

Information Sheet

Flexible Working

Introduction

Information about the right to request flexible working, options for employees returning to work after maternity and family leave, and other flexible working options.

Maternity Leave – Returning on Different Terms

A mother's right to return from maternity leave is a right to return to her old job on terms and conditions no less favourable than if she had not been absent on maternity leave.

There is no statutory right for the mother to return part-time, but there may be a contractual right for the mother to return on different terms, including on a part-time basis or working different hours. If so, the mother can choose to return part-time (or on different hours) if she wishes.

The mother has the right to request flexible working. This is not an automatic right to part-time work; it is the right to request

to change her terms and conditions of employment. The employer must comply with a minimum procedure and give reasons for any refusal (see "Flexible Working" section).

As well as its duties under the Flexible Working Regulations, employers will be subject to a complaint of indirect sex discrimination if they cannot show an objective justification for a refusal to allow the mother to return on different terms.

In one case, a full-time teacher on maternity leave asked to return to teaching on a part-time basis. She was offered three months' part-time work, after which time she would have to revert to full-time working. She refused to accept that condition and the school withdrew the offer of three months' part-time work. Her discrimination claim was upheld. The school had not investigated the possibility of making part-time working feasible. They could have carried out a trial over a longer period than three months and they failed to establish justification.

Tribunals have upheld a school's refusal of part-time requests where it has been able to demonstrate a justifiable need for the post holder to be full-time.

Other Family Leave

Employees also have the right to return to their old job or request different terms if they take:

- > adoption leave;
- > paternity leave; or
- > parental leave.

Flexible Working

Since 30 June 2014 every employee has had the statutory right to ask to work flexibly after 26 weeks' service. There is an ACAS Code of Practice which gives guidance on the process. Only one statutory request can be made in any 12 month period. The request from an employee must be in writing and include the following:

- > the date of the application, the changes they are seeking and when they would like those changes to take effect;
- > what effect they believe the change will have on the employer and how such effects might be dealt with; and
- > a statement that this is a statutory request and if a previous request has been made and when it was made.

Employers may specify lower levels of information in their own procedures and they will still be compliant with the regulations, but it should be very clear to employees which information is required.

Once a request has been received, the employer should consider the application and arrange a meeting as soon as possible if the request is not going to be approved. **If the request is approved, no meeting is needed.** The meeting should be held in private and seek to provide a better view of the request and its likely impact. The employee has the right to be accompanied by a work colleague at the meeting.

The employer must give the request due consideration. A balance should be sought between the advantages for the individual employee and the impact on the business of the proposed changes.

Under the legislation, refusal of a request must be for one 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;
- > a detrimental impact on ability to meet customer demand;
- > insufficient work for the periods the employee proposes to work; or
- > a planned structural change to the business.

The response to the request should be in writing. It should either state that it is accepted, accepted with modifications or refused. Employees should be given the opportunity to appeal against the decision. This may be done following further talks between the employer and employee which would be seen as an indicator of a reasonable procedure.

Once agreed, changes to working arrangements should be formalised as they represent a permanent change to the contract of work of the employee.

All requests, including appeals, should be considered and decided on within a three month period from first receipt, unless the employee has agreed to an extension. If the employee fails to attend both an arranged meeting and a rearranged meeting without good reason, the employer can consider the request withdrawn.

Job Sharing

Job share is an arrangement for two employees to share a single job.

Mothers may request job share arrangements following their return from maternity leave, or at other times.

As with flexible working, there is no legal right to return to work on a job share basis following maternity leave, but an unreasonable refusal by an employer without objective reasons to permit job sharing in these circumstances could amount to sex discrimination.

Under job share arrangements, two employees share the responsibilities of one full-time position and divide the hours, salary and benefits. If the job share arrangements end, it should be possible for the post to revert to a single, full-time position.

The most common working patterns in a job share are a split week, a split day or alternate weeks. Each partner in a job share has a separate contract of employment. Each job sharer receives the appropriate proportion of full-time salary for the post. They may be on different incremental points depending on qualifications and experience.

Each job sharer has the full range of statutory employment rights, they maintain continuity of employment unless there is a break in service and they qualify for part-time rights in their pension scheme. A job share should not be fixed term unless there is a justifiable reason for permanent work being unavailable.

Employers must treat part-timers at least as well as full-timers unless differential treatment can be justified objectively and, because more women than men work part-time, unfair treatment of part-timers may be indirect sex discrimination.

If a woman job sharer is required by her employer to change to full-time hours when her job share partner resigns because the employer will not recruit another job share partner, there must be business reasons for

no longer allowing her to work part-time. This may be indirect sex discrimination unless there is a very strong reason for refusing to allow her to continue working part-time, because the requirement to work full-time has a worse impact on women than on men.

Dependant's Leave

All employees have a statutory right to **unpaid time off** to care for dependants. An employee can only receive payment for this leave if their contract of employment specifically provides for this. Members should check their employer's leave of absence policies.

Employment legislation sets out the circumstances when an employee may take time off. The entitlement is to take a reasonable amount of time off during working hours in order to take action which is necessary:

- to provide assistance on an occasion when a dependant falls ill, gives birth or is injured or assaulted;
- to make arrangements for the provision of care for a dependant who is ill or injured;
- in consequence of the death of a dependant;
- because of the unexpected disruption or termination of arrangements for the care of a dependant; or
- to deal with an unexpected incident at an educational establishment involving a child of the employee.

A dependant is defined as the employee's spouse or civil partner, child, parent or person who lives in the same household as the employee but who is not his or her employee, tenant, lodger or boarder. This covers non-married partners, including same-sex partners, and step-children who live in the same house. The definition also covers other family members or friends who live together, e.g. an elderly aunt or grandparent.

The definition of dependant also includes any person who reasonably relies on the employee for assistance when they fall ill or are injured or

assaulted, or to make arrangements for their care in the event of illness or injury.

An employee can complain to an employment tribunal that the employer has unreasonably refused to permit him or her to take time off. A complaint must be presented to the tribunal within three months of the date when the alleged refusal occurred.

In a 2003 Employment Appeal Tribunal (EAT) case, the EAT held that when deciding what is a reasonable amount of time off, a tribunal should take into account the individual's circumstances rather than any disruption or inconvenience to the employer.

In the event of a dispute, the tribunal also has to consider whether it was necessary for an employee to take time off in the particular

situation. Factors to be taken into account include the nature of the incident, the relationship between the employee and the dependant and the extent to which anybody else could have provided assistance.

An employee is entitled not to be subjected to any detriment at work by their employer because he or she took or sought to take time off. Detriment includes failure to promote, denial of training or other opportunities, unjustified disciplinary action and reduction in pay.

An employee is automatically unfairly dismissed if the reason, or principal reason, for the dismissal (or selection for redundancy) is connected with the fact that they took or sought to take time off. There is the same protection in respect of the other entitlements in this information sheet.

Further information

Can be found in the Information Sheets:

- > Maternity & Family Rights and Benefits
- > Parents at work

ACAS:

- > [acas.org.uk/index.aspx?articleid=1616](https://www.acas.org.uk/index.aspx?articleid=1616)
"The right to request flexible working"