

# **Right to Request Flexible Working**

## **Managers' Guide**



Human Resources  
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## **Right to Request Flexible Working**

### **Managers' Guide**

#### **1. Background**

- 1.1 This guidance document is intended to support Managers in applying the provisions of the statutory right of all employees to request flexible working in line with the [Children and Families Act 2014](#)
- 1.2 It is essential that managers follow the procedures as set out within this Guide as failure to do so may result in Employment Tribunal proceedings.
- 1.4 Furthermore, an unjustified refusal to accommodate a request for flexible working could also be a breach of discrimination legislation, where damages awarded are unlimited.

#### **2. Eligibility Criteria**

- 2.1 An employee is eligible to request flexible working under the statutory provisions if they:
  - have been continuously employed by the council for 26 weeks on the date that application is made;
  - have not requested flexible working under this right in the previous 12 months.

#### **3. Flexible Working**

Employees who meet the eligibility criteria are entitled to request an adjustment to their hours or place of work. Although not specified in the regulations, adjustments can include:

- a reduction in working hours (e.g. part-time working or job sharing);
- a change to times of work (e.g. a change in normal starting and finishing times; a compressed working week; annualised hours etc.);
- a change in work base, perhaps for the purposes of reducing travelling time.

#### **4. Dealing with Applications for Flexible Working**

##### **4.1 Role of Employees**

- 4.1.1 An application for flexible working must be made using the Request for Flexible Working Arrangements Form (Appendix 1). This must be submitted by the employee to their service manager.
- 4.1.3 It is the responsibility of the employee making the request to ensure all relevant information is included in the application as follows:
  - the date of their application

- the change to working conditions they are seeking and when they would like the change to come into effect
- what effect, if any, they think the requested change would have on the council and how, in their opinion, any such effect might be dealt with
- a statement that they are making a statutory request and if and when they have made a previous application for flexible working.

#### 4.2 Role of Service Managers

- 4.2.1 On receipt of an application for flexible working, the service manager is obliged to consider the request.
- 4.2.2 In order to do this the service manager should arrange to meet the employee to discuss the application. The employee may be accompanied at this meeting by a Trade Union representative or colleague.
- 4.2.3 The Service manager must fully consider the request carefully looking at the benefits of the requested changes in working conditions for the employee and the council and weighing these against any adverse business impact of implementing the changes. All applications must be assessed in relation to the criteria set out in below.

#### 4.3 Criteria against which Requests should be considered

- 4.3.1 Care must be taken when considering an application for flexible working. Options should be explored with the employee prior to any decision being made. Consideration should be given, not only to the impact of granting a request, but also to the impact of rejecting a request.
- 4.3.2 Reasons for rejecting an application must be objective and demonstrable, rather than an opinion. Rejecting an application will only be valid under the terms of the legislation if the reason falls under one of the following categories:
- the burden of additional cost to the council;
  - granting the request will have a detrimental effect on the council's ability to meet customer demand.;
  - granting the request will make it impossible to organise work within the existing staff resources;
  - the council is unable to recruit to cover the hours vacated;
  - the flexible working pattern will have a detrimental impact on quality of service;
  - the flexible working pattern will have a detrimental impact on service performance;
  - insufficient work during the periods when the employee proposes to work;
  - it is not possible to accommodate the employee's request due to planned structural changes.

#### 4.4 Agreement to Applications for Flexible Working

- 4.4.1 Where an application is agreed, a standard Change of Circumstances form should be completed and forwarded to Human Resources along with the employees original application form. Following receipt, Human Resources will write to the employee to confirm their new working arrangements.
- 4.4.2 Under the terms of the Flexible Working Regulations, agreed changes to terms and conditions such as a reduction in hours, are deemed to be permanent contractual

changes. The employee does not have the legal right to revert to their previous working pattern, hours or location of work although the council will consider any such requests as they arise.

- 4.4.3 It is recognised that in some circumstances it may be beneficial to both parties to agree a trial period before a final decision is taken in relation to granting or refusing a request for flexible working. Where both parties agree to a trial period the working arrangements should be reviewed at the end of the trial period and the employee should then be given a formal decision on their request.

#### 4.5 Refusal of Application for Flexible Working

Where an application is refused (on the basis of one of the grounds listed in 5.3), the employee must be informed in writing of:

- The grounds on which their request has been refused
- The reasons why the particular ground applies in their circumstances
- Their right of appeal as set out in section 6 below

### **5. Right of Appeal**

- 5.1 Employees may appeal against a decision not to grant their application by writing to the Head of Service within 10 working days of being advised of the outcome of their application.
- 5.2 The Head of Service must arrange an appeal hearing within 10 working days of receipt of the appeal.
- 5.3 The employee will be entitled to be accompanied at the appeal hearing by a Trade Union representative or colleague.
- 5.4 The Head of Service must provide a written decision within 10 working days of the hearing, unless an extension is mutually agreed.
- 5.5 If the appeal is rejected, the Head of Service must provide a written explanation of the grounds for dismissing the appeal. As with the initial application this must be on one of the grounds listed in 5.3 above and the employee must be given an explanation of why the specific ground applies in their particular case.

### **6. Withdrawal of Applications**

- 6.1 In certain circumstances, an employer will be entitled to consider an application for flexible working as having been withdrawn. Specifically where:
- An employee themselves decides to withdraw their application
  - The employee fails to attend two meetings to discuss their application without reasonable cause.
  - The employee unreasonably refuses to provide required information.
- 6.2 In any of the above circumstances the employee should be informed in writing that their application is considered as having been withdrawn.
- 6.3 Where an application is withdrawn the employee concerned will not be able to make a new request under this procedure for a period of 12 months

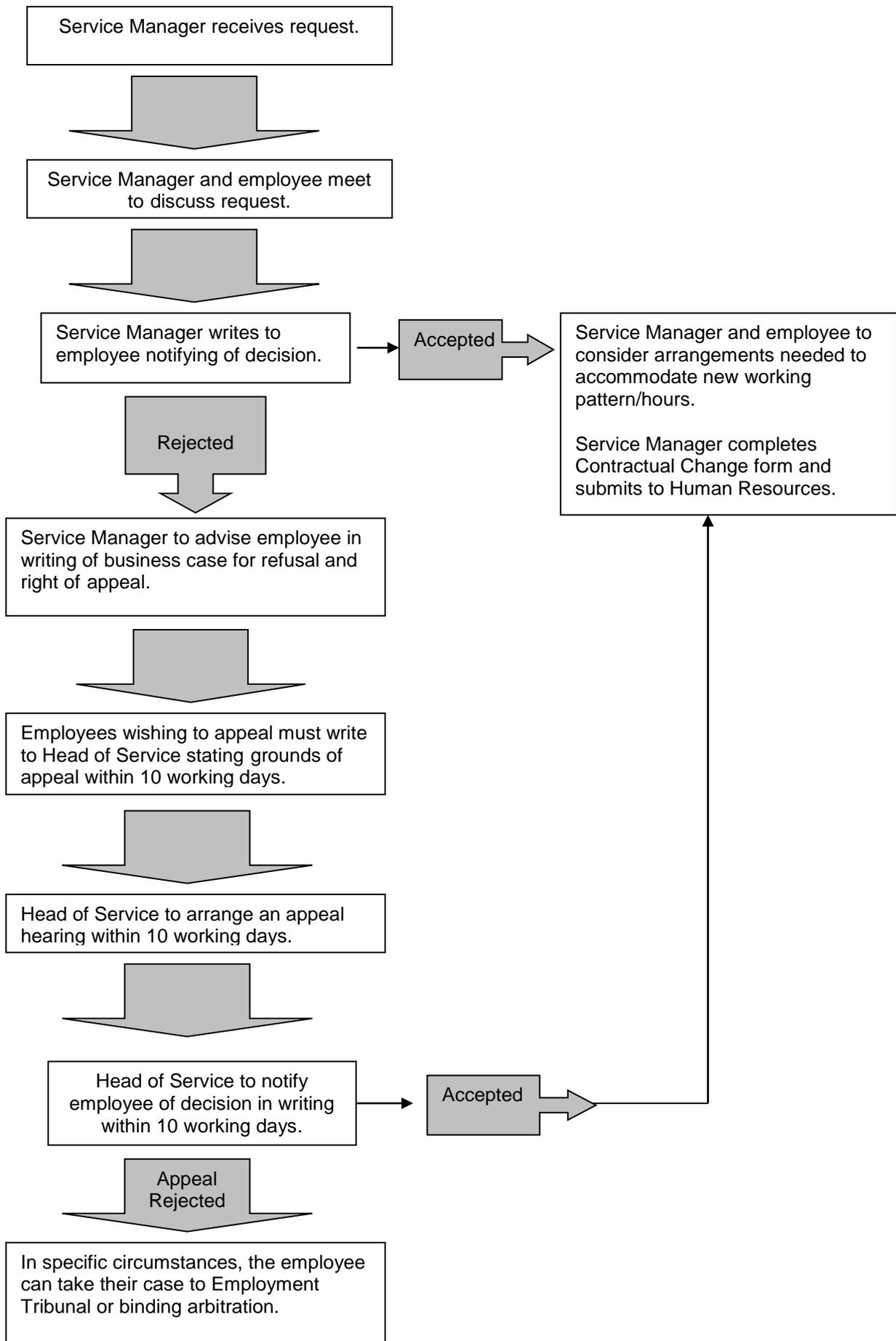
## **7. Timescales**

- 7.1 Where an employee exercises their statutory right to request flexible working, the council is required to consider and decide on the request, including any appeal, within a period of three months from receipt of the request.
- 7.2 It should be noted that the regulations provide for the ability to extend the 3 month timescale where both parties agree.

## **8. Additional Information**

- 8.1 A flow chart illustrating the process for requesting Flexible Working is set out in the attached Appendix.
- 8.2 Further advice regarding applications for flexible working is available from the HR Policy and Advice Team.

**PROCEDURE FOR REQUESTING FLEXIBLE WORKING**



## RIGHT TO REQUEST FLEXIBLE WORKING APPLICATION

### Note to the employee

You can use this form to make an application to work flexibly under the right provided in law.

You should note that under the right it may take up to 3 months to consider a request before it can be implemented and possibly longer where difficulties arise. You should therefore ensure that you submit your application well in advance of the date you wish the request to take effect.

It will help your Service/Group Manager to consider your request if you provide as much information as you can about your desired working pattern. It is important that you complete all the questions, as otherwise your application may not be valid. When completing sections 6 & 7, 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 forward it to your Service/Group Manager (you might want to keep a copy for your own records). Your Service/Group Manager will then arrange a meeting with you to discuss your request. If the request is granted, this will normally be a permanent change to your terms and conditions unless otherwise agreed.

<b>1. Personal Details</b> (please PRINT)												
Name:												
Employee No:												
Manager's Name:												
Service Area:												

I would like to apply to work a flexible working pattern that is different to my current working pattern under my right provided under the Children and Families Act 2014. I confirm I meet the eligibility criteria as follows:

- I have worked continuously as a West Lothian council employee for the last 26 weeks.
- I have not made a request to work flexibly under this right during the past 12 months.

Date of any previous request to work flexible under this right:

**2. Please provide information on your reason for requesting flexible working. You are not obliged to provide this information, but any information you can provide may assist the council in accommodating your request.**


**3. Describe your current working pattern (days/hours/times worked):**


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


**5. I would like this working pattern to commence from date:**

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<b>6. Impact of the new working pattern</b>
I think this change in my working pattern will affect my employer and colleagues as follows:

<b>7. Accommodating the new working pattern</b>
I think the effect on my employer and colleagues can be dealt with as follows:

Name (please PRINT):
Signature: <span style="float: right;">Date:</span>

**NOW PASS THIS APPLICATION TO YOUR SERVICE/GROUP MANAGER**

To be completed by Service/Group manager

Name (please PRINT):	Position
Signature:	Date:
Date Application Received:	
Request Approved: Yes/No	If yes, start date:

<b>If Request cannot be approved please provide reasons below</b>

Completed form and contractual change documentation should be sent to  
[HRChanges@westlothian.gov.uk](mailto:HRChanges@westlothian.gov.uk)