

FLEXIBLE WORKING GUIDANCE

The information in this guidance note is not intended to be exhaustive or to cover every eventuality and should be read in conjunction with supporting documents within the Flexible Working Framework.

Adherence to the procedures outlined in this Guidance should ensure employees and Managers meet all necessary statutory requirements, laid down in the Employment Act and Work and Families Act legislation, Flexible Working Regulations (2014) and updates (2024).

This Guidance will:

1. Summarise the main types of flexible working arrangements.
2. Explain the Processes when requesting/introducing flexible working arrangements.
3. Clarify Eligibility and Set out the Legislative Framework.
4. Provide guidance on the likely changes to employees' contracts of employment.

TYPES OF FLEXIBLE WORKING ARRANGEMENTS (this list is not exhaustive):

➤ Flexi Time Scheme

Where the employee can participate in a corporate or tailored flexible working hours scheme which gives them some choice about their actual working hours, and which fits around the needs of the Service. It is a legal requirement to state in the SEP the hours of work that an employee must work and this includes any flexible working hour's arrangement. It is also important that an employee becoming eligible for flexible working hours understands the rules that apply to avoid any misunderstanding.

➤ Part Time Work

Where an employee works less than full time hours. When an employee's working hours are reduced to less than full time working, it is important to remember that there is a legal requirement to ensure they are not treated less favourably than full time workers engaged in the same or broadly similar work. In addition, the terms and conditions must not be less favourable than those that applied in their full time capacity, however, the terms and conditions are applied on a pro-rata basis. Managers should be aware that this applies to all general terms and conditions of employment, such as occupational sick provisions, maternity provisions, pension provisions, annual and other leave,

all training provisions and entitlements and promotion opportunities.

➤ Time off in Lieu (TOIL)

Where employees agree with their manager to take time off at a mutually convenient time to make up for extra hours worked. Used to compensate people who attend evening meetings or do weekend work. Normal practice is that time off in lieu is managed by the Manager and not through the flexible working request process.

➤ Job Share

Where two people carry out the duties of a post that would normally be done by one person. Each person is employed part-time but together they cover a full-time post and divide the pay, holidays and other benefits. Job Sharing is considered a form of part time working, therefore there is a legal requirement to ensure they are not treated less favourably than full time workers engaged in the same or broadly similar work, however, the full-time employment conditions are shared on a pro rata basis.

➤ Shift/Rota Working

Where service provision can be extended to provide a better service with people working shifts following on from each other to provide a service. This can provide more flexibility about how shifts are organised, giving more choice.

➤ Staggered Hours

Where employees within a workplace have different start, finish and break times. Usually used to cover longer opening hours. Provides more choice for people.

➤ Shift Swapping

Means employees can negotiate working times to suit their needs and re-arrange shifts amongst themselves or within teams to meet the needs of the service.

➤ Self Rostering

Gives team members more control over their work times. The numbers of staff and the skill mix required are agreed, then shift patterns are compiled, matching as closely as possible the individual preferences of staff to the agreed staffing levels.

➤ Hybrid Working

Hybrid Working is a type of flexible working which means employees split their working time between their contractual work base, home and/or alternative workspaces within their locality.

➤ Home Working

Home working is where an employee works at home for the whole of their usual working week with only occasional attendance at a base/location over the course of an agreed period (normally 6 months). There are seen to be very few roles within the Council suited to permanent homeworking and as such formal requests to homework are expected to be by exception, as a reasonable adjustment linked to equality legislation.

➤ Term Time Working

Means remaining on a permanent contract, either full or part-time, and having paid or unpaid leave of absence during the school holidays. If an employee is granted term time working, the employment contract needs to make clear the working hours relating to the contract, usually by agreeing the dates at the beginning of each school year. The contract should also be clear about when holiday entitlement is taken, for example, if it must all be taken during school holidays or if some days are kept for emergencies during term time.

➤ Compressed Working Hours

This allows people to work their total number of agreed hours over a shorter number of working days, for example, you could work full time hours over four days a week instead of five, or over nine days instead of ten. The main changes to an employee's terms and conditions if they are working compressed hours are:

- Annual Leave & Public Holiday Entitlement Both annual leave and public holiday entitlement will be taken in hours instead of days.
- Flexible Working Hours Scheme Employees working compressed hours can continue to use the Flexible Working Hours Scheme with the agreement of their manager. Local arrangements can be made in relation to the ability to take flexi-leave, subject to service delivery and the ability to accrue leave.
- Working Time Regulations 1999 - No compressed hours working arrangement should breach the Working Time Regulations 1999. Managers should monitor the working hours of employees to prevent employees from working excessively long hours.

➤ Annual Hours

Systems organise working time on the basis of the number of hours to be worked over a year rather than a week – usually used to fit in with peaks and

troughs of work.

➤ Voluntary Reduced Work Time

An employee reduces hours for an agreed temporary period with a reduced salary and with a guarantee to return to full time working when that period ends.

➤ Flexible Retirement

On nearing retirement, part time working is operated, usually with arrangement to protect pension entitlements. This is currently only available to Teaching Staff through the Winding-Down Scheme.

ROLES/GUIDANCE – WHEN INTRODUCING FLEXIBLE WORKING

A. Managers offering Flexible Working

As part of business improvement/transformation an employee may be offered the opportunity to embrace flexible working. It is important to recognise that not everyone will want to, or is able to, work flexibly depending on their particular role and personal circumstances.

Part of ensuring inclusion and equality in the way we work is taking into account people's individual working preferences and personal circumstances.

Any changes to the way we work which involves a contractual change, will be implemented following appropriate consultation with relevant parties.

B. Employee requesting Flexible Working

All employees retain the right to make a request for flexible working from day one of employment and to make up to two requests in any 12 month period.

Employees wishing to request any form of flexible working, should discuss with their line manager in the first instance to ensure all suitable options are considered.

ELIGIBILITY AND THE LEGISLATIVE FRAMEWORK

The Council's Flexible Working Framework allows all employees to request to work flexibly in line with Flexible Working Regulations (updated 2024) which include the following measures:

- make the right to request flexible working a day one right
- introduce a new requirement for employers to consult with the employee when they intend to reject their flexible working request

- allow 2 statutory requests in any 12-month period (previously one request)
- require a decision period of 2 months in respect of a statutory flexible working request (previously 3 months) unless an extension has been agreed by both parties.
- remove the existing requirement that the employee must explain what effect, if any, the change applied for would have on the employer and how that effect might be dealt with

Managers should, also be aware of the following legislation when considering the introduction of or approval of flexible working arrangements.

Flexible Working Regulations 2014

Since 30 June 2014, all employees who have worked for the same employer for 26 weeks have had the right to request flexible working (previously just parents and carers). The right to request does not mean the right to have requests granted, it means that your employer must handle requests in a 'reasonable manner'.

The Work & Families Act (2006)

The Work & Families Act (2006) extended the right to request to work flexibly for those in "carer" roles. Carer roles is defined as an employee who expects to be caring for an adult who is married to, or the partner or civil partner of the employee, is a near relative of the employee (including parents, parent in law, adult child, adopted child, siblings (including those who are in laws), uncles, aunts or grandparents and step relatives or falls into neither category but lives at the same address as the employee.

The Flexible Working (Eligibility, Complaints and Remedies) (Amendment) Regulations 2009

This extended the right to request to work flexibly for eligible employees with children up to and including the age of 16.

Indirect Sex Discrimination

In dealing with requests for flexible working, it is possible that indirect sex discrimination may occur. Indirect discrimination occurs when an employee can show an employment tribunal:

- that it would be to the detriment of a considerably larger proportion of women than to men;
- that the employer cannot show it to be justifiable, irrespective of the sex of the person to whom it is applied; and, it is to his/her detriment.

Case law has now clarified the position to the effect that a refusal to allow an employee to return part-time following maternity leave may be considered indirect sex discrimination unless the employer can show objective justification irrespective of sex.

Although there is no automatic right to work flexibly for a woman returning from maternity or adoption leave, or because of childcare commitments, Managers must be clear that they can justify the refusal of such requests on the business grounds laid out in the Employment Act 2002.

Part-Time Workers Discrimination

The Part-time Workers (Prevention of Less Favourable Treatment) Regulations make it unlawful to treat part-time employees less favourably in their contractual terms and conditions than comparable full-time employees. This means that, when granting a request for flexible working that involves a reduction in working hours, Managers should be aware that these employees are still entitled to the same considerations in respect of training, promotion and financial issues.

CHANGES TO EMPLOYEES' CONTRACTS OF EMPLOYMENT

There are many types of flexible working practices that an employee may request to be considered for. Most will require changes to contracts of employment and some may require approval through the relevant approval process.

- Advice should initially be sought from Human Resources on policy interpretation.
- A permanent request to work flexibly may result in a change to an employee's terms and conditions, unless otherwise mutually agreed by both parties. This should be processed through the MyPKC Staff Portal process.
- Whether a change is contractual or not, details of the agreed flexible working pattern should be noted in writing and the employee's level of autonomy to decide how, where or when they work should be made clear.
- Where groups of employees make an application to work flexibly departmental trade union representatives should be advised by the Manager. It will be the Manager's responsibility using the model letters to prepare and issue the acceptance letter for a new working arrangement. Employment Services will support Manager's where necessary regarding the relevant clauses from the Master SEP.

For further information or guidance on this Guidance Note, please contact Human Resources.