All employees now have the statutory right to apply to work flexibly, provided they have worked for their employer for a continuous period of at least 26 weeks at the date their application is made and they have not made another application to work flexibly under the right during the previous 12 months (employees can only make one application in any 12 month period).

The right enables employees to request a flexible working arrangement. It does not provide an automatic right to work flexibly as there will always be circumstances when the employer is unable to accommodate the employee’s desired work pattern. The right is designed to meet the needs of both employees and employers, and it aims to facilitate discussion and encourage both parties to consider flexible working patterns and to find a solution that suits them both.

The employee has a responsibility to think carefully about their desired work pattern when making an application and the employer is required to deal with their application in a reasonable manner.

**What kind of changes can be applied for?**

Employees can apply to vary:

* The hours they work.
* The times they work
* Their place of work (between their home and the employer’s place or places of business).

This covers working patterns such as flexi-time, part-time working, annualised hours, home working, job sharing, shift working, staggered hours and term-time only working.

**ACAS Code of Practice on Handling in a Reasonable Manner Requests to Work Flexibly**

The statutory flexible working procedure was also repealed with effect from 30 June 2014. Instead, there is a statutory ACAS Code of Practice on Handling in a Reasonable Manner Requests to Work Flexibly. The Code of Practice is intended to help employers deal with written requests to work flexibly made by employees. As it is a statutory Code of Practice, it will also be taken into account by employment tribunals when considering relevant cases.

**The application procedure**

A flexible working request from an employee must be submitted in writing and include the following information:

* The date of the employee’s application.
* The change to working conditions they are seeking.
* When they would like the change to come into effect.
* An explanation of what effect, if any, the employee thinks the requested change would have on the employer’s business and how, in their opinion, any such effect might be dealt with.
* A statement that it is being made under the statutory right to make a flexible working request.
* Whether the employee has previously made a flexible working application and, if so, the date that application was submitted.

Employers should make clear to their employees what information they need to include in a written request to work flexibly.

The employee should allow sufficient time between the date of their application and the date they would like the flexible working arrangement to start, as the process can take three months (see further below).

**Dealing with the request**

Once the employer has received a written request, he/she must consider it. He/She should arrange to talk with the employee as soon as possible after receiving their written request. However, if the employer intends to approve the request as submitted, then a meeting is not needed.

The employer should discuss the request with the employee as this will help him/her get a better idea of what changes the employee is looking for and how they might benefit the business and the employee. Wherever possible, the discussion should take place in a private place where what is said will not be overheard.

The employer should allow the employee to be accompanied by a work colleague for this and any appeal discussion and the employee should be informed about this prior to the discussion.

The employer should then consider the request carefully, looking at the benefits of the requested changes in working conditions for the employee and the business and weighing these against any adverse business impact of implementing the changes. In considering the request, the employer must also take care not to unlawfully discriminate against the employee (see further below).

Once the employer has made his/her decision, he/she must inform the employee of that decision as soon as possible. This should be done in writing as it can help avoid future confusion on what was decided.

If the employer accepts the employee’s request, or accepts it with modifications, he/she should then discuss with the employee how and when the changes might best be implemented.

If the employer rejects the employee’s request, it must be for one of the business reasons as set out in the legislation – these are discussed further below. If the request is rejected, the employer should allow the employee to appeal the decision. The Code of Practice points out that it can be helpful for an employer to allow the employee to speak with him about his decision as this may reveal new information or an omission in following a reasonable procedure when considering the application.

**Business reasons for refusal**

It is important to note that an employer can only refuse an application for one or more of a number of specified business reasons. They are:

1. The burden of additional costs.
2. Detrimental effect on ability to meet customer demand.
3. Inability to reorganise work among existing staff.
4. Inability to recruit additional staff.
5. Detrimental impact on quality.
6. Detrimental impact on performance.
7. Insufficiency of work during the period when the employee proposes to work.
8. Planned structural changes to the business.

The employer should aim to provide a sufficient written explanation to the employee of why the particular business reason applies in the circumstances.

**The decision period**

The law requires that the employer must notify the employee of his decision on their application within a period of three months beginning with the date on which their application is made, or such longer period as the parties may agree. This period also includes any appeal provided by the employer against a decision to reject the employee’s application.

An agreement with the employee to extend the decision period in a particular case may be made either before it ends, or with retrospective effect before the end of three months beginning with the day after that on which the decision period that is being extended came to an end.

**Treating an application as withdrawn**

An application will be treated as withdrawn by the employee if, without good reason, they have failed to attend both the first meeting that the employer arranged to discuss their application and the next meeting arranged for that purpose, or where the employer allows the employee to appeal a decision to reject an application, the employee, without good reason, has failed to attend both the first meeting arranged to discuss their appeal and the next meeting arranged for that purpose, and the employer has notified the employee that he has decided to treat their conduct as a withdrawal of their application.

The employee may also decide of their own volition to withdraw their application. They will not then be eligible to make another application for 12 months.