

The Right To Request Flexible Working



Many Usdaw members would like more of a say in when they work. At times, it can seem like flexibility is all about what the employer wants, not what works for our members.

But an important right called the Right to Request Flexible Working means all members can ask their employer for a change in their working hours, and their employer must carefully consider the members request.

Before April 2024, only employees with 26 weeks of service or more could use the right.

Ushaw members who are parents or carers may find this right particularly helpful as it can be difficult to secure hours of work that fit in with looking after family members.

The Right to Request Flexible Working can help because members are more likely to get their request properly considered and agreed than if they rely on an informal chat with the manager. Using the Right to Request Flexible Working means everyone involved has the chance to discuss the member's request, and explore what changes the member is seeking and how these might be made to work.

How Do Members Apply?

Step One – Making a Request

Members must make a request in writing to their employer to work flexibly. The request has to include several pieces of information in order to be valid. There is a standard form enclosed with this briefing which we recommend members use.

If a member does not wish to use the standard form, their application must contain the following information in order to be valid:

- It must say that this is a formal application made under the legal right to apply for flexible working.
- It has to be dated, explain the changes the member wants and the date they would like them to start.
- The member needs to sell their case to the employer – tell the employer why they should agree to the change and what's in it for them.
- It must also say whether or not the member has made a previous request under this procedure, and if so, when.
- Finally, the member must sign and date their letter.

Important

Members need to be aware that any request made under the new procedure will represent a permanent change to their contract, unless the employer and employee agree otherwise. Therefore, if a member only wants the change to last for a limited amount of time, they must make this very clear in their application.

Members also need to be aware that they can only use this procedure twice every 12 months. Members won't want to be stuck with a working arrangement which, several months down the line, no longer suits them. There is, therefore, space provided on the enclosed application form for members to ask for a review of their new working pattern before the end of this 12-month period.

In any event, members should be encouraged to think ahead to the next year and beyond. If a change is only requested for a limited amount of time, or if a further change is anticipated in the year ahead, then it is better to try and agree a package of variations at the outset.

Step Two - Timescales

Once the application has been received, the employer should arrange to discuss it with the member as soon as possible. The law says that employers have two months in which to consider the request, discuss it with the employee making the request and issue a decision. This means any meetings or appeals that take place must be completed before the end of two months (the clock starts ticking from the date the application is received). The process can only be extended beyond two months with the member's agreement.

Step Three - Meeting with the Member

ACAS guidance for employers says they should discuss the member's request as soon as possible.

ACAS also says it is good practice for the employer to allow employees to have their Union rep with them at meetings to discuss their request (in most Usdaw workplaces this will happen anyway as managers understand the helpful role reps play in workplace discussions).

The Union's advice to members is to take their Usdaw rep to any and all meetings held under this procedure. Reps should treat these meetings as you would any other discussion with a member and local management about working hours.

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The member should be given the chance to fully explain their case. The aim of the discussion is to give both parties the chance to explore the desired work pattern and to discuss how it might be best accommodated.

Important

If a member misses a meeting called under this procedure, their application could be deemed to have been withdrawn. It is important, therefore, that members make every effort to attend meetings and let their employer know if they cannot.

Step Four – The Outcome

ACAS guidance says “the employer should consider the request carefully looking at the benefits of the requested change in working conditions for the employee and the business”.

If the employer refuses a request, they must give a clear business reason why it can't be agreed. It is not enough for the employer simply to say no or to say 'it's the needs of the business'.

ACAS guidance encourages employers to agree to a trial period rather than rejecting the request out of hand.

ACAS has produced a guide for employers on how to handle requests, which says:

“Requests to work flexibly must be considered objectively and an employer can only refuse them if there are business reasons for doing so.”

The business reasons an employer can use to refuse a request are set out in law and are as follows:

- The burden of additional costs.
- Detrimental effect on ability to meet customer demand.
- Inability to re-organise work amongst existing staff.
- Inability to recruit additional staff.
- Detrimental impact on performance.
- Insufficiency of work during the periods the employee proposes to work.
- Planned structural changes.
- Detrimental impact on quality.

If the Employer Says No

If a request is turned down, it is important to check that the employer has given a clear explanation and a genuine reason, based on one of the above grounds, as to why.

The ACAS guidance for employers says they should allow employees to discuss a refusal, and to be accompanied at this discussion.

Where a member's request to work different hours is refused, they may hold other, stronger legal rights to get the hours they need – depending on their circumstances.

If the member is a woman and/or a disabled worker, they may have additional rights under the Equality Act (in England, Scotland and Wales) or the Sex Discrimination (NI) Order 1976 and the Disability Discrimination Act 1995 in Northern Ireland which could be of further help to them. In this situation, reps should seek advice from their Area Organiser.