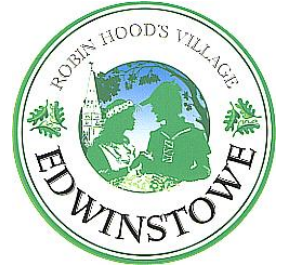


# Edwinstowe Parish Council

*Working to make a difference*



**Clerk – Alice Dunn**

## **Flexible Working**

### **Legislation**

The Employment Rights Act 1996 sets out the parameters of the right to request flexible working.

### **Right to Request**

Eligible employees can make one request every 12 months to vary their terms and conditions in the following ways:

- Vary the hours the employee is required to work.
- Vary the times the employee is required to work.
- Vary the place the employee is required to work e.g. make a request to work at home.

ACAS guidance has suggested that these options could, amongst others, include the following range of work patterns:

- Part-time working
- Flexitime
- Staggered hours
- Compressed working hours
- Job sharing
- Shift swapping.
- Self-rostering
- Time off in lieu or banked hours
- Term-time working
- Annual hours

### **Entitlement**

In order to be entitled to be able to make a flexible working request to care for a child, an employee must meet a number of criteria:

- The employee must have been continuously employed for a period of no less than 26 weeks.

- The employee must be the mother, father, adopter, guardian, or foster parent of the child, or be married to or the partner of, a relative of, or live at the same address as the adult.
- The employee expects to have responsibility for the upbringing of the child (under the age of 17 or 18 in the case of a disabled child) or the care of the adult. As an example, an employee may need to assist an elderly relative to attend GP appointments on a weekly basis or help an elderly relative

### **Application**

Any application for a flexible working request must detail the following points:

- State that the application is one for flexible working.
- Outline the change which is being applied for and the date on which it is proposed the change should become effective.
- Explain what effect the employee thinks the change applied for would have on the employer and how this may be dealt with
- Explain how the employee meets the above requirements to make a flexible working request.

In respect of childcare, any request must be made before the day on which the child concerned reaches the relevant age limit i.e. 17 or 18 in the case of a disabled child.

An employee can use Flexible Working Request Form which can be found at [www.gov.uk/flexible-working/making-a-statutory-application](http://www.gov.uk/flexible-working/making-a-statutory-application)

Any change to an employee's terms and conditions will be permanent unless the employer and employee agree otherwise. If an employee makes an application for flexible working and the council discovers that the employee has lied and never intended to use the flexible working pattern for the purpose of caring for a child (or adult), the council may take disciplinary action following the council disciplinary procedure. However, this may be difficult to prove.

### **Procedure employer must follow.**

1. Once an employee has made an application, the employer must hold a meeting with the employee to discuss the application within 28 days of the application being made.
2. Where a meeting has been held, the employer must give the employee notice of their decision on the application within 14 days of the date of the meeting.
3. If the application is refused, the notice must set out the grounds for refusing the request and give an explanation as to why the ground applies. The employee must also be given the right of appeal.
4. If an employee chooses to appeal against a refusal to grant a flexible working request, they must do so within 14 days of the date of the original decision. An employee can use the Flexible Working Appeal Form which can be found at [www.gov.uk](http://www.gov.uk) This appeal hearing must be held within 14 days of the appeal from the employee.

5. Following any appeal hearing, the employer must give notice of their decision on the appeal within 14 days of the appeal hearing.

### **Refusing a flexible working request**

There are limited grounds under which an employer may be able to refuse a flexible working request and one or more of the following grounds must apply:

- Burden of additional costs
- Detrimental effect on ability to meet customer demand.
- Inability to reorganise work among existing staff.
- Inability to recruit additional staff.
- Detrimental impact on quality
- Detrimental impact on performance
- Insufficiency of work during the periods the employee proposes to work.
- Planned structural changes.

For example, a council that receives a flexible working request from a full-time groundsman to vary his contractual hours to part-time so they can share responsibility for caring for their son following a divorce from their spouse, would need to establish why they would not be able to meet the request. This perhaps could be due to the fact that the tasks could not be arranged in such a way as to enable job-share with another part-time groundsman or, perhaps, the unavailability of those with the requisite qualifications to undertake the tasks within the available hours. However, the council would need to be able to establish that these reasons were factually correct i.e. that the tasks could not be divided between two part-time employees or that they had advertised for a part-time groundsman without success. Any reasoning should be detailed within a rejection letter. It is not simply a tick box exercise.

Councils should also be aware that refusing a flexible working application from a female employee may give rise to a claim of indirect sex discrimination, which would require the council to justify its refusal as being a proportionate means of achieving a legitimate aim. It should also be noted that granting flexible working requests to female employees while turning down applications from male employees would also be sex discrimination.

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