

FLEXIBLE WORKING

Introduction

Education staff should be entitled to make reasonable adjustments to their working hours to achieve work/life balance which is suitable for them. Flexible working might include part-time work, job sharing, varying your hours of work, working from home or phased retirement. Given the requirements of the teaching timetable, and the core responsibilities of classroom teachers and support staff flexible working for teachers and education workers is more likely to take the form of part-time work or job sharing. More information on these forms of working can be found on the National Education Union (NEU) website.

All employees with at least 26 weeks' continuous employment service are entitled to make one statutory flexible working request per year. Your employer has a duty to consider requests for flexible working in a reasonable manner in accordance with the ACAS Code of Practice on Handling in a Reasonable Manner Request to Work Flexibly. The statutory right has limitations, however, so the NEU recommends in most cases that members seek flexible working arrangements informally before relying on the statutory procedure.

This guidance is primarily for education workers who are already in employment.

Before you start

Ask your workplace rep or school or college office for copies of relevant policies and procedures e.g. flexible working, job share, home working policies. The NEU urges all employers to adopt clear policies and procedures to enable flexible working. The statutory entitlements offer the minimum flexible working rights; many employers offer flexible working arrangements which are more generous than the statutory entitlements. Consider your own needs, including the sort of flexibility you need. You might need to reduce the number of days you work to fit in with your childcare arrangements, or to reduce your hours temporarily to recover from surgery, or you might need to adjust your start or finish times. Think about how your request could be accommodated and how it might impact on the team or department in which you work. Weigh up how long you'll need the change and whether you need a permanent or temporary change to your working arrangements. Talk to colleagues who are working flexibly for tips on how they secured the arrangement and how they have made it work. Bear in mind how flexible you can be and prepare to negotiate an arrangement that suits both your needs and the needs of your employer and students.

If you don't have an immediate need to work flexibly you could consider working collectively with your colleagues to secure flexible working arrangements across the workplace or within a department that meet the needs of all staff and students. A collective discussion early in the spring term on staffing arrangements, flexible working needs and school or college needs for the following academic year could assist with timetabling and staff planning.

How do I make an individual informal request for flexible working?

It is advisable to make an informal request before making a statutory request for flexible working - there is no limit to the number of informal requests you make but you can only make one statutory request a year.

You should approach your line manager, head teacher or principal informally to find out if they would be agreeable to a change in your working arrangements. Try to anticipate any arguments that might be raised to justify refusing your request and prepare suggestions for how those arguments could be countered. Even if your specific request is not agreed, you may still be able to agree a compromise. If you do get an agreement for a change to your working arrangements, you should ensure that you receive written confirmation of what has been agreed and whether this is on a permanent or temporary basis. If temporary, it should specify for how long (12 months is common) and include a review date. The agreement will constitute a temporary or permanent variation to your original contract of employment. You may also be asked to follow a local policy or procedure and fill in a form.

If you cannot come to an agreement using this informal route, then you should consider a statutory application.

How can I strengthen my request?

You can strengthen your request by considering in detail how the arrangement you are seeking will help you, your class or department and your students to flourish. Some employers are opposed to the idea of part time working/job sharing because they view it as inconvenient, more expensive and perceive that parents do not like it, particularly in primary schools. There is, however, no conclusive evidence that splitting responsibility for classes in any way impacts detrimentally on pupils' education. In its reports on individual schools, OFSTED has commented favourably on the benefits of job share arrangements, including the quality of educational provision and the good progress made by pupils taught by job sharers. In addition, employment tribunals have rejected the assumption that job sharing necessarily has an adverse effect on education.

Some employers object to job-shares claiming that the need to pay National Insurance (NI) contributions for two employees instead of one might increase costs. In fact, the increase in cost is minimal. Job sharing could be cheaper if the NI contributions for each job-share partner is lower. Some arrangements, for example adjusted start or finish times can be cost-neutral.

You should set out the positive benefits to the school and address concerns that your employer may have. You could discuss your proposal with your line-manager and seek their support for your application.

Positive benefits of flexible working you may want to refer to include:

- increased motivation of staff
- managed work-life balance and improved wellbeing
- retention of skilled and experienced staff for the benefit of pupils and workplace
- less sickness absence
- maintenance of relationships with pupils

- if applying for a job-share, the energy and ideas of two members of staff rather than one
- reduced need to incur agency fees.

If you are seeking a job share, explain how you propose to deal with handover arrangements. For example, say that you propose to speak on the telephone or email on a regular basis. You could explain that you would use a diary system.

Explain how you would approach planning in a job share arrangement.

Your employer may need to be reassured that children's learning will not be disrupted, so practical suggestions as to how you and your job-share partner would address this in practice would be helpful.

If there are existing or previous successful part time or job share arrangements in your workplace, refer to them as evidence of how such arrangements can work well.

If you are proposing a job-share it will assist, if possible, if there is an existing member of staff who wishes to reduce their hours. If you are in this position you and the other member of staff could explain how you would share the work between you.

Can I make a statutory request for flexible working?

To qualify for the statutory right to make a request under the flexible working regulations you must:

- have a contract of employment (agency workers are unfortunately excluded) and at least 26 weeks of continuous service with your current employer;
- not have made another 'statutory' request for flexible working within the last 12 months.

How do I make a statutory request?

We advise you to exhaust any local arrangements for job-share, part-time work or other flexible working patterns before turning to the statutory procedure.

A statutory request must be made in writing to your employer. If you are in a community or voluntary controlled, maintained nursery or special school, we advise you send written requests to the local authority and to copy your requests to the governing body and head teacher or principal.

If you are in a foundation, foundation trust or voluntary aided or independent school, academy, free school, sixth form college or CTC, we advise you apply to your governing body and to copy your application to your head teacher or principal.

The NEU has produced a template letter for lodging a statutory request that can be accessed via the 'useful links' section below. To qualify as a statutory request, the application must be dated and include the following information:

- a statement that you are exercising your statutory right to request flexible working
- details of the change you are applying for
- the specific date you wish the change to take place
- what effect, if any, you think the change would have on the employer and how you think that might be dealt with.

Can I change my mind and withdraw my application?

If you plan to withdraw your statutory application, you should tell your employer in writing as soon as possible. If you withdraw, you will not be able to make another statutory application for 12 months.

If your employer arranges a meeting to discuss the application or the appeal with you and you do not attend this meeting and a rearranged meeting 'without a good reason' the ACAS Code says that your employer can consider your application withdrawn. Your employer must inform you if your application is treated as withdrawn.

What will happen once I have made my application?

What will happen once I have made my application? Your employer has a duty to consider your request. All statutory requests, including any appeals, must be considered and decided on within three months from the date the employer receives the application, unless you and your employer agree to extend this time limit.

There is no need to hold a meeting if your employer intends to approve your request but in most cases your employer will arrange a meeting to discuss your request with you. The ACAS Code says that the discussion should take place in a private place where what is said will not be overheard.

Your employer should consider the request carefully, looking at the benefits of the requested changes in working conditions for you and your workplace and weighing these up against any adverse impact of implementing the changes. Your employer must not unlawfully discriminate against you during this process.

Can my NEU representative accompany me?

The ACAS Code says that if your employer does arrange a meeting, you should be allowed to be accompanied by a work colleague who may or may not be a union representative. The NEU recommends that NEU school or college representatives should be released to accompany members to flexible working discussions. Ask your union representative for your local facility time arrangement – your employer might have agreed to such representation. Should you have any difficulties, please refer to the contact details at the end of this guidance.

What happens if my request is agreed?

Your employer should inform you as soon as possible if your request has been agreed in full or agreed with modifications. The ACAS Code recommends that this notice is provided in writing. Your employer should discuss with you how and when the changes might best be implemented. You are not obliged to agree to any changes to your working arrangements if you do not agree with any suggested modifications that the employer may have made. If you agree to the changes, you should be given a written 'variation of contract'. This can be a temporary or permanent variation depending on what has been agreed.

What happens if my request is refused?

Your employer should inform you as soon as possible if your request has been refused. The ACAS Code recommends that this notice is provided in writing. The notice should

contain an explanation of how flexible working affects your employer and details of how you can appeal.

Your employer can only legally reject your application for one or more of the following reasons:

- the burden of additional costs
- an inability to reorganise work amongst existing staff
- an inability to recruit additional staff
- a detrimental impact on quality
- a detrimental impact on performance
- detrimental effect on ability to meet customer demand
- insufficient work for the periods the employee proposes to work
- a planned structural change to your business.

How do I appeal against my employer's decision?

There is no statutory right to an appeal hearing but the ACAS Code recommends that employers should speak with applicants about the refusal. A discussion may reveal new information.

If your employer has followed the statutory procedure and given genuine clear business reasons, with evidence, for refusing your request, it is unlikely that you will be able to take the matter further, unless you have some new and relevant information that was not available at the time they made the decision. The regulations and ACAS Code give only limited recourse to tribunals for breaches of statutory procedure.

What if flexible working requests are routinely refused?

Discuss your concerns with your workplace rep. If your employer is routinely refusing flexible working requests, you may be advised to tackle the issue collectively.

You or your rep might decide to contact the union for further advice. The NEU will be able to advise what steps you should take. The refusals might be a symptom of an unwritten blanket policy of 'no job-shares' or 'no working from home'. Blanket policies can have an indirect impact on particular workers, for example women or elder-carers or disabled workers. You may be advised to meet with your members, to negotiate improved procedures with your employer or to lodge a collective grievance with your colleagues. It is likely that working together will prove to be more effective in empowering colleagues, raising morale and securing fair flexible working procedures.

This may resolve the issue.

Employers in the education sector and multi-academy trusts have a statutory duty to be proactive in advancing equality of opportunity for staff and pupils. They must assess the impact of their policies and procedures on the people affected by them and be prepared to revise procedures where it is proportionate to do so. Contact your workplace rep, branch secretary, or local equality officer if you want to get involved in reviewing the equality impact of policies and procedures in your workplace.

What should I do next?

If you need further advice, please contact your NEU representative in the first instance. If there is no NEU rep in your workplace, or the peripatetic nature of your employment

makes contact with a workplace rep difficult, contact the NEU AdviceLine on 0345 811 8111. Further contact details may be found at: <https://neu.org.uk/contact-us>

Further advice on flexible working and related issues can be found here

TUC guidance on flexible working www.worksmart.org.uk

ACAS guidance on parents' and carers' rights www.acas.org.uk