>How to help your employer consider your request</i>	14
Considering an application	17
Summary points about the meeting to consider a request	17
<i>The meeting</i>	17
<i>The companion</i>	17
How should an application be submitted and received?	18
How should an application be acknowledged?	18
What happens if the application is incomplete?	18
What happens at the meeting?	18
How to ensure you get the most from the meeting	19
<i>Employer</i>	19
<i>Employee</i>	20
Can an employee bring a companion to the meeting?	20
What happens if the employee fails to attend this meeting?	21
Considering a request – reaching a decision	23
Key points to note when reaching a decision	23
Accepting an application	23
How to action an accepted request	24
What happens if the employer needs more time to reach a final decision?	24
Would a trial period help?	24
How would a trial period work in practice?	24
Would a temporary period of working flexibly be appropriate?	25
Declining an application	25
Business grounds for refusing a request	25

How should the refusal be explained?	26
How to ensure that the explanation accompanying the business grounds is sufficient	26
What happens at the appeal meeting?	28
Appealing the decision	28
What happens when the appeal meeting is missed?	30
Exceptions to the procedure and withdrawals	31
Extension of time limits	31
<i>Through agreement by the employer and the employee</i>	31
<i>Through the employer's absence</i>	31
When can an application be treated as withdrawn?	32
<i>The employee decides to withdraw the application</i>	32
<i>The employee fails to attend two meetings</i>	32
<i>The employee unreasonably refuses to provide the employer with the required information</i>	33
What to do if you suspect an employee of abusing the right to request?	33
Unresolved applications	34
Resolving disputes in the workplace	34
Speak to the employer informally	35
Employer's own grievance procedure	35
Third party conciliation/mediation	35
External parties providing the remedy	36
In what circumstances can a formal complaint be made?	36
Re-examination of the business grounds	37
Remedies and compensation	37
What is an industrial tribunal?	37
What is the LRA Arbitration Scheme for flexible working?	38
Protection from detriment and dismissal	41
What protection is there against detriment for requesting flexible working?	41
In what circumstances is an employee protected from dismissal under the rights?	41
How the right works with other legislation	43
Discrimination legislation	43
<i>Sex discrimination</i>	43
<i>Other forms of discrimination</i>	43
<i>Part-time workers</i>	44
Annex A: What is sufficient explanation?	45
<i>Example 1</i>	45
<i>Example 2</i>	46
<i>Example 3</i>	46
Annex B: Additional rights and sources of information	47
Working parents	47
<i>Maternity leave and pay</i>	47
<i>Paid paternity leave</i>	47
<i>Adoption leave and pay</i>	47
<i>Parental leave</i>	47
<i>Time off for dependants</i>	48
Working carers	48
<i>Guidance</i>	48
<i>Support</i>	48
Useful contacts for carers of children and adults and their employers	48
Annex C: Good practice forms	50

Cut this slip off and return it to your employee in order to confirm your receipt of their application 55
Cut this slip off and return it to your employer in order to confirm your acceptance of their request..... 64
Cut this slip off and return it to your employee in order to confirm your receipt of their withdrawal notice..... 66

Annex D: How does the process work?.....51

Appendix 1: Booklets in this series52

Appendix 2: Useful addresses.....54

Eligibility to request flexible working in Northern Ireland

To make an application under the statutory right to request, the employee will have to meet certain criteria. This section explains what those criteria are and the types of flexible working for which an employee might apply. An employee who does not meet the criteria will not be able to make a request under the statutory right but may still approach their employer to work flexibly as many employers offer flexible working opportunities across their workforce.

Eligibility checklist

To be eligible to make a request under this right, a person must:

- *be an employee;*
- *have worked for their employer continuously for 26 weeks at the date the application is made;*
- *not be an agency worker or a member of the armed forces; and*
- *not have made another application to work flexibly under the right during the past 12 months.*

Additional criteria apply depending on whether the request is being made by a parent or the carer of an adult dependant. These criteria are set out below:

A **parent**, to be eligible, must:

- *have a child aged under six (prior to 18th July 2010), aged 16 or under (from 18th July 2010), or a child under 18 who receives Disability Living Allowance (DLA);*
- *have responsibility for the upbringing of the child and be making the application to enable them to care for the child;*
- *be either:*
 - *the mother, father, adopter, guardian, special guardian, foster parent or private foster carer of the child or a person who has obtained a residence order in respect of the child; or*
 - *married to, the partner or civil partner of the child's mother, father, adopter, guardian, special guardian, foster parent, private foster carer or person who has obtained a residence order in respect of the child.*

A **carer**, to be eligible, must

- *have (or expect to have) responsibility for the care of an adult aged 18 or over;*
- *be making the application to enable them to care for that person;*

- *be either:*
 - *the cared-for person's spouse, partner, civil partner or relative (defined later in this section); or*
 - *living at the same address as the person receiving care.*

Under what circumstances can an application be made?

An application can only be made in order to help the employee to care for a child or dependant adult. The legal right to request does not apply if the request is made for any other purpose, though an employer may still consider such a request.

Why make an application?

There are all sorts of reasons why an employee might want to make an application.

A carer might want, for example, to devote more time to looking after an elderly parent or grandparent, a sibling with a long-term illness or a disabled spouse. A parent might want to change their hours in order to spend more time with their children, to help an older child prepare for critical examinations or simply to allow an additional half-hour for the school run.

Case study 1: Antrim Borough Council

Antrim Borough Council employs approximately 250 permanent staff and a further 50 casual workers. These are based in various locations throughout the Borough and a range of work patterns are in operation, as Assistant Director of Human Resources, Elaine Magee, explains:

“Council believes that there is mutual benefit to be gained from offering work-life balance solutions which will suit both the organisation and the employee, and that this directly impacts upon attendance levels, staff satisfaction and employee turnover rates, all of which influence the performance of Council both financially and in terms of customer satisfaction.”

Over the last three years Council has benefited in particular from improvements in retention rates. Employee turnover has reduced significantly from 9.3% to 6.2% over the three year period. Voluntary turnover is even lower and was reduced to 4.03% Council-wide by 31 March 2006. High turnover can obviously be expensive due to the cost of recruiting and training new personnel in addition to the disruption and reduced output within the Section concerned, hence these improvements are of direct benefit to both Council and existing employees.”

All employees are eligible to make a request to work flexibly under the Council's work-life balance policy and a number of employees have already benefited.

Sandra Barkley has worked as a full-time Receptionist at the Antrim Forum since 1998. In May 2004 Sandra asked to reduce her working hours to 20 hours per week for a two year period to enable Sandra to leave her children to school and collect them. At the time of the request Sandra's daughter required medication to be administered on a daily basis due to her special needs. Sandra was naturally concerned about how she could keep her current job and be able to administer medication to her daughter on a daily basis.

Keen to retain Sandra, the Council successfully offered additional hours to other staff to enable Sandra's request to be accommodated. In this way, Council were pleased to be able to retain a valued member of staff whilst ensuring that the service was not adversely affected.

Sandra says: "The Council have been very supportive to me as a single parent to enable me to juggle work with family life. Council dealt with my requests promptly and worked with me without delays."

Who can make requests under the right?

Parents

Both mothers and fathers of children aged under six (before 18th July 2010), aged 16 or under (from 18th July 2010) or children under 18 receiving DLA, whether they are the biological parents or legal guardians, can make applications, as can adoptive and foster parents and private foster carers. Spouses, civil partners or partners (whether or the same or different sex) are also eligible as long as they have or expect to have responsibility for the upbringing of the child.

Carers

Applications can be made by those who care for or expect to be caring for a spouse, partner, civil partner, relative, or an adult living at the same address. If the cared-for person lives at the same address, then the employee's relationship to that person is not relevant to the request.

The term "relative" covers the relationships described in the definitions later in this section.

What are the age limits?

Parents

The employee's child must be under six (if the request is made before 18th July 2010), 16 or under (if the request is made on or after that date), or under 18 where the child is receiving DLA, for the employee to be eligible to make an application.

Carers

The person cared for by the employee making the application must be aged 18 or over.

Which staff are covered?

The person making the application must be an employee and have worked for their employer continuously for 26 weeks at the date the application is made. Continuous employment generally means working for the same employer without a break but this is not always the case. For more information on the law in this area, see Employment Rights booklet '[Rules governing continuous employment and a week's pay](#)' (ER 8).

Agency workers are not eligible to take advantage of the legal right to request. Neither are members of the armed forces. However, whether an employee is eligible under the statutory right or not, many employers offer flexible working opportunities and the employee can still approach their employer to find out what opportunities exist.

How often can an application be made?

One application every 12 months can be made under the right. This is regardless of whether a previous application was made in respect of a different caring responsibility i.e. an employee wishing to make a request to care for an adult would still have to wait a year even if their previous request had been to enable them to care for a child. Each year runs from the date when the application was made.

Before making a subsequent application under the flexible working legislation, employees should bear in mind that they would still need to meet the eligibility criteria at the time of their subsequent application, i.e. be caring for a child within an age range that is covered by the right or for an adult covered under the legislation.

Definitions

- **Adopter:** someone who has been matched with the child for adoption or someone who has given notice of his or her intention to apply for an adoption order as required by Article 22 of the Adoption (Northern Ireland) Order 1987 or, in relation to England and Wales, as required by section 44 of the Adoption and Children Act 2002 or, in relation to Scotland, as required by section 22 of the Adoption (Scotland) Act 1978. (Specifically, the definition of adopter refers to a person in respect of whom a decision has been taken to place a child for adoption. The definition includes adoptions where the child concerned is not being placed by a UK adoption agency. In practice, this means adoptions from overseas and adoptions by relatives are covered.);
- **Adoption agency** means an adoption agency within the meaning of Article 3(3) of the Adoption (Northern Ireland) Order 1987, section 2 of the Adoption and Children Act 2002 or section 1(4) of the Adoption (Scotland) Act 1978;

- **Agency worker:** any person who is supplied by a person ('the agent') to do work for another ('the principal') under a contract or other arrangement between the agent and the principal;
- **Civil partner:** a legal relationship between two people of the same sex, as defined in section 1 of Civil Partnership Act 2004;
- **Employee:** an individual who has entered into or works under a contract of employment;
- **Disabled:** entitled to a Disability Living Allowance within the meaning of section 71 of the Social Security Contributions and Benefits (Northern Ireland) Act 1992;
- **Employer:** the person by whom an employee is employed;
- **Foster parent:** a person described in regulation 1(2) of the Foster Placement (Children) Regulations (Northern Ireland) 1996, regulation 2(1) of the Fostering Services Regulations 2002 or regulation 2(1) of the Fostering of Children (Scotland) Regulations 1996;
- **Private foster carer:** a person fostering a child privately as set out in Articles 106 and 107 of the Children (Northern Ireland) Order 1995, section 66 of the Children Act 1989 or a person who is not the child's parent who fosters the child as set out in the Foster Children (Scotland) Act 1984 or looks after the child in circumstances in which that Act applies by virtue of section 17 of that Act;
- **Guardian:** a person appointed as a guardian under Article 159 or 160 of the Children (Northern Ireland) Order 1995;
- **Special guardian:** a person appointed as a special guardian under section 14A of the Children Act 1989;
- **Partner:** the other member of a couple consisting of a man and woman who are not married to each other but are living together as if they were husband and wife; or two people of the same sex who are not civil partners but who are living together as if they were civil partners;
- **Relative:** mother, father, adopter, guardian, special guardian, parent-in-law, step-parent, son, son-in-law, step-son, daughter, daughter-in-law, step-daughter, brother, brother-in-law, step-brother, sister, sister-in-law, step-sister, uncle, aunt or grandparent. Half blood relatives are also included, as are adoptive relationships and relationships which would have existed but for an adoption i.e. an employee's natural relatives;
- **Residence order:** an order as defined by Article 8(1) of the Children (Northern Ireland) Order 1995 or, in relation to England and Wales, section 8(1) of the Children Act 1989 or, in relation to Scotland, section 11(2)(c) of the Children (Scotland) Act 1995.

What kind of changes can be applied for?

There is scope to apply for a wide variety of different types of working pattern. Eligible employees can make a request to:

- *change the hours they work;*
- *change the times when they are required to work; or*
- *work from home (whether for all or part of the week).*

A request may be as simple as asking to start half an hour later than usual to allow the employee to drop their child off at school. Alternatively, an employee might want to help an older child with preparation for school examinations and, to allow more time in the evenings to do this, could ask to start and finish work an hour earlier. Of course, a request could also be made for a bigger change to an employee's hours, such as a job-sharing arrangement, in order to better fit their work with their caring responsibilities at home.

Example: reduced hours

Mike, a tyre fitter, asks his manager if he can start an hour later each day. He accepts that this will mean a reduction in his pay. In his application, he states that he has asked the other fitters working in the branch whether they would be able to manage, and they have no problems with this. Mornings are usually less busy than afternoons, and they believe they would be able to handle any eventualities that occur. Mike's manager discusses the application with him and considers the circumstances carefully. He agrees the request.

Flexible working actually incorporates a wide variety of working practices. A flexible working arrangement can be any working pattern other than the normal working pattern in an organisation. Most people are familiar with working part-time for pro-rated pay or working different shift patterns. But other ways of working that employees may consider are outlined below.

Ways of working

- **Annualised hours** describes working time organised on the basis of the number of hours to be worked over a year rather than a week; it is usually used to fit in with peaks and troughs of work. Pay will depend on the hours worked each pay period. Typically, the annual hours an employee is contracted to work are split into set shifts which cover the majority of the year and unallocated shifts which the employee can be asked to work at short notice. In some systems the employee is paid for unallocated shifts and 'owes' the time to the company. The company holds these hours or 'payback' shifts in reserve and can ask employees to work them at short notice, to cover for colleagues or to cope with peak demand. The company then monitors the hours worked for each employee to identify any 'underspend' or 'overspend'. The company may not call back all the shifts it is owed – to the advantage

of the employee. Annual hours can apply to all employees, but in practice the system is often restricted to shift workers.

- **Compressed hours** involve individuals working their total number of agreed hours over a shorter period. Through starting early and/or finishing late, employees can build up additional hours which they can then take as a day or half-day away from work. For example, employees might work their full weekly hours over four rather than five days, taking the fifth day off (e.g. 08:00-18:00 Monday-Thursday instead of 09:00-17:00 Monday-Friday). Employees would be paid for a full-time job but would not receive overtime payments for the agreed extra hours they work in any one day.
- **Flexi-time** allows employees to choose, within set limits, when to begin and end work. Employees are required to work during **core times** and must work an agreed number of hours during a settlement or accounting period (typically four weeks). Outside the core times, at the beginning or end of each day, are **flexible bands** when employees may choose whether to be at work. The total period the workplace is open is called the **bandwidth**. Employers need to decide what happens at lunch breaks – start and finish times and the maximum and minimum lunch period that can be taken. Hours of attendance are recorded and added up at the end of each settlement period. Within limits, employees can **carry over** any excess or deficit in the number of hours they are required to work (typically a day to a day and a half a month). Some schemes allow employees to take excess hours as additional leave, known as flexi-leave. An example of a flexi working day is given below. In the example, an employee could work as few as four hours or as many as ten hours on a given day, provided they make up the required number of hours over the whole accounting period (so they could not, for example, work four hours every day).

Flexible band	Core time	Flexible lunch period	Core time	Flexible band
08:00-10:00	10:00-12:00	12:00-14:00	14:00-16:00	16:00-18:00

- Home-working doesn't have to be on a full-time basis and it may suit an employee to divide their time between home and office. What individuals are paid for depends on the hours they work. Employers are required to carry out a risk assessment of the activities undertaken by home-workers, identifying any hazards and deciding whether enough steps have been taken to prevent harm to them or anyone else who may be affected by their work.
- Basic guidance on risk assessment can be found in the [Health and Safety Executive for Northern Ireland \(HSENI\) document Risk assessment simplified](#). You can also telephone HSENI's freephone Helpline on 0800 0320 121 or visit www.hseni.gov.uk.

- Guidance on the hazards that may be encountered in the home and the measures that can be taken to control them can be found in the [Health and Safety Executive \(HSE\)](#) document INDG 226 *Homeworking – guidance for employers and employees on health and safety*. Telephone the HSE Infoline on 0845 345 0055 or visit www.hse.gov.uk.
- A useful website for reference is nibusinessinfo.co.uk. Follow the link on the main page labelled 'Health, safety, premises', select 'Working environment', 'Use your home as a workplace', and then 'Home working health and safety risk assessment'.
- **Job-sharing** is a form of part-time working where two (or occasionally more) people share the responsibility for a full-time job. They share the pay and benefits in proportion to the hours each works. Job sharers may work split days, split weeks or alternate weeks. Job sharing can increase flexibility when used to meet peak demand, for instance by both sharers being present when workloads are heavy. Job sharing can, for example, make it easier for women to return to work from maternity leave.
- **Shift working** is a pattern of work in which one employee replaces another on the same job within a 24-hour period. Shift workers normally work in crews, which are groups of workers who make up a separate shift team. In some shift systems, each crew will regularly change its hours of work and rotate morning, afternoon, and night shifts. Continuous shift systems provide cover for 24 hours, seven days a week. Non-continuous shift systems provide cover for less than the total hours available in a week – for example five 24-hour periods in seven days, or 12-hours out of 24. Shift working gives employers the scope to have their business open for longer periods than an eight-hour day. Agreed flexible working arrangements may mean that a shift premium is not needed. The [Health and Safety Executive \(HSE\)](#) has produced a risk index for shift workers which helps employers to analyse the link between shift patterns and employee fatigue. The risk index and other related information can be found in the 'human factors' section of the HSE website at www.hse.gov.uk.
- **Staggered hours** allow employees to start and finish their day at different times. This is often useful in the retail sector, for example, where it is important to have more staff over the lunch period but fewer at the start and end of each day. Pay will depend on hours worked in total rather than the time at which they are worked.
- **Term-time working** allows employees to take unpaid leave of absence during the school holidays.

Case study 2: McKeagneys Chemist, Lurgan

Mr. Sheelin McKeagney, owner manager, says:

“We are lucky in that we have a small team of great people working for McKeagney Chemists. We started to offer flexible work hours because people were having difficulties at home caring for dependent relatives and children. They would come to us explaining their situation, saying they were really stuck, and that they were going to have to go and look for another job with different hours. McKeagney Chemists is a small family run organisation and we have tried to be aware of our colleagues’ family situations. We want to work with them – we have a very low turnover of staff.”

“We didn’t really have a formal Work-Life Balance policy, but informally, in our business, we have tried to accommodate and support people. For example, we have created job shares where people cover for each other – say where 2 people do 3 days a week. This works very well in a retail business where we have to be open 6 days a week. Another great benefit, particularly with pharmacists, is you get their ideas and intellect 7 days a week. They read professional journals and research out of hours and they are more enthusiastic. They are getting their life balanced at home and then they are getting fired up to work and coming back to me with ideas and suggestions. I am much more interested in what people deliver during the time they are at work rather than the amount of hours that they actually spend at work. If people are happy and content and if they are not concerned about their childcare or granny care arrangements they are going to deliver more effectively for the company.”

“With the examples I mentioned there has been flexibility on both sides, which is absolutely crucial. For example, if we have a holiday problem, staff will step in and make arrangements to provide cover for each other. Around school holidays, Christmas / Easter time – we would try and accommodate staff by bringing in students. Another benefit is that, in the longer run, those students tend to come back to us as future employees or people we can call on at short notice.”

“Staff morale has its highs and lows, as I am sure every company has, but I would like to think people are reasonably happy. We work very much on an ‘open door’ policy, my office door is jammed open – you don’t have to knock, you just come in and if people have a problem I want to know about it, so we can work on fixing it and then they are not going to go looking for application forms for the business next door. People spend almost as much time with their work colleagues as with their family, so it is really important that they are content at their work.”

Making an application

The main opportunity for the employee to set out their desired working pattern and arguments why it can be implemented is through their application when making a request. The initial onus is therefore on the employee to provide a written application to their employer well in advance of when the change is to take effect. This section explains the information that must be included for an application to be valid and the issues that the employee will want to consider in preparing their application.

[Form FW \(A\): Flexible Working Application Form](#), which accompanies this guidance (at [Annex C: Good practice forms](#)), and which is also available from the Department for Employment and Learning's website (www.delni.gov.uk), may be used to make a request. Its use, however, is not mandatory. An application can be made in whatever form is most suitable to the employee. It may be through a letter to the employer, on a form provided by the employer, or via e-mail. [Form FW \(A\)](#), however, will help the employee to ensure that all the minimum necessary information is provided and avoids any delay. Irrespective of how an application is made, there follows a list of all the points that **must** be covered in the application in order for it to be valid and for it to be considered by an employer.

Application checklist

An application under the statutory procedure **must**:

- be **in writing** (whether on paper, e-mail or fax);
 - state that the application is being made under the statutory right to request a flexible working pattern;
 - confirm **either**
 - that the employee has or expects to have responsibility for the upbringing of a child aged 16 or under or a disabled child under 18 **and** is **either** the child's mother, father, adopter, guardian, special guardian, foster parent, private foster carer **or** a person who has obtained a residence order in respect of the child; or is married to, the partner or the civil partner of one of these,
- or**
- that the employee has or expects to have responsibility for the care of an adult aged 18 or over and is either that person's spouse, partner, civil partner or relative (see the previous section for a definition of "relative"), or lives at the same address;
 - explain what **effect**, if any, the employee thinks the proposed change would have on the employer and how, in their opinion, any such effect might be dealt with;

- 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 the employer and, if so, when it was made; and**
- be **dated**.

What information should an application contain?

The checklist above represents the minimum requirements for an application to be valid. 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 written application must state **the date when the employee would like the new working pattern to start**. The proposed date should allow time for the application to be considered and implemented. There is no set time but an employee can expect it to take around fourteen weeks or longer if a problem arises. The employee must also state **their relationship** to the child or cared-for adult, e.g. they are the adoptive father of a child aged 16 or under or the half-sister of an adult they care for. They should confirm that they have **responsibility** for the child's upbringing or for the care of the adult. They must also state **if and when any previous application was made**.

Providing evidence to the employer

It is always helpful, and good practice, for the employee making the request to provide their employer with as much information as possible, including evidence of a caring relationship – although this is **not required by the legislation**.

In some circumstances, an employer might wish to be satisfied that a request is being made in good faith e.g. in order to care for an adult, but **there is no entitlement under the legislation to ask the employee for proof of either parental or caring responsibility**. An employer should take the decision on whether or not a request can be granted on **business grounds** rather than the employee's personal circumstances. Employers should, however, bear in mind their obligations under other legislation, such as discrimination legislation (see '[How the right works with other legislation](#)' on page 43 for more information).

Employees are not required, under the flexible working legislation, to demonstrate that the child or adult in question requires any particular level of care. For example, an employee asking for a change in hours to care for her elderly mother will not need to show that her mother is unable to cope alone or that she qualifies for Disability Living Allowance. Nor will employees be required to demonstrate why they personally are needed to provide that care. For example, a father asking for reduced hours in order to care for his

child will not be required to demonstrate why the care cannot be provided by the mother or by somebody else. However, requests for flexible working can only be made for the purpose of providing care, and not for some other purpose. An employer who suspects abuse of the right, for example because he or she suspects that an employee does not genuinely have a qualifying relationship with the child or adult in question, might reasonably request evidence (if this is available) and, in some cases, invoke the company's disciplinary procedure.

What types of care are relevant?

Carers' patterns of care-giving will vary considerably from individual to individual, both in the nature and the extent of the care given. The sort of care-giving activities that carers of adults who request flexible working are likely to be involved in to a greater or lesser extent include:

- *help with personal care (e.g. dressing, bathing, toileting);*
- *help with mobility (e.g. walking, getting in and out of bed);*
- *nursing tasks (e.g. daily blood checking, changing dressings);*
- *giving / supervising medicines;*
- *escorting to appointments (e.g. GP, hospital, chiropodist);*
- *supervision of the person being looked after;*
- *emotional support;*
- *keeping the care recipient company;*
- *practical household tasks (e.g. preparing meals, doing shopping, domestic chores);*
- *help with financial matters or paperwork.*

Some similar issues could give rise to a request to care for a disabled child under 18. Care-giving activities relating to young children could include leaving a child at school or picking the child up, domestic chores relating to childcare, building a relationship with the child through supervised activities, and so on. Reasons for making a request in respect of an older child could again be related to relationship-building or, for example, assisting with study towards recognised qualifications.

This is not an exhaustive list. Some activities feature more prominently for some groups of carers than others. Carers of older people, for example, may need to ensure proper eating, while carers of people with mental health problems may need to order and supervise medication. Carers of people who have mental health problems and who are in paid work may also need to help the person they care for with routine tasks such as getting to work.

Impact on the employer's business

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 employer's business, as far as they are able to tell. It must therefore provide an explanation of what **effect**, if any, the employee thinks the proposed change would have on the employer and **how they feel any such effect might be dealt with**.

For example, the employee may argue that arriving half an hour later will have minimal impact on the business as this is the quietest time of the day and they can make up the time during the lunch period when it is far busier. This does not mean that the employee is expected to know every factor that might influence the employer's decision. It simply means that they should show they have considered the factors that they are aware of that are likely to influence their employer's decision. Evidence shows that applications for flexible working patterns succeed where they are soundly based on the business needs of the employer.

Example: altered hours

Emma, an assistant in a clothes shop, asks the shop manager if she can change her working hours from 8 a.m.-1 p.m. to 10 a.m.-3 p.m. In her application, she states that early mornings in the shop tend to be the quietest time and the other two assistants who would be in at that time agree that they could cover this period. She also states that the lunch period is the busiest time and that her new working pattern would result in an increase in the number of customers who could be served.

After consideration, the shop manager agrees to the request and welcomes the fact that it will enable the business to better manage the busy lunch period.

How long the change in working pattern will last

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. So, for example, if an employee's new flexible working pattern involves working reduced hours, he or she has no right to revert to working the hours he or she previously worked, although this is not to say that an employer will automatically reject a subsequent request to do so.

Clearly, making a permanent change to a contract of employment is a big step, and not to be entered into lightly. Employees who are concerned about this should consider suggesting a trial period, or think about whether a limited period of working flexibly might be more appropriate. Employees should discuss these possibilities with their employer when they meet to discuss their application.

Points to bear in mind when making an application

The points below suggest some issues that employees may wish to bear in mind when making an application.

How to help your employer consider your request

- *A new working pattern will normally be a **permanent change** unless otherwise agreed. So think carefully about your request as you have **no right to revert back to your former hours of work**. If in doubt you might want to consider with your employer whether a trial period would be helpful.*
- *Think about **the date you would like your new working pattern to begin**. Be aware that the process can take up to 14 weeks to complete, and sometimes longer where a problem arises.*
- *Clarify with your employer how they like applications to be made, but ensure that everything is in writing. Your employer may have their own form. If you are unsure, use [Form FW \(A\)](#) accompanying this guidance.*
- *Remember, the more notice you give your employer, the more likely they will be able to implement the change when it suits you. So **submit your application to your employer as soon as it is complete**.*
- *Remember, if you request a flexible working pattern that will result in you working fewer hours, your pay will be reduced too.*
- *It is to your advantage to **provide as much detail as possible** about the pattern you would like to work and why. If you are changing your working pattern in order to care for an adult, for example, you may want to think about how much your employer knows about your situation. He or she may already know enough to be satisfied that you are eligible to make your request but, if not, he or she might for example ask you for further information about your caring responsibilities. Bear in mind that it is generally helpful for your employer to have as much information as possible about your situation.*
- *Take time to **consider how your colleagues will manage** if your working pattern is changed. If you have any colleagues or friends who are already working flexibly, ask them about their experiences.*
- ***Think about what effect changing your working pattern will have on your job**. You should aim to show in your application that your plans will not harm your employer's business and may in fact enhance it. It may mean that you are available to provide extra cover at peak hours, thereby improving customer service.*
- ***Think about how any potential problems your plans may present to your employer could be overcome** and ensure that you include these in your application. For example, it may mean that you will not be*

in work when the business opens. What effect will this have on the business, and how could it be managed?

- ***Check who will consider your application*** and ensure that you submit it to the appropriate person. If the person is absent it may be necessary to send it to an alternative manager.
- *If you are due to go on maternity leave think carefully about when to make your request. You might wish to mention to your employer before you take leave that you are interested in applying to work flexibly on your return. Bear in mind that you may need to attend meetings with your employer so that your request can be properly considered. If you want the changes to start on your return from maternity leave, you should make your application in good time.*
- *If you think that a trial period might be useful, you may wish to discuss this informally before initiating the formal procedure. Then you might be able to agree to have a trial period before the time frame for the formal procedure starts running.*

Case study 3: GEMS Northern Ireland

GEMS Northern Ireland is a city based employability organisation employing 13 staff. Its core business is about widening participation in and increasing access to learning and employment.

The company is committed to achieving work-life balance for employees while ensuring continuous improvement of the service it delivers. To ensure this outcome, GEMS NI has reviewed its working practices and introduced flexible approaches for its employees.

Prior to starting at GEMS NI as a receptionist, Jackie Hawkins, a lone parent with three children, had been unemployed for approximately 15 years. Jackie had been studying part-time but faced difficulties in finding employment which would allow her to balance her family and work commitments.

After discussing her working hours with management, it was agreed that Jackie could start half an hour later in the mornings. This suited Jackie's needs as it gave her time to be there for her children getting ready for school and meant she could drop them off on her way to work.

GEMS NI understands that Jackie has parental responsibilities such as school meetings and medical appointments, etc., and is flexible in enabling Jackie to attain a work-life balance. Time off has been granted on all such occasions and Jackie makes up any lost time by taking a shorter lunch or starting a little earlier. This has not had a detrimental impact to GEMS NI and means Jackie does not face the stress associated with missing out on important events related to her children.

Jackie has now been with the company for almost 8 months. She is extremely satisfied in her job role and has grown in confidence in her ability. Of flexible

working, she says: *“It suits me down to the ground. It means I am not rushing out and leaving the kids. I can drop them off on my way and then come into work. After school they can go to my mum’s and I’m there within half an hour. I love it. It’s about getting back out there.”*

The change also works for GEMS NI as it means the organisation has retained an enthusiastic and competent member of staff who is happy in her job role and can focus on duties without worrying about not being available for her children. For GEMS NI, flexible working has meant low staff turnover, access to a wider pool of potential employees such as those with care commitments, and retention of experienced and valued staff who need to balance work with outside responsibilities.

Considering an application

The right places a legal duty on employers to consider all applications and establish whether the desired work pattern can be accommodated within the needs of the business. Employers should consider each application objectively on this basis, and not attempt to judge whether one applicant's need for flexible working is greater than another's.

It may be possible for an employer to agree to a request to work flexibly simply on the basis of the application itself and if so he should write to the employee within 28 days, specifying the contract variation agreed to and the start date. But, where this is not possible, a set procedure must be followed.

A flowchart summarising the procedure is included in [Annex D: How does the process work?](#) (page 51). This section explains the first step in the process, which is to arrange a meeting to discuss the request with the employee.

Summary points about the meeting to consider a request

The meeting

- *An employer must hold a **meeting** to consider the request within 28 days after the date an application is received.*
- *An employee can, if they wish, be **accompanied** to the meeting by another worker employed by the same employer.*
- *The employer must write to the employee informing them of their decision **within 14 days** after the date of the meeting.*

The companion

- *An employee has the right to **bring a companion** to the meeting.*
- *The companion must be **a worker employed by the same employer**, but not necessarily working at the same premises, and he or she can be the trade union representative.*
- *The employer must allow the companion **paid time off** during working hours to attend the meeting.*
- *The companion can **address the meeting** or **confer with the employee** during it.*
- *The companion is **not** allowed to answer questions on the employee's behalf.*
- *If the companion is unable to attend the meeting, the employee should re-arrange the meeting for a date **within seven days** of the originally proposed time, ensuring that the new time is convenient to all parties; or consider an alternative companion.*

How should an application be submitted and received?

An application will be considered to have been made on the day that it was received by the employer. For applications sent by e-mail or fax 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.

How should an application be acknowledged?

It is good practice for the employer to acknowledge receipt of the request. An acknowledgement slip is included at the bottom of [Form FW \(A\)](#) which allows an employer to confirm the date on which the application was made. This is particularly important where there has been a delay in the application reaching the employer.

What happens if the application is incomplete?

If an employee fails to provide all the required information as set out in [‘Making an application’](#) (beginning on page 10), the employer should inform the employee of what they have omitted and ask them to re-submit the application when complete. The employer should also inform the employee that they are not obliged to consider the application until it is complete and re-submitted.

If the employee unreasonably refuses to provide the employer with the information needed to assess whether the change should be agreed to, for example he or she has not described the desired future working pattern, the employer will be entitled to treat the application as withdrawn. The employee would not then be able to make another application under the statutory procedure for another 12 months. It is therefore important for the employee to provide any appropriate information if requested.

What happens at the meeting?

Experience shows that the best way for both parties to understand each other’s position and identify a solution that suits them both is to hold a face-to-face meeting to discuss the request. The legislation requires the employer to arrange a meeting with the employee **within 28 days** after the application has been made. 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 employer and the employee should themselves be prepared to be flexible.

If the requested 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 employer’s and employee’s interests to agree that the new working pattern will take place for an agreed trial period (for example, for 12 weeks) in order to see how it would suit them both.

In this case, the parties could agree to extend the time for a final decision to be given by the employer until the end of the trial period. To do so the employer should specify the period of extension and its end date in writing (dated) to the employee. The employer's final decision can then be given once they have tried out the new pattern (see section on '[Exceptions to the procedure and withdrawals](#)' beginning on page 31).

In some circumstances, the employer and employee may conclude that a permanent change to the latter's contract of employment is not the best solution: this might be the case, for example, where an employee is going to be caring for an adult who has a terminal illness or a fluctuating condition. A solution here might be an informal agreement between employer and employee – outside the legislative framework – to flexible working for a limited period. Other solutions might be found in other arrangements such as the statutory right to time off for dependants or employer-specific schemes.

However informal the arrangement is, it is advisable to have it agreed in writing so that both employer and employee are clear about start and end dates, etc.

Alternatively, the employer and employee might agree under the formal procedure to a time-limited change after which the employee would revert back to the original working pattern. In this case, the employee would then have no right to make another request within a year, or to complain to a tribunal if he or she subsequently wanted the change to be made permanent.

How to ensure you get the most from the meeting

Employer

You might want to:

- *Make a list or draft an agenda of the issues you want to discuss at the meeting, e.g. if you are already aware that the request can be granted, you may want to discuss a suitable start date before formally accepting the request.*
- *Inform your employee of anyone you have asked to join the meeting.*
- *Ask your other workers if they would want to cover any extra hours that may be created as a result of granting the request.*
- *If you have a personnel or human resources section, speak to them so that you are clear about your options.*
- *Familiarise yourself with this guidance and the different types of flexible working.*
- *If it would be helpful to involve external expertise, be open to the proposition.*

Employee

You should:

- *Be prepared to expand on any points within your application.*
- *Prepare to be flexible. Your employer may ask if there are any other working patterns you would be willing to consider or if you would consider another start date or a trial period.*
- *If you are taking a companion along, make sure they are fully briefed on your request beforehand, provide them with a copy of your application, and inform your employer that a companion will be present. This will save time during the meeting.*
- *Familiarise yourself with this guidance and other sources of information on flexible working before the meeting.*

The employer must ensure that the meeting is held at an appropriate time and place that is convenient to both parties. In most cases, this will probably be the usual place of work, but again, both parties should be prepared to be flexible about this. For example, if the employee is a mother who is about to return to work from maternity leave, it may be that she will find it difficult to travel to her workplace. In such circumstances, discuss the meeting place with her and consider whether there is an easier place to meet.

If it is difficult to arrange a meeting within 28 days after the application was made at a time and place convenient to all parties then the employer should seek the employee's agreement to extend the period. This is explained in detail in '[Exceptions to the procedure and withdrawals](#)' beginning on page 31. Failure to hold a meeting within the 28-day period or any extension, without the employee's agreement, will be a breach of the procedure (see '[Unresolved applications](#)' on page 34 for more detail).

Example: home working

Ciara, the manager of a company's sales department, who commutes to work each day, requests to work from home one day a week in order to care for her elderly grandmother in the early evening. In the application, the manager states that she has asked other colleagues for their opinions, and they have no objections. She also explains that she has a computer with broadband Internet access at home, allowing her to stay in contact with the office.

Her employer weighs up the case against the business needs and agrees to accept the request. Both parties also agree to a trial period of twelve weeks after which they will decide whether the change should be permanent.

Can an employee bring a companion to the meeting?

The right allows an employee to be **accompanied at the meeting by one companion** if they feel this would help them. The companion must be a **worker employed by the same employer**. This can include a colleague or a

trade union representative who works at any other premises which form part of the business.

The role of the companion is to support the employee. For example, if the employee has not attended many meetings before, it is possible that they may be nervous. The presence of a colleague can therefore make the meeting more productive for the employer and the employee.

The companion may also have some expertise about different types of flexible working. Experience shows that the involvement of such an individual can be helpful to both the employer and the employee. The companion is able to **address the meeting**, and to **confer with the employee** during it, but they may **not** answer questions for the employee.

The employee should contact their companion as soon as they know the date of the meeting to ensure they are free. If the companion is unable to make the initial meeting the employee must seek to rearrange the meeting for a time convenient to themselves, the employer and their companion. It should take place **within seven days** of the date of the initially proposed meeting. If this cannot be achieved, the employee should consider an alternative companion who can attend the meeting. **An employer must allow any of their workers to take time off during work hours to act as a companion. The employer must also continue to pay them for this time.**

What happens if the employee fails to attend this meeting?

An employee who fails to attend the meeting without notification should contact the employer as soon as possible to explain their absence, and to allow the employer to rearrange the meeting at the next mutually convenient time. An employer 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 employer 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 '[Exceptions to the procedure and withdrawals](#)' beginning on page 31.

Case study 4: Asidua

Asidua is a locally owned IT services company based in Belfast providing software consultancy services across a broad spectrum of business sectors. The company has a workforce of almost 100 employees.

Angela Canavan, Chief Operations Officer, says: *“Asidua believes in work-life balance because employees who achieve a balance between their work and home lives will be happier and more productive, thus creating a win-win situation for both employee and employer. We believe that a supportive working environment will result in employee commitment, high morale, enthusiasm, and a personal investment towards work, which translates into significant benefits for both Asidua and our employees.*

It is our firm belief that if we are to continue to attract good people and retain existing employees we must support work-life balance policies and working practices that are in keeping with the objectives of the business.”

Asidua’s employees have the ability to work flexible working hours, which are typically between Monday and Friday. Within this flexible working scheme, employees are required to work certain core hours, but all other hours operated are flexible, in line with business needs. The company’s flexible start and finish times, along with the option of taking up to two hours for lunch, means that employees can facilitate caring arrangements as necessary. For example, one employee who also has caring responsibilities for his mother stated a preference to start work at 10.00am. This was to enable him to care for his mother until transport arrived to take her to her day-care facility. This employee has also been able to arrange appointments with social workers etc before 10.00am, which means he does not require time off from work.

Asidua offers all staff the opportunity to request flexible working. Of the 7.5% of employees currently operating a flexible working pattern, only 43% do so for childcare reasons. One of these employees, Lorraine McCartan, says

“I took six months’ maternity leave from March to September 2005 and an additional six months’ unpaid leave. Before returning to work I requested a reduction of my working hours and suggested the possibility of working a three-day week. This was completed through emails without any formal meeting. Asidua approved this and also gave me the option of changing these hours if I felt it necessary upon returning to work and also working the reduced hours over a flexible pattern e.g. working five half days instead of three full days.

Since returning to work I have been working Monday to Wednesday but on occasions have changed a working day to suit doctor’s appointments, etc., without having to take annual leave. Also, Asidua have occasionally requested that I work different days e.g. to cater for training courses.”

This flexible approach ensures a win-win scenario for both Asidua and its employees, as both sides are willing to facilitate requests for changes in working patterns in line with need.

Considering a request – reaching a decision

Once the employer and the employee have discussed the request, **the employer must notify the employee of the decision in writing**. Notification must take place **within 14 days** following the date of the meeting. This section describes the steps that need to be taken whether the application has been accepted, remains unresolved or has been rejected. An application may only be refused where the employer has a **clear business reason** for doing so. Acceptable business reasons are listed later in this section.

Key points to note when reaching a decision

- *The employer must inform the employee of their decision in writing within 14 days after the day of the meeting.*

If a request is accepted, the notification must:

- *include a **description of the new working pattern**;*
- *state **the date from which the new working pattern is to take effect**;*
and
- *be **dated**.*

If a request is rejected, the notification must:

- *state the **business ground(s)** for refusing the application;*
- *provide a **sufficient explanation** as to why the business ground or grounds for refusal applies or apply in the circumstances;*
- *provide **details of the employee's right to appeal**; and*
- *be **dated**.*

Accepting an application

When accepting a request the employer must write to the employee:

- *detailing the new **working pattern**;*
- *stating the **date on which it will start**; and*
- *ensuring the notice is **dated**.*

[Form FW \(B\): Application acceptance form](#) can 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 or time-limited period has been agreed, this should also be detailed in the written notice. When implementing the new working pattern, other factors that the employer should bear in mind are detailed below.

How to action an accepted request

- *Check whether you need to inform your personnel or HR section, if appropriate, 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 might be particularly relevant where the employee is to work from home.*
- *Consider who else you need to inform, including other colleagues.*

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

If the employer needs more time to come to a decision, **they must obtain the agreement of their employee to an extension to the 14 days in which to inform them of the decision following the meeting.** In these circumstances, the proposal for an extension is likely to be in the employee's interests and the employee should be open to such requests. For example, an extension will be helpful where, following the meeting, the employer is willing to agree to the request in principle but needs more time to look into certain aspects of the proposed new working pattern. This could occur where an alternative working pattern was identified during the meeting. In such circumstances, the employer will need to agree with the employee an extension of the time limit to deal with the request. This is covered more fully under '[Exceptions to the procedure and withdrawals](#)' beginning on page 31.

Would a trial period help?

Trial periods can help both employees and employers because they provide an opportunity – without commitment – to test a particular working pattern to see if it works out to the satisfaction of both. An employee may, for example, be concerned about making what will be a permanent change to his or her contract of employment, while the employer might have concerns about the potential impact of the proposed change in the employee's working pattern on the business. A trial period of, for example, 12 weeks will give both the employee and the employer a chance to find out whether the chosen pattern of working will really work out well in practice.

How would a trial period work in practice?

Trial periods can potentially happen at two stages before a formal agreement is reached:

- *Firstly, the employer could give informal agreement to a trial before a formal flexible working request has been made by the employee; if this happened, the formal procedure would still be available to the employee if they wished to use it at some stage in the future.*

- *Secondly, if a formal application is made, an extension of time for the employer to make a decision (see [‘Exceptions to the procedure and withdrawals’](#)) could be agreed and the trial period could happen before a final agreement takes place; in this case the rest of the formal procedure would still be available to the employee.*

Would a temporary period of working flexibly be appropriate?

In some circumstances, particularly where caring for an adult is involved, a permanent change to an employee’s contract of employment may not be the best solution for him or her. Where, for example, an employee suddenly becomes the carer of an adult with a terminal illness, the employer might consider that a temporary period of flexible working, agreed informally outside the formal procedure, might be appropriate. Alternatively, the employer and employee might agree to a time-limited change after which they would revert back to the original pattern.

An informal temporary arrangement might also be more appropriate where the demands on an employee’s time are unpredictable, for example if caring for someone with a fluctuating condition like Parkinson’s Disease.

Declining an application

There will always be circumstances where, due to the needs of the business, the employer feels they are unable to accept a request.

[Form FW\(C\): Application rejection form](#) is provided for refusing the request. In all such circumstances, the employer must, in writing:

- *state which of the **listed business ground(s) apply** and have led the employer to reject the request;*
- *provide an **explanation** of why the business reasons apply in the circumstances;*
- *set out the **appeal procedure**; and*
- *ensure the written notice is **dated**.*

Business grounds for refusing a request

An application can be refused only where there is a clear business reason. The **only** business ground(s) on which an employer can refuse an application are listed below. (It is possible to justify the refusal on the basis of one or more business ground(s).)

- *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.*

How should the refusal be explained?

In addition to providing a specific business ground or grounds, the employer must include an explanation about **why the business ground(s) applies or apply** in the circumstances. Experience shows that an employee who understands why a business reason is relevant will accept the outcome and be satisfied that their application has been considered seriously, despite being disappointed that their application has been refused. It also shows that the reverse is true, particularly if the explanation is not sufficient to help the employee understand the reasons for the rejection.

The explanation should include the key facts about why a business ground applies. These should be accurate and clearly relevant to the business ground. To prevent any uncertainty, the explanation should avoid the use of unfamiliar jargon and should be written in a way that is easy to understand.

An explanation of around two paragraphs will usually be sufficient, although the actual length of explanation necessary to demonstrate why the business ground applies will differ depending on each individual case. It is not a requirement for the employer to provide a lengthy and complex explanation looking to cover each argument in fine detail, nor should the employee expect this. The aim is for the employer to explain to the employee, in terms that are relevant, why the requested working pattern cannot be accepted as a result of the business ground applying in the circumstances. If the argument does not look convincing to the employer it is unlikely to look convincing to the applicant. This is a vital stage in the constructive dialogue that maintains a good relationship between both parties.

How to ensure that the explanation accompanying the business grounds is sufficient

Double check that the explanation:

- *says why the business ground is relevant and why the request cannot be accepted;*
- *is easy to understand and avoids the use of unfamiliar jargon;*
- *includes relevant and accurate facts;*
- *is not overly complex or unnecessarily long.*

An example might be a manager in a small firm manufacturing curtains who receives a request from an employee not to work Thursdays. The manager rejects the request, as the weekly fabric delivery is received on Thursday, and preparations begin for the following day's despatch of customer orders. The explanation might say:

I am sorry that I cannot grant your request to change the days that you work, but to allow you not to work on a Thursday would have a detrimental effect on the performance of the business.

Thursday is our busiest day of the week, when all staff are required to ensure that the machinists can continue making curtains while stock is received, and finished curtains are packaged ready to be despatched the following morning. You are aware that on a Thursday morning we receive our weekly delivery of fabric. This requires the involvement of all staff to help move the material from the delivery bay into the storeroom, before the newly made curtains can be prepared for despatch the following morning.

As I indicated when we met to discuss the application, if you decide to change the day you would prefer not to work to one earlier in the week, then I would be happy to reconsider your application.

Further examples of appropriate explanations can be found in [Annex A](#).

Any facts quoted in the explanation must be accurate. It is not a necessity for the employer to provide the detail in the explanation, but they should ensure that they are able to back up any facts should they subsequently be disputed. A decision based on incorrect facts to reject an application would provide an employee with a basis to make a complaint to an industrial tribunal.

Note

Under the flexible working legislation, a tribunal does not have the power to question the employer's business reasons for declining a request nor is it allowed to consider whether or not the employee acted fairly or reasonably. However, a tribunal will want to see evidence of any facts relied upon to reject the application and that the employer has provided the employee with a sufficient explanation as to why the business ground(s) applies or apply to the application.

(If a flexible working tribunal case includes another element, particularly a claim under the Sex Discrimination (Northern Ireland) Order, a tribunal is able to re-examine the business grounds.)

The employee in the above example might at appeal argue they can recall instances of when curtains have been despatched at the beginning of the

week. In such circumstances the employer will need to address this during the appeal, for example:

During our discussion of your appeal yesterday you said you could recall an occasion last month when the curtains were despatched on a Monday rather than on a Friday. You felt that it was therefore unfair of me to base my decision on the fact that everyone had to be in on a Thursday to prepare the newly made curtains for despatch the following morning.

I explained that you were absolutely correct about the delayed despatch last month, which resulted from the unusual occurrence of the delivery lorry breaking down. But, from the record book that I showed you it was clear this was the only occasion during the past six months when the curtains were not despatched on a Friday.

Further information on when an employee may have a right to pursue their application, including making an appeal or complaint to an industrial tribunal, can be found under [‘Unresolved applications’](#) and [‘How the right works with other legislation’](#).

What happens at the appeal meeting?

It will never be possible for an employer to agree to a new working pattern in every circumstance due to the business needs of the organisation. In such situations, the reasons why the request cannot be accepted should be clear to the employee from the notice of the refusal, which must include the business reason and an explanation. However, there will be circumstances where the employee may believe that their request has not been properly considered and may want to appeal. The appeal procedure is summarised below.

Appealing the decision

- *An employee has **14 days** to appeal in writing after the date of notification of the employer’s decision.*
- *If an appeal is made, the employer must arrange an appeal meeting to take place within **14 days** after receiving notice of the appeal.*
- *The employee can be **accompanied** to the appeal meeting.*
- *The employer must inform the employee of the outcome of the appeal in writing **within 14 days** after the date of the meeting.*

An employee must make their appeal in writing within **14 days** after the date they receive written notice that their request has been rejected. When appealing against a refused request an employee will have to **set out the grounds for making the appeal** and **ensure that the appeal is dated**.

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

The employer must arrange the appeal meeting within **14 days** after receiving notification that the employee wishes to appeal. The employee can be **accompanied by one companion**. This is on the same basis as the meeting to discuss the request and is detailed in '[Considering an application](#)' starting on page 17. There are no restrictions on who should hold the appeal meeting. Experience shows that an employee is far more likely to feel that their appeal has been taken seriously when **a manager senior to the one who originally considered the application** hears it. (This is not always necessary, nor possible, for many small businesses.)

The employer must inform the employee of the outcome of the appeal in writing within **14 days** after the date of the meeting. [Form FW \(E\): Appeal Reply Form](#) has been provided 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**;*
and
- *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; and*
- *be **dated**.*

A written notice of the appeal outcome constitutes the employer's final decision and is effectively the end of the formal procedure within the workplace.

Example: appeal

Andrea, a telephonist, asks her line manager in a large call centre if she can work three evenings a week from 5pm to 9pm rather than five evenings a week. After the initial meeting, the line manager rejects Andrea's request on the grounds that it would not be possible to re-allocate work amongst existing

staff and due to the difficulty of recruiting new staff to cover those shifts. However, at the appeal meeting, Andrea informs her line manager that a colleague currently on maternity leave wishes to return for a couple of evenings a week. She adds that she has spoken to the woman and they would both be willing to undertake a job share. The employer explores the proposal with the other employee and subsequently agrees to accept the request.

What happens when the appeal meeting is missed?

The circumstance where the employee misses the appeal meeting should be handled in the same way as for an employee who misses the meeting to discuss the application, as described in the section '[Considering an application](#)'. An employee who fails to attend the meeting without notification should contact the employer as soon as possible to explain their absence. The employer should rearrange the meeting at the next mutually convenient time. An employer whose employee fails to attend a meeting more than once and does not provide a reasonable explanation may treat the application as having been withdrawn. In such circumstances, the employer 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 '[Exceptions to the procedure and withdrawals](#)' below.

Exceptions to the procedure and withdrawals

In the majority of cases, requests for flexible working will follow the procedure as laid out earlier in the guide. However, there will be occasions where it is necessary to deviate from this to help reach a suitable outcome. This section outlines the potential exceptions to the procedure and when an application may be taken as withdrawn. In all circumstances it is essential that a written record is made.

Extension of time limits

There are two circumstances where the time limits as laid out earlier in the guide can be extended.

Through agreement by the employer and the employee

There will be exceptional occasions when it is not possible to complete a particular part of the procedure within the specified time limit. For example, it might be that the employer requires extra time to speak to another employee, who is on holiday, about whether they could work the hours left uncovered by the employee's requested working pattern. Or the employee themselves may be going on leave and as such will not be able to attend a meeting within the time limit. **Such extensions of time limits can only take place if they are agreed by both the employer and the employee.** The employer must make a written record of the agreement. [Form FW \(F\): Extension of Time Limit](#) can be used for this purpose.

The written record of the agreement must:

- *specify **what period** the extension relates to;*
- *specify the **date** on which the extension is to end;*
- *be **dated**; and*
- *be **sent to the employee.***

Through the employer's absence

Where an application is sent to the manager who will deal with the application, and the manager is absent from work due to leave or illness, an **automatic** extension applies. The period that the employer has to arrange the meeting will commence **either on the day of the manager's return or 28 days after the application is made**, whichever is sooner. On a manager's return it will be good practice to acknowledge receipt of the application so the employee is aware that the extension has applied and knows the period within which they can expect to meet their employer to discuss the request.

There are no other circumstances where an automatic extension to any period applies.

Example: extension of time limit

Mark, a stylist in a small hairdressing salon, asks to change the number of afternoons he works from five to three in order to care for his sister, who has a long-term illness. Marie, the manager of the salon, would like to accept Mark's request, and is almost certain that another stylist would be willing to cover the hours, as she had recently asked about taking on more work. However, that stylist is currently on holiday and Marie would like to double-check her availability before officially accepting Mark's request.

Marie therefore completes the [Form FW \(F\): Extension of Time Limit](#) asking Mark to agree to an extension of fourteen days until the other stylist returns from annual leave.

When can an application be treated as withdrawn?

There will also be occasions when an application is **treated as withdrawn**. In all circumstances a **written record** must be made. [Form FW \(G\): Notice of Withdrawal](#) has been provided for this purpose.

There are three circumstances in which an application may be treated as withdrawn.

The employee decides to withdraw the application

An employee who withdraws their application will not be eligible to make another application for **12 months** from the date their application was made. This will therefore be a factor the employee will want to bear in mind when considering withdrawing their application. Where the employee decides to withdraw their application, they should notify their employer as soon as possible and in writing. This is essential to avoid any misunderstandings and [Form FW \(G\): Notice of Withdrawal](#) can be used for this purpose.

An employer 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 employer does not receive confirmation from the employee, the employer 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 employer may treat the application as withdrawn. It is therefore in the employee's best interests to **inform their employer as soon as possible if, and why, they are not able to attend a meeting**. For example, if an employee misses a meeting for a reason such as their child falling ill and informs the employer straight away, the employer should treat this sympathetically. However, if an employee simply misses a meeting and does not explain why, then they can expect their absence to be treated less sympathetically. The employer 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 employer with the required information

There may be occasions where the employer 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 the employer with the information, then the employer can treat the application as withdrawn. For example, an office worker may request to work from home three days a week and the employer may wish to ensure their working space meets health and safety standards. If the employee refuses to comply with this, the employer may treat the application as withdrawn.

What to do if you suspect an employee of abusing the right to request?

Most employers recognise that it is important to deal sensitively with an employee's personal relationships and possible caring role: being a carer of an adult, for example, can be very stressful and carers are often not inclined to talk openly about their caring role.

Employers who have reason to think that an employee is abusing the right to request, for example, if they don't have a caring responsibility but are fraudulently claiming that they are eligible, should deal with the situation according to their normal disciplinary procedures as with any right claimed by an employee. If this were to happen, the question of evidence would be important because if the employee could, but fails to, produce any evidence in support of their assertion of their right to apply under the procedure, as with any other claim, this could be a factor affecting the employer's decision to apply a disciplinary sanction in respect of the employee and could support the employer's case should there later be a dispute.

However, employers should be aware that employees have a statutory right not to be subjected to detriment or dismissed for making (or proposing to make) an application for flexible working under the statutory procedure, for exercising (or proposing to exercise) a right under the statutory procedure, for bringing proceedings against the employer or alleging the existence of any circumstance which would constitute grounds for bringing proceedings under the statutory procedure. See '[Protection from detriment and dismissal](#)' on page 41.

Unresolved applications

Most applications will conclude with a satisfactory outcome either when the employer gives their decision or at appeal. But there will always be some cases, even after an appeal, where an employee feels their application has not been dealt with to their satisfaction. The employee may want to involve a third party or, in specific circumstances, be thinking of making a complaint to an industrial tribunal. This section outlines the options available.

How to deal with an unresolved application

- through an informal discussion;
- the employer's grievance procedure;
- third party involvement, e.g. a [Labour Relations Agency](#) official, union representative;
- in specific circumstances, making a formal complaint to an [industrial tribunal](#) or the Labour Relations Agency Arbitration Scheme.

Resolving disputes in the workplace

Where there is a dispute about a workplace issue involving rights and responsibilities those involved should try to sort out the matter between themselves. Whether the employee is complaining (raising a grievance) about something the employer has done or the employer has concerns about the employee's work or behaviour (a disciplinary matter) it is generally a good idea to talk the matter over informally and try to get it resolved as soon as possible. If this approach fails it is normal to involve line management and a union representative (where there is one) to explore potential solutions.

If the dispute goes beyond this point without being resolved, employers and employees are generally required to follow a minimum formal process to ensure that workplace disputes are properly discussed. Even at this stage it can be useful to seek outside assistance or advice from the Labour Relations Agency (LRA). The LRA may be able to help resolve the dispute.

If the dispute continues and the employee or the employer fails to follow the process this could influence the outcome of a subsequent claim to an industrial tribunal. Tribunals have power in most situations to take action where the procedures have not been followed. For example – depending on the circumstances – they can reduce or increase an award, rule automatically against the employer, or refuse to accept the claim.

Detailed guidance about the procedures including when they do not apply and when they are treated as having been followed is available on the Departmental website: www.delni.gov.uk/resolvingdisputes. Further advice including advice on employment rights and responsibilities generally, can be obtained from the LRA by contacting their helpline: 028 9032 1442.

Speak to the employer informally

In the first instance it is likely to be in all parties' interests to try to resolve the problem within the workplace. Evidence shows that the quickest and most effective way for an employee to resolve an issue is to speak with their employer.

It may be that there has been a simple misunderstanding of the flexible working procedure, which the employee believes affected the employer's decision. If the employee feels able to discuss this with the manager, the issue may be resolved without the need to resort to more formal mechanisms. For example, where a time limit has not been met in the first instance, it may be far more effective to speak to the manager and inform them that they need to reply as soon as possible due to their breach, rather than seek to pursue the matter to an industrial tribunal.

Employer's own grievance procedure

Employers should have a grievance procedure which the employee can use to attempt to resolve their complaint. Again, this has the advantages of being far quicker than involving external parties and allows the issue to be resolved at the workplace. In addition, if the employee is thinking about making a complaint to an industrial tribunal about their flexible working application, then (as noted above) it is usually a necessary first step to follow the statutory minimum dispute resolution procedures which are designed to help employees and employers resolve workplace disputes. More information on the statutory procedures can be obtained in the form of guidance from www.delni.gov.uk/resolvingdisputes.

Third party conciliation/mediation

Despite the best efforts of both parties there will be cases where it may not be possible to resolve a disputed request at the workplace. In such circumstances, both parties can agree to try to resolve the issue through the use of an external third party mediator or conciliator. This might be someone from the Labour Relations Agency, a union representative, or another person with appropriate expertise. The purpose is to try to resolve the case in an informal fashion instead of immediately resorting to the more formal route of external arbitration or making a complaint to an industrial tribunal.

The third party will tend to contact the employer and employee and attempt to resolve the problem through discussion. They will talk through the issues, outline the law relating to the case where necessary and generally help parties become aware of the options open to them.

Parties who are considering going to a tribunal should bear in mind, however, that there are time limits for submitting a claim. The ordinary time limit in flexible working cases is three months, but an automatic extension of three months (extending the overall time limit to six months) is usually granted where the parties have followed the statutory minimum workplace dispute resolution procedures. More information in the procedures, in the form of

guidance for employees and employers, can be obtained from www.delni.gov.uk/resolvingdisputes.

External parties providing the remedy

If a dispute cannot be resolved between the parties, in specific circumstances the case can be heard by an external body which provides the remedy to the disagreement: either an industrial tribunal or through the Labour Relations Agency Arbitration Scheme.

In what circumstances can a formal complaint be made?

An employee may make a complaint to an industrial tribunal or to the LRA Arbitration Scheme where:

- *the employer has failed to follow the procedure properly; or*
- *the decision by the employer to reject an application was based on incorrect facts.*

Although a complaint can be made if the reason given by the employer for refusal is not one of the specified business grounds, **an employee has no right to make a complaint where they simply disagree with the business grounds provided by the employer for declining a request**, and neither has the industrial tribunal/LRA binding arbitration powers to question the employer's business reasons, although it can examine the facts on which the business reason is based to see if they are correct.

A breach of the procedure may, for example, be a failure to hold the meeting to discuss the application within the timescale (where no extension has been agreed) or where the employer fails to provide all the necessary information in their notice to the employee of their decision. Missing a deadline as laid out in the procedure by one day will technically constitute a breach, although in the vast majority of cases where this is simply an accident the problem should be resolved at the workplace.

Equally, it is important that the employer ensures that facts provided to explain why a business ground applies are correct. While a tribunal or arbitrator has no power to question the employer's actual business grounds for declining a request, any rejection based on incorrect facts will provide a basis for making a complaint.

Where an employee suspects that a fact given by the employer is incorrect they must first raise this at appeal. For example, an employee may appeal by arguing against the employer's grounds that there is no-one else to provide cover in their absence which, if not addressed by the employer at appeal, could be a basis for making a complaint to a tribunal or arbitrator.

Usually, then, an employee can only make a complaint to an industrial tribunal if they have received notification that their application has been rejected by the employer at the appeal stage. The exceptions to this are where there are

breaches of procedure relating to deadlines for meetings or the giving of notice of a decision.

If an employee decides to ask for their case to be heard by a tribunal, it may also be possible to bring the case under the Sex Discrimination (Northern Ireland) Order 1976. The Order prohibits direct and indirect sex discrimination. In dealing with requests for flexible working, indirect discrimination is more likely to occur. Further information is available under the heading '[How the right works with other legislation](#)' (page 43).

Re-examination of the business grounds

It is worth noting that if a case is brought jointly with other legislation, e.g. the Sex Discrimination (Northern Ireland) Order, a tribunal may seek to re-examine the business grounds. This is due to the fact that other legislation requires business cases to be objectively justified or to be within a range of reasonable responses. The fact that an employer has sought to establish a business case, and has held meetings under the duty to consider, should help, for example, in establishing whether the decision could be objectively justified.

Remedies and compensation

An industrial tribunal or LRA binding arbitration, which finds in favour of the employee, will be able to order the employer to:

- *reconsider an application by following the procedure correctly; and/or*
- *pay an award to the employee.*

The level of compensation will be an amount that the LRA or the industrial tribunal feels to be just and equitable in all the circumstances, limited to a maximum amount. The maximum level is eight weeks' pay. The week's pay itself will be limited to the maximum provided under Article 23(1) of the Employment Rights (Northern Ireland) Order 1996. This is reviewed annually and, at the time of writing, stands at £380.

In addition, where an employer is found to have prevented the employee from being accompanied either at the meeting to discuss the application or appeal meeting they may make a separate award of up to two weeks' pay. Again, the week's pay is capped, as set out above.

What is an industrial tribunal?

Taking a complaint to an industrial tribunal is always a last resort. A tribunal is a formal, legal, public hearing and generally has three members. The 'chairman' is legally qualified and there are two lay members drawn from people dealing with work-related problems.

A complaint to an industrial tribunal cannot usually be made unless the employee has at least written a letter setting out the problem ("grievance") to the employer and waited 28 days. (However, if the employee is disciplined or

dismissed, then it is the employer's duty to write to the employee.) The employee should also meet the employer to discuss the problem and, if necessary, attend an appeal meeting. These are the three basic steps which make up the minimum statutory workplace dispute resolution procedure that employees and employers are generally required to follow unless there are exceptional circumstances. If the employee has a grievance and doesn't follow at least the first step, a tribunal will not accept the employee's claim unless there are exceptional circumstances. More information and guidance on the statutory minimum dispute resolution procedures can be found at www.delni.gov.uk/resolvingdisputes.

There is a time limit for making a complaint to a tribunal regarding a breach of procedure, a detriment or dismissal, or the employer's failure to act. Normally, this is three months but this period is automatically extended by a further three months provided the employee writes to the employer setting out the nature of the complaint within the initial three months (in the case of a grievance) or provided that the employee believes that a disciplinary procedure is ongoing (in the case of disciplinary action or dismissal). See the guidance material on the website mentioned above for more on time limits.

An extension to this time limit can also be granted in exceptional circumstances, where the industrial tribunal is satisfied that it was not reasonably practicable for the complaint to have been made earlier.

An employee who wishes to make a complaint to an industrial tribunal should obtain a copy of the explanatory booklet **Procedures for those concerned in industrial tribunal and Fair Employment Tribunal proceedings** and should complete a copy of the claim form **ET1** which can be completed online or can be obtained in hard copy. The booklet, which explains the procedure and gives the address of [the Office of Industrial Tribunals and the Fair Employment Tribunal \(OITFET\)](#), is available from your local Jobs and Benefits office or Citizens Advice Bureau. You can also make a claim online from the OITFET website (www.employmenttribunalsni.co.uk).

When OITFET receives the completed form, it will send a copy to a conciliator at the Labour Relations Agency who will try to help the two sides to reach a settlement of the complaint.

If conciliation is not possible or fails, the industrial tribunal will hear the case and both parties should attend the hearing. They may claim travelling expenses and other expenses within certain limits.

What is the LRA Arbitration Scheme for flexible working?

The LRA Arbitration Scheme came into operation on 25 May 2006. It provides employees with an alternative to having their complaint settled at tribunal, as some people find industrial tribunals have become too legalistic, costly and time-consuming.

Use of the Scheme is entirely voluntary and both the employer and the employee must agree to the dispute going to arbitration. Where both parties

agree to use the Scheme, the decision of the arbitrator will be binding and the employee will waive their right to go to an industrial tribunal. The basis for making a complaint to the Scheme, and potential remedies available, including compensation, are exactly the same as they are at an industrial tribunal. For more information on the Scheme please contact the LRA on (028) 9032 1442 and ask to speak to someone about arbitration.

The following table provides a breakdown of the main differences between the LRA Arbitration Scheme and an industrial tribunal hearing:

Differences between an industrial tribunal hearing and the LRA Arbitration Scheme

<i>Industrial Tribunal</i>	<i>Arbitration Scheme</i>
<ul style="list-style-type: none"> Likely to have to wait several weeks and possibly months before the case can be heard. 	<ul style="list-style-type: none"> Hearing can be arranged within a few weeks.
<ul style="list-style-type: none"> Public hearing held at an industrial tribunal office or local courthouse. 	<ul style="list-style-type: none"> Private hearing generally held at the offices of the Labour Relations Agency.
<ul style="list-style-type: none"> Hearing normally completed within a day. 	<ul style="list-style-type: none"> Hearing normally completed within half a day.
<ul style="list-style-type: none"> Heard by a legally qualified Chair usually along with a panel of two other members. 	<ul style="list-style-type: none"> Heard by a single LRA arbitrator who is experienced in employment relations and flexible working.
<ul style="list-style-type: none"> Witnesses cross-examined under oath as in a courtroom. 	<ul style="list-style-type: none"> Asked questions informally by the arbitrator.
<ul style="list-style-type: none"> Legal representatives act for the parties in a large number of cases. 	<ul style="list-style-type: none"> Legal representatives may be present but are given no special status.

<i>Industrial Tribunal</i>	<i>Arbitration Scheme</i>
<ul style="list-style-type: none"> • <i>If the claim is upheld the remedies may be re-consideration or compensation.</i> 	<ul style="list-style-type: none"> • <i>Same as tribunal – the awards are based on same criteria and reflect the same levels of payment.</i>
<ul style="list-style-type: none"> • <i>Hearings and results are public.</i> 	<ul style="list-style-type: none"> • <i>Hearings and results are confidential.</i>
<ul style="list-style-type: none"> • <i>Can jointly hear other claims (e.g. Sex Discrimination (Northern Ireland) Order 1976).</i> 	<ul style="list-style-type: none"> • <i>Not able to hear other claims.</i>

Protection from detriment and dismissal

Employees are protected from suffering a detriment or dismissal for making an application under the right to request flexible working. Employees who believe they have suffered detriment can complain to an industrial tribunal (see '[Unresolved applications](#)' on page 34) regardless of their length of service with their employer (provided they have already followed the statutory grievance procedure). In most cases, employees will be able to make a complaint to an industrial tribunal if they are dismissed during the procedure of making an application.

What protection is there against detriment for requesting flexible working?

An employee is protected against being subjected to detriment by any act or deliberate failure to act by their employer because the employee:

- *made (or proposed to make) an application to work flexibly under the right;*
- *exercised (or proposed to exercise) a right under the procedure;*
- *have made (or have stated their intent to make) a complaint to a tribunal in respect of their application to work flexibly;*
- *exercised (or sought to exercise) their right to be accompanied or have accompanied another employee.*

Detriment can cover a wide range of forms of unfair treatment, such as denial of promotion, facilities or training opportunities which the employer would otherwise have offered or made available. Employees who suffer unfair treatment at work for the above reasons may make a complaint to an industrial tribunal.

In what circumstances is an employee protected from dismissal under the rights?

Dismissal means the termination of employment by the employer, with or without notice. It could also include constructive dismissal, where the employee has resigned because the employer has made a substantial breach of the contract of employment indicating that he or she intends no longer to be bound by it. Or, it could include the expiry of a fixed-term contract without its renewal or the end of a contract that expires when a specific task has been completed.

It is unlawful for an employer to dismiss an employee because the employee:

- *made (or proposed to make) an application to work flexibly under the right.*
- *exercised (or proposed to exercise) a right under the procedure.*

- *has made (or has stated their intent to make) a complaint to a tribunal in respect of their application to work flexibly.*
- *exercised (or sought to exercise) their right to be accompanied or have accompanied another employee.*

This protection against dismissal also applies if an employee is selected for redundancy on these grounds.

How the right works with other legislation

The right to request is designed to enable employers and employees to find flexible working solutions that suit them both. The right encourages dialogue and allows a lot of flexibility in how to consider a request whilst requiring employers to follow a basic procedure. Failure to follow the procedure or basing a refusal on incorrect facts will provide the employee with a basis to take their case to an industrial tribunal. Other legislation that employers should be aware of when considering requests is outlined below.

If an employee feels that a disputed request also breaches other legislation, it will be possible for both matters to be heard jointly at an industrial tribunal. It will not be possible for these cases to be dealt with under the LRA Arbitration Scheme. This section outlines how the various areas of legislation operate.

Discrimination legislation

Sex discrimination

The Sex Discrimination (Northern Ireland) Order 1976 prohibits direct and indirect discrimination. **Direct discrimination** occurs where a woman or a man is treated less favourably than a person of the opposite sex in comparable circumstances because of their sex. Types of sex discrimination include sexual harassment and treating a woman adversely because she is pregnant (in which case there is no need for a male comparator).

In dealing with requests for flexible working **indirect discrimination** is more likely to occur. This might be an issue, for example, in the case of a woman returning from maternity leave and wishing to work part-time. To establish an indirect discrimination claim, an employee will need to show that the action being complained about:

- *is such that it would be to the detriment of a considerably larger proportion of people of one sex than of the other;*
- *cannot be shown by the employer to be justifiable irrespective of the sex of the person to whom it is applied; and*
- *is to the employee's detriment.*

The Equality Commission for Northern Ireland (www.equalityni.org) can provide detailed information on sex discrimination.

Other forms of discrimination

Employees can also make a complaint to an industrial tribunal if they believe they have been discriminated against on the basis of race, disability, age or sexual orientation. They can take a complaint to the Fair Employment Tribunal for Northern Ireland if they believe that they have been discriminated against on the basis of their religious belief or political opinion.

The Equality Commission for Northern Ireland (www.equalityni.org) can provide detailed information on discrimination.

Part-time workers

The Part-time Workers (Prevention of Less Favourable Treatment) Regulations (Northern Ireland) 2000 make it unlawful to treat part-timers less favourably in their contractual terms and conditions than comparable full-timers.

This means that when granting a request for flexible working that involves a reduction in hours, employers should be aware that their employees are still entitled to the same consideration in respect of training, promotion and financial issues. Contact the Labour Relations Agency on 028 9032 1442 or 028 7126 9639 to get advice.

Annex A: What is sufficient explanation?

Where there is a recognised business ground that prevents an employer from being able to accept an employee's application to work flexibly, the employer must include, as part of their written decision provided to the employee, an explanation as to why that ground applies in the circumstances. What constitutes an appropriate level of explanation is set out above, under '[How should the refusal be explained?](#)' on page 26. Detailed below are examples of the explanations which might be given in different circumstances.

Example 1

Sasha, a systems administrator for a small IT company applies to change from working weekends to working her existing days off during the week. Sasha has recently participated in an extensive training programme to undertake the role. The systems administrator role includes undertaking maintenance of the computer system to ensure that all IT equipment is working fully during trading hours.

Her manager discusses the request with Sasha but is unable to agree to a change to the days when Sasha is required to work. When stating the business grounds she includes **inability to recruit additional staff** and the **burden of additional costs** within the explanation about why the grounds apply in the circumstances.

The role of the weekend administrator is vital to the running of the company. It is essential that the IT equipment is operational from the moment staff arrive on a Monday morning and maintenance occurs out of our core hours. You are aware of the difficulties that we have had during the past year of filling the systems administrator posts. The vacancy was advertised twice (at the JobCentre and in trade press) and on both occasions no suitable applicant was found.

You subsequently expressed an interest and agreed to receive the necessary training. We discussed at the time that a necessary part of the job was to fulfil the weekend systems administrator's duties. It was on this basis that I made the case to our board to invest substantially more on training this year than was planned and, specifically, to fund your course. The training programme was extensive and completed only last month. As such, we do not presently have the budget or resources to train anyone else. When we met to discuss your application I agreed also to speak to John, our other administrator, to explore whether he can change his hours but he is unable to help. I am afraid, therefore, that on this occasion I am unable to amend your working hours. I have attached details of the appeal procedure should you wish to appeal.

Example 2

Colin, a pharmacist, makes an application to the owner of the chemist's shop in which he works. He wants to amend his hours so that he can drop off and collect his child from school. At the meeting to discuss the request the owner explains that it is a legal requirement for a pharmacist to be on duty at all times. In his written decision the employer states that due to the business ground of an inability to reorganise work amongst existing staff he is unable to accept the request.

...because we handle prescriptions we are contracted by the NHS to provide a dispensing service between 8:30 and 5:30 each day. Despite both dispensers being prepared to cover your absence, by law I must have a qualified pharmacist on duty between these times. The only other weekday pharmacist is Sam who works part-time over the busy lunch period and does not want to change his hours of work.

You suggested during our discussion that I could make use of locum pharmacists to cover the periods when you would be absent, in the same way that I use locum pharmacists during periods of leave. I explored this with the locum agency and, as I speculated during our discussion, they confirmed that it is unlikely that a locum pharmacist would be willing to work for an hour in the morning and at the end of the day. As such, the agency said that they could not guarantee cover.

I regret therefore that I cannot agree to the work pattern set out in your application. You do have a right to appeal this decision which is set out below.

Example 3

Emma, an employee at a fish and chip shop, applies to work on a Monday and Tuesday instead of Thursday and Friday to account for a change in her disabled aunt's care arrangements. The employer provides **insufficiency of work** during the period the employee proposes to work as the business ground for not being able to agree to the request.

...as you know, Thursday and Friday are two of our busiest days of the week. Only Saturdays are busier. It is during this busy time when I need extra people to help out in the shop. However, at the beginning of the week, the shop is relatively quiet and, as such, I do not need extra staff at this time.

I am therefore afraid that I am unable to agree to your request. You do have a right to appeal this decision and details are attached.

Annex B: Additional rights and sources of information

Working parents

Maternity leave and pay

Expectant mothers generally have the right to 26 weeks' ordinary maternity leave and 26 weeks' additional maternity leave. Statutory Maternity Pay (SMP) is paid at 90% of average weekly earnings for the first six weeks of ordinary maternity leave and at the lesser of £124.88 per week (at time of writing) or 90% of average weekly earnings for an additional 33 weeks. Mothers who don't qualify for SMP may be able to claim Maternity Allowance (MA). For more information, see '[Maternity rights - a guide for employers and employees](#)' (ER 16).

Paid paternity leave

Eligible employees have the right to take up to two weeks' leave, paid at a weekly rate of £124.88 (at time of writing) to care for the new baby and support the mother. For further information, see '[Rights to paternity leave and pay](#)' (ER 34).

Adoption leave and pay

Adoption leave is available to employees, provided certain conditions are met, for up to 52 weeks around the time the child is placed with them for adoption. Where the child is expected to be placed for adoption, Statutory Adoption Pay (SAP) is payable during the first 39 weeks of this period at the lesser of £124.88 per week (at time of writing) or 90% of average weekly earnings. The adopter's spouse, partner or civil partner has the right to paid paternity leave providing they have worked continuously for their employer for 26 weeks ending with the week in which the adopter is notified of being matched with a child. Further information is available in the booklet '[Adoptive parents: a guide for employers and employees](#)' (ER 35).

Parental leave

This gives employees who have completed one year's continuous service with their employer the right to up to thirteen weeks' unpaid parental leave to care for their child between the birth and the child's fifth birthday. In cases of adoption, the leave can be taken up to five years from the placement of the child, or up to the child's 18th birthday if that is sooner. Parents of disabled children can take up to 18 weeks' parental leave up to the child's 18th birthday. Further information is available in '[Parental leave: a guide for employers and employees](#)' (ER 25).

For advice on claiming social security benefits during parental leave, employees should contact their nearest Jobs and Benefits office / Social Security Office or visit the Social Security Agency website at www.dsdni.gov.uk/ssa.

Time off for dependants

All employees have the right to take a reasonable amount of time off work to deal with an emergency involving a dependant, and not to be dismissed or victimised for doing so. The booklet '[Time off for dependants](#)' (ER 24) provides more detail on this right.

Working carers

Guidance

The '[Complete A-Z for carers](#)', which is published by [the Department of Health, Social Services and Public Safety](#), gives advice on where carers can get information, support and services relevant to them. You can download a copy by going to www.dhsspsni.gov.uk/complete_a_-_z_for_carers.pdf or by contacting DHSSPS (see 'Useful contacts' below).

Useful links to guidance and support available on the internet can be found on the [NI Direct](#) website at www.nidirect.gov.uk/index/caring-for-someone.htm.

Support

[Carers Northern Ireland](#) provides information and support for carers on a range of issues. See below for contact details.

Details of other carers' support groups and voluntary organisations, which have a focus on specific aspects of caring or which provide services to particular geographical areas, are set out in the *Complete A-Z for carers* referred to above.

Useful contacts for carers of children and adults and their employers

Business in the Community

Bridge House
Paulett Avenue
Belfast
BT5 4HD

Tel: 028 9046 0606

Website: www.bitcni.org.uk

Carers Northern Ireland

3rd Floor
Merrion Business Centre
58 Howard Street
BELFAST
BT1 6PJ

Tel: 028 9043 9843

Website: www.carersni.org
www.carersinfo.net

nidirect.gov.uk

This website provides information about rights and responsibilities in employment as well as on a wide range of other issues.

Website: www.nidirect.gov.uk

Employers for Carers

A partnership between Carers UK and major employers who want to help their staff who have caring responsibilities.

Website:

www.carersni.org/SupportUs/Corporatesupport/Supportforyouremployees

Employers for Work-Life Balance

Aims to help UK organisations set in place effective work-life balance strategies.

Tel: 020 7004 7200

Fax: 020 7004 7111

Website: www.employersforwork-lifebalance.org.uk

Parentline

A confidential helpline run by Parentline Plus, providing support to families.

Tel: 0808 800 2222

Website: www.parentlineplus.org.uk

Department of Health, Social Services and Public Safety

Castle Buildings
BELFAST
BT4 3SQ

Tel: 028 9261 0661

Website: www.dhsspsni.gov.uk

Employers for Childcare

87 Main Street
Moirá
BT67 OLH

Tel: 028 9261 0661

Fax: 028 9261 0761

Website:

www.employersforchildcare.org

Opportunity Now

Bridge House
Paulett Avenue
Belfast
BT5 4HD

Tel: 028 9046 0606

Website: www.opportunitynow.org.uk

Child Tax Credit and Working Tax Credit

9 out of 10 families with children are entitled regular payments from the Government known as tax credits.

Tel: 0845 300 3900

Textphone: 0845 300 3909

Website: www.hmrc.gov.uk/taxcredits

Other useful contact details can be found in [Appendix 2](#).

Annex C: Good practice forms

The following pages contain good practice forms for use by employees and employers in making and responding to an application to work flexibly.

FW (A): Flexible Working Application Form**Note to the employee**

You can use this form to make an application to work flexibly under the right provided in law to help eligible employees care for their children or for an adult. Before completing this form, you should first read the guidance booklet '[Flexible working: a guide for employers and employees](#)' (ER 36), which contains information how to make a request.

It may take up to 14 weeks for your employer to consider a request under the right before that request can be implemented. It may take longer where difficulties arise. Please ensure that you submit your application to the appropriate person well in advance of the date you wish the request to take effect.

Provide as much information as you can about your desired working pattern. This will help your employer reach a decision. Complete all the questions as otherwise your application may not be valid. When completing **Sections 3 and 4**, think about what effect your change in working pattern will have both on the work that you do and on your colleagues. Once you have completed the form, you should immediately forward it to your employer (you might want to keep a copy for your own records). Your employer will then have 28 days after the day your application is received in which to arrange a meeting with you to discuss your request. If the request is granted, this will be a permanent change to your terms and conditions unless otherwise agreed.

When completing this form, ensure that you tick all of the REQUIRED boxes. If two options are given and are separated by the word OR, tick either the first or the second box. If a list of options is given, tick or complete the box that applies to you. If you cannot tick the boxes in this way because you don't meet the criteria, then you won't qualify to make a request under the law. If you are not sure whether you meet any of the criteria, information can be found in the '[Eligibility](#)' section of guidance booklet '[Flexible working: a guide for employers and employees](#)' (ER 36).

Please note that even if you don't meet all the legal qualifications, this does not mean that your request may not be considered. You can still approach your employer. Many employers offer flexible working to their staff as good practice.

Note to the employer

This is a formal application under the legal right to apply for flexible working. Employers have a legal duty to consider applications seriously. You have 28 days after the day you received this application in which either to agree to the request or to arrange a meeting with your employee to discuss it. You should confirm receipt of this application using the attached confirmation slip. Forms accompanying guidance booklet '[Flexible working: a guide for employers and employees](#)' (ER 36) can be used to respond to this application.

1 Personal details

Name

Staff or payroll number

Manager's name

National Insurance number

To the employer

I would like to apply to work a flexible working pattern that is different to my current working pattern, under my right provided under Article 112F of the Employment Rights (Northern Ireland) Order 1996. I confirm that I meet each of the eligibility criteria as follows:

I have worked continuously as an employee of the company for the last 26 weeks. (REQUIRED)

I have not made a request to work flexibly under this right during the past 12 months. (REQUIRED)

Date of any previous request made under the right
(dd/mm/yy)

I am making this request to help me care for a person whose relationship to me is described in Part A or B. (REQUIRED)

A PARENTS

If you are making a request for flexible working in respect of a child aged 16 or under or a disabled child under 18, please complete this section, otherwise go to **Part B**.

I have responsibility for the upbringing of a child aged 16 or under.

OR

I have responsibility for the upbringing of a disabled child under 18.

	Mother	Father	Adopter	Guardian / Special guardian [†]	Foster parent [‡]
I am the child's:	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
OR					
I am the partner* of the child's:	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

* partner includes spouse, partner and civil partner

[†] you can also tick this box if a residence order has been made in your favour

[‡] you can also tick this box if you are a private foster carer

B CARERS OF ADULTS

Please complete this section if you are making a request for flexible working in respect of someone aged 18 or over who is:

- your spouse, partner, civil partner or relative, or
- who lives at your address.

I have responsibility for the care of an adult aged 18 or over who lives with me at my address.

OR

I have responsibility for the care of an adult relative aged 18 or over and the adult I care for is related to me in the following way – they are my:

- | | | | |
|------------------|--------------------------|----------------|--------------------------|
| Parent | <input type="checkbox"/> | Brother | <input type="checkbox"/> |
| Adopter | <input type="checkbox"/> | Sister | <input type="checkbox"/> |
| Guardian | <input type="checkbox"/> | Step-brother | <input type="checkbox"/> |
| Special guardian | <input type="checkbox"/> | Step-sister | <input type="checkbox"/> |
| Step-parent | <input type="checkbox"/> | Brother-in-law | <input type="checkbox"/> |
| Parent-in-law | <input type="checkbox"/> | Sister-in-law | <input type="checkbox"/> |
| Child | <input type="checkbox"/> | Uncle | <input type="checkbox"/> |
| Step-child | <input type="checkbox"/> | Aunt | <input type="checkbox"/> |
| Son-in-law | <input type="checkbox"/> | Grandparent | <input type="checkbox"/> |
| Daughter-in-law | <input type="checkbox"/> | | |

Other (please specify – see note)

Note: ‘Half blood’ (e.g. half-brother, half-sister) or adoptive relatives are also covered by the law. Use the ‘Other’ box to describe such a relationship.

2A Describe your current working pattern
(days / hours / times worked)

2B

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



(you may continue on a separate sheet if necessary)

2C

I would like this working pattern to commence from:



3

Impact of the new working pattern

I think this change in my working pattern will affect my employer and colleague(s) as follows



4**Accommodating the new working pattern**

I think the effect on my employer and colleague(s) can be dealt with as follows:

Signature (please print and sign here)**Date**

(dd/mm/yy)

NOW PASS THIS APPLICATION TO YOUR EMPLOYER.

Cut this slip off and return it to your employee in order to confirm your receipt of their application.

Employer's Confirmation of Receipt (to be completed and returned to employee)

Dear

I received your request to change your work pattern on

(dd/mm/yy)

I shall be arranging a meeting to discuss your application within 28 days following this date. In the meantime you might want to consider whether you would like a colleague to accompany you at the meeting.

From

FW (B): Flexible Working Application Acceptance Form**Note to the employer**

You must write, with your decision, to your employee within 14 days following the meeting. This form can be completed by the employer 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. The section entitled '[Points to bear in mind when making an application](#)' in the guidance booklet '[Flexible working: a guide for employers and employees](#)' (ER 36) gives information on the issues you might want to consider. You can get a copy from your local Jobs and Benefits office / JobCentre or download it from www.delni.gov.uk/erbooklets.

Please note that Form **FW (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 Staff Number

Following receipt of your application and our meeting on (dd/mm/yy)
I have considered your request for a new flexible working pattern.

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

OR

I am unable to accommodate your original request. However, 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: (dd/mm/yy)

Note to the employee

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 to your previous working pattern, unless otherwise agreed.

If you have any questions on the information provided on this form please contact me to discuss them as soon as possible.

Name

Date

(dd/mm/yy)

NOW RETURN THIS FORM TO YOUR EMPLOYEE.

FW (C): Flexible Working Application Rejection Form
Note to the employer

You must write to your employee with your decision within 14 days following the meeting. This form can be completed by you when declining an application. Before completing this form you must ensure that full consideration has been given to the application. You must state the business ground(s) as to why you are unable to agree to a new working pattern and the reasons why the ground(s) applies in the circumstances. The list of the permissible business grounds under which a request may be refused are provided in the section entitled 'What is a business ground?' in the guidance booklet 'Flexible working: a guide for employers and employees' (ER 36). This booklet is available from your local Jobs and Benefits office / JobCentre or can be downloaded from www.delni.gov.uk/erbooklets.

Dear Staff Number

Following receipt of your application and our meeting on
I have considered your request for a new flexible working pattern. (dd/mm/yy)

I am sorry but I am unable to accommodate your request on the following business ground(s).

The ground(s) 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).

Name**Date**

(dd/mm/yy)

If your employee is unhappy with the decision, they may appeal against it. Details of the appeal procedure are set out below.

The Appeal Process

Note to the employee

If your employer turns down your request for flexible working, you have the right to appeal against the decision. If you wish to appeal, you must write to your employer, setting out the grounds for your appeal, within 14 days after receiving written notice of the decision.

Note to the employer

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

If your employee appeals against your decision to refuse a request for flexible working, you must arrange a meeting with your employee to discuss the appeal within 14 days after receiving the appeal letter. See the section entitled '[What happens at the appeal meeting?](#)' in the guidance booklet '[Flexible working: a guide for employers and employees](#)' (ER 36) for more information.

After the meeting has been held, you must write to your employee within 14 days to notify him or her of the outcome of the appeal.

NOW RETURN THIS FORM TO YOUR EMPLOYEE.

FW (D): Flexible Working Appeal Form**Note to the employee**

If your application has been refused, you may appeal against your employer's decision. You can use this form to make your appeal. You should set out the grounds on which you are appealing, and do so within 14 days of receiving written notice that your application for flexible working has been turned down.

Note to the employer

This is a formal appeal made under the legal right to apply for flexible working. You have 14 days following your receipt of this form in which to arrange a meeting with your employee to discuss their appeal. See the section entitled '[What happens at the appeal meeting?](#)' in the guidance booklet '[Flexible working: a guide for employers and employees](#)' (ER 36) for more information. This booklet is available from your local Jobs and Benefits office / JobCentre or can be downloaded from www.delni.gov.uk/erbooklets.

Form **FW (E): Flexible Working Appeal Reply Form**, to use when responding to this appeal, has been provided.

Dear

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

(you may continue on a separate sheet if necessary)

Name

Date

(dd/mm/yy)

NOW RETURN THIS FORM TO YOUR EMPLOYER.

FW (E): Flexible Working Appeal Reply Form**Note to the employer**

You may 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, within 14 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. More information is available in the section entitled 'What happens at the appeal meeting?' in the guidance booklet 'Flexible working: a guide for employers and employees' (ER 36). This booklet is available from your local Jobs and Benefits office / JobCentre or can be downloaded from www.delni.gov.uk/erbooklets.

Dear

Staff Number

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

(dd/mm/yy)**A ACCEPTING AN APPEAL**

Complete this section if you are accepting the employee's appeal.

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:

(dd/mm/yy)**Note to the employee**

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.

B REJECTING AN APPEAL

Complete this section if you are rejecting the employee's appeal.

I am sorry but I must reject your appeal.

I must reject your appeal on the following ground(s):

The ground(s) apply because:

(you may continue on a separate sheet if necessary)

Name

Date

(dd/mm/yy)

NOW RETURN THIS FORM TO YOUR EMPLOYEE.

FW (F): Flexible Working Extension of Time Limit Form
Note to the employer

This form is provided for you to complete when confirming agreement with your employee that you wish to extend a time limit for part of the procedure, from that set out in the regulations. You may extend the time limit for any part of the process, providing your employee agrees to the extension. Information on when it might be appropriate to extend the time limits can be found in the section entitled 'Extension of time limits' in the guidance booklet 'Flexible working: a guide for employers and employees' (ER 36).

Dear Staff Number

I wish to extend the amount of time that the regulations allow me to:

Arrange a meeting to discuss your application (28 days)

Notify you of my decision regarding your application (14 days)

Arrange a meeting to discuss your appeal (14 days)

Notify you of my decision regarding your appeal (14 days)

I wish to extend the time limit to days.

I need the extra time for the following reason:

If you agree to this extension, please complete the slip below and return it to me.

Signed

Date

(dd/mm/yy)

NOW PASS THIS FORM TO YOUR EMPLOYEE

Note to the employee

To allow proper consideration of your request, your employer may wish to extend the permitted time limit for any part of the process. Your employer will need your agreement to any extension of the time limit. If you agree to the above request, please complete the agreement slip below and return it to your employer. See the section entitled '[Extension of time limits](#)' in the guidance booklet '[Flexible working: a guide for employers and employees](#)' (ER 36) for further details.

Cut this slip off and return it to your employer in order to confirm your acceptance of their request.

Employee's Agreement to Time Extension (to be completed and returned to employer)Dear I accept your request to extend the amount of time to days**Signed****Date**

(dd/mm/yy)

FW (G): Flexible Working Notice of Withdrawal Form
Note to the employee

This form provides notification to your employer that you wish to withdraw your application to work flexibly. Once you have withdrawn your application, you will not be able to make another application until 12 months from the date your original application was made. See the section entitled '[When can an application be treated as withdrawn?](#)' in the guidance booklet '[Flexible working: a guide for employers and employees](#)' (ER 36) for more information.

Dear I submitted a flexible working application to you on

(dd/mm/yy)

I wish to withdraw that application to work flexibly

I understand that I will not be able to make another application until twelve months after the above date.

Name Date

(dd/mm/yy)

NOW RETURN THIS FORM TO YOUR EMPLOYER.

Note to the employer

Once your employee has completed this form and returned it to you, the application is considered as withdrawn and you are not required to give it any further consideration. See the section entitled '[When can an application be treated as withdrawn?](#)' in the guidance booklet '[Flexible working: a guide for employers and employees](#)' (ER 36) for more information.

You should complete the slip below and return it to your employee to confirm your receipt of the withdrawal notice.

Cut this slip off and return it to your employee in order to confirm your receipt of their withdrawal notice

Employer's Confirmation of Withdrawal (to be completed and returned to employee)Dear You submitted an application for flexible working on

(dd/mm/yy)

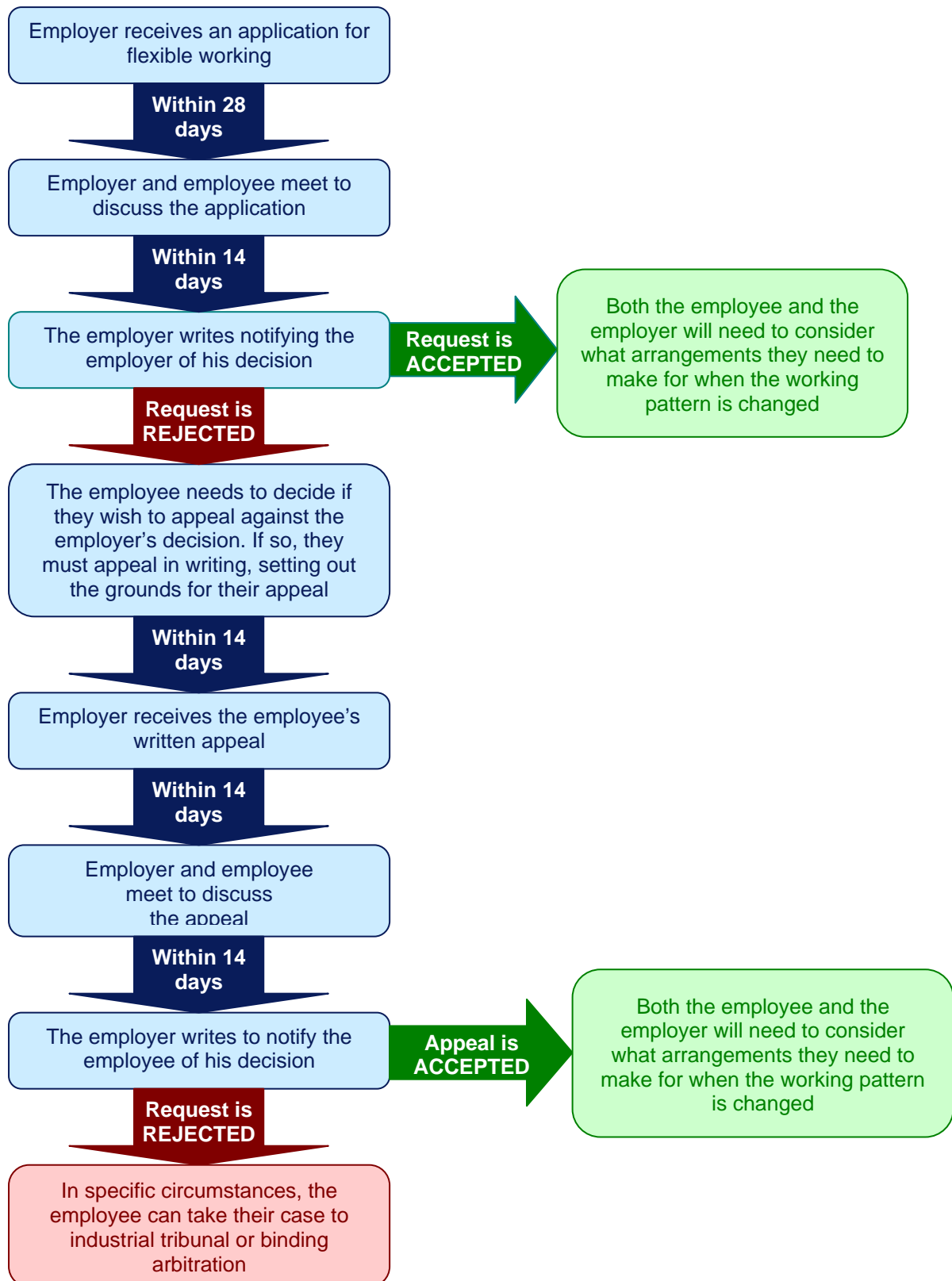
I confirm that I have received notice from you that you wish to withdraw that application

Under the right to apply, you will not be eligible to submit another application until 12 months after the above date.

From Date

(dd/mm/yy)

Annex D: How does the process work?



Appendix 1: Booklets in this series

Booklets in this series are available online from www.delni.gov.uk/erbooklets or can be obtained by contacting the Department.

ER 1	<i>Individual rights and responsibilities of employees</i>
ER 2	<i>Written statement of employment particulars</i>
ER 3	<i>Redundancy entitlement statutory rights</i>
ER 4	<i>Redundancy consultation and notification</i>
ER 5	<i>Your rights if your employer is insolvent</i>
ER 6	<i>Unjustifiable discipline by a trade union</i>
ER 7	<i>Time off for public duties</i>
ER 8	<i>Continuous employment and a week's pay</i>
ER 10	<i>Suspension from work on medical or maternity grounds</i>
ER 12	<i>Pay statements: what they must itemise</i>
ER 13	<i>Unfairly dismissed?</i>
ER 14	<i>Guarantee payments</i>
ER 15	<i>Rights to notice and reasons for dismissal</i>
ER 16	<i>Maternity rights: a guide for employers and employees</i>
ER 17	<i>Help with meeting redundancy costs for employers in financial difficulty</i>
ER 18	<i>Dismissal: fair and unfair - a guide for employers</i>
ER 19	<i>Limits on payments and awards</i>
ER 21	<i>Contracts of employment: changes, breach of contract and deductions from wages</i>
ER 22	<i>Criminal records and employment</i>
ER 23	<i>Payment of union subscriptions through "check off"</i>
ER 24	<i>Time off for dependants</i>
ER 25	<i>Parental leave: a guide for employers and employees</i>
ER 26	<i>Time off for study or training</i>

- ER 27** *Industrial action and the law: a guide for employees*
- ER 28** *Trade union executive elections*
- ER 29** *Industrial action and the law: a guide for employers*
- ER 30** *Industrial action and the law: a guide for individuals whose supply of goods or services is affected by unlawful industrial action*
- ER 31** *Union membership: rights of members and non-members*
- ER 33** *Trade union political funds*
- ER 34** *Rights to paternity leave and pay*
- ER 35** *Adoptive parents: a guide for employers and employees*
- ER 36** *Flexible working: a guide for employers and employees*

Additional employment rights publications, covering a range of other issues, can be found online at www.delni.gov.uk/erpublications or can be obtained from the Department.

Appendix 2: Useful addresses

Certification Officer for Northern Ireland

10-12 Gordon Street
Belfast
BT1 2LG

Tel: 028 9023 7773

Fax: 028 9023 2271

Textphone: 028 9023 8411

Website: www.nicertoffice.com

Email: info@nicertoffice.com

Department for Employment and Learning

Redundancy Payments Service
Room 203
Adelaide House
39-49 Adelaide Street
Belfast
BT2 8FD

Tel: 028 9025 7956

Freephone: 080 0585 811

Fax: 028 9025 7555

Website: www.redundancyni.gov.uk

E-mail: rpsquery@delni.gov.uk

The Health & Safety Executive for Northern Ireland

83 Ladas Drive
Belfast
BT6 9FR

Tel: 028 9024 3249

Fax: 028 9023 5383

Textphone: 028 9054 6896

Freephone Helpline: 080 0032 0121

Website: www.hseni.gov.uk

Department for Employment and Learning

Employment Relations Policy and
Legislation Branch
Room 203
Adelaide House
39-49 Adelaide Street
Belfast
BT2 8FD

Tel: 028 9025 7580

Website: www.delni.gov.uk/er

E-mail: erbooklets@delni.gov.uk

The Equality Commission for Northern Ireland

Equality House
7-9 Shaftesbury Square
Belfast
BT2 7DP

Tel: 028 9050 0600

Fax: 028 9033 1544

Textphone: 028 9050 0589

Website: www.equalityni.org

E-mail: information@equalityni.org

Industrial Court

Room 203
Adelaide House
39-49 Adelaide Street
Belfast
BT2 8FD

Tel: 028 9025 7599

Fax: 028 9025 7555

Website: www.industrialcourt.gov.uk

E-mail: enquiries@industrialcourt.gov.uk

Labour Relations Agency

Head Office
2-8 Gordon Street
Belfast
BT1 2LG

Tel: 028 9032 1442

Fax: 028 9033 0827

Textphone: 028 9023 8411

Website: www.lra.org.uk

E-mail: info@lra.org.uk

NI Business Info

(website giving information on a wide range of issues for employers)

Website: www.nibusinessinfo.co.uk

Labour Relations Agency

Regional Office
1-3 Guildhall Street
Londonderry
BT48 6BJ

Tel: 028 7126 9639

Fax: 028 7126 7729

Textphone: 028 9023 8411

Website: www.lra.org.uk

E-mail: info@lra.org.uk

**Office of the Industrial Tribunals
and the Fair Employment Tribunal**

Killymeal House
2 Cromac Quay
Ormeau Road
Belfast
BT7 2JD

Tel: 028 9032 7666

Fax: 028 9023 0184

Website:

www.employmenttribunalsni.org

people:skills:jobs:



Department for
**Employment
and Learning**
www.delni.gov.uk



INVESTOR IN PEOPLE

THE DEPARTMENT:

Our aim is to promote learning and skills, to prepare people for work and to support the economy.

This document is available in other formats upon request.

Further information:

telephone: 028 9025 7580

e-mail: employment.rights@delni.gov.uk

website: www.delni.gov.uk