

The Flexible Working Regulations (FWR) 2002/Amendment Regulations 2006

- [Summary](#)
- [Eligibility Criteria](#)
- [Employee Entitlements](#)
 - [Right to Request Flexible Working](#)
 - [Right to be Accompanied](#)
 - [Complaint to an Employment Tribunal](#)
 - [Detriment](#)
 - [Unfair Dismissal](#)
- [Employers' Duties](#)
 - [Application Procedures](#)
 - [Grounds for Refusal](#)
- [Application Procedures](#)
 - [Written Application](#)
 - [Meeting to discuss Application](#)
 - [Appeal Procedure](#)
 - [Withdrawal of Application](#)
- [Remedies](#)
- [Further Advice](#)

Summary

Implemented from 6 April 2003 as part of amendments to the Employment Rights Act 2002, the main purpose of the Flexible Working Regulations (FWR) is to meet parents' desires for more flexible work patterns in a manner compatible with business efficiency.

The Flexible Working (Eligibility, Complaints and Remedies) Regulations 2002 ('Eligibility' Regulations), and subsequent amendments, provide parents with the statutory right to apply for flexible working.

The Flexible Working (Procedural Requirements Regulations) 2002 ('Procedural' Regulations) prescribe the manner in which employers are required to consider such requests.

From 6 April 2007, the Flexible Working (Eligibility, Complaints and Remedies) (Amendment) Regulations 2006 (SI 2006/3314) became law. These changes extended the right to request flexible working to certain carers of adults over 18.

Together these Regulations provide details of:

- the [eligibility criteria](#) that must be met in order for an employee to apply for a flexible working pattern;
- an employee's [entitlement](#) to apply for a flexible working pattern;
- a [procedural framework](#) for employees and employers to follow in considering requests for flexible working;
- the [employer's duties](#) in relation to an application under the Regulations;
- an [employee's entitlement](#) to complain to an employment tribunal; and
- the [remedies](#) that an employment tribunal can enforce.

[Back to top](#)

Eligibility Criteria

Cambridgeshire County Council

To exercise this statutory right an employee, on the date that he/she applies for flexible working, must:

- a) have been employed continuously, by the employer, for at least 26 weeks;
AND EITHER
- b) be the mother/father/adopter/guardian/foster parent of an eligible child¹ or be married to/the partner of such a person; AND have/expect to have responsibility for the upbringing of the eligible child;
OR
- c) care/expect to care for person who is aged 18 or over who is:
 - married to, partner or civil partner of the employee (i.e. immediate relative); or
 - a near relative of the employee; or
 - is neither of the above but lives at the same address as the employee.

[Back to top](#)

Employee Entitlements

Request for Flexible Working

An employee, who meets the [eligibility criteria](#), can apply to his/her employer for a permanent/temporary variation to his/her contract of employment, where the purpose of the change is to enable the employee to fulfil his/her parental or caring responsibilities.

Therefore, an employee may request a change to the:

- number of hours worked;
- times worked; and/or
- contracted work location.

This means that employees can ask to:

- reduce working hours, e.g. to work part time or job share;
- change working times, e.g. to work term time only, operate flexitime, stagger working hours, work compressed hours (e.g. 9-day fortnight) or work annualised hours; and/or
- change work location, e.g. occasional/permanent homeworking, teleworking or hot-desking.

Right to be Accompanied

Employees have the right to be accompanied at meetings by a trade union representative or another work colleague of their choosing, for who paid time off must be granted by the employer to attend.

Complaint to an Employment Tribunal

Where a case cannot be resolved in the workplace or through other alternative dispute resolution mechanisms, e.g. ACAS, an employee has the right to make a claim in an employment tribunal (within three months of the event) on the grounds that:

- the employer failed to comply with the Regulations; or
- the employer has based a decision to reject the application on incorrect facts.

Detriment

An employee has the right not to be subjected to any detriment by his/her employer on the ground that the employee has exercised his/her right to request flexible working or has made a complaint to an Employment Tribunal in respect of such a request.

Unfair Dismissal

¹ An eligible child is one who is under 16 years of age (or under 18 years of age for a disabled child) AND the application is made at least 14 days before the child reaches the relevant age limit, (i.e. 16th or 18th birthday).

Cambridgeshire County Council

The dismissal of an employee for a reason directly/indirectly related his/her application for flexible working will be considered 'automatically unfair' and the question of reasonableness will not arise.

[Back to top](#)

Employers' Duties

Application Procedures

An employer must establish and follow a procedure to deal with flexible working requests that meets the [application procedures](#) outlined in the Regulations.

Grounds for Refusal

An employer may refuse a request for flexible working only where one or more of the following grounds apply AND sufficient explanation can be provided of why the particular ground(s) 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; and/or
- planned structural changes.

[Back to top](#)

Application Procedures

Written Application

To exercise the statutory right an employee **must** provide a written application stating:

- the wish to exercise the right;
- that he/she meets the qualifying conditions;
- the specific contract variation desired and from what date;
- the potential effects on the employer and how these might be dealt with; and
- the date of any previous application.

Meeting to discuss Application

The employers must meet with the employee within **28 days** of receipt of the application unless:

- an extension to this time limit is mutually agreed; or
- the proposed contract variation is agreed and notified to the employee with the 28-day period.

The purpose of the meeting is to discuss the desired work pattern in depth and how it might be accommodated. Alternative suitable working arrangements must be considered where there are difficulties accommodating the employee's desired pattern as outlined in his/her application.

The employer must provide the employee with a written decision on the application within **14 days** of the meeting.

Where the decision is to agree the employee's proposals, confirmation of the changes and their effective date must be given.

Where the decision is to refuse the employee's proposals, the employer must provide:

- details of the [grounds for refusal](#);
- sufficient explanation as to why those grounds apply; and

Cambridgeshire County Council

- details of the appeal procedure.

Appeal Procedure

The employee must be given the right to appeal, against a decision to refuse a request for flexible working by writing to the employer **within 14 days** of the appeal decision being received, stating the grounds for the appeal.

The employer must hold an appeal hearing, **within 14 days** of the receipt of the appeal notification, at a time and place that is convenient to both parties.

An appeal hearing need not be held where the employer, within the 14-day period, upholds the appeal and confirms this decision in writing, confirming agreement to the variation of contract and an effective start date.

The employer must confirm the decision of the appeal hearing, in writing, within **14 days** of the hearing.

Where the decision is to uphold the appeal and to agree the employee's proposals, confirmation of the changes and their effective date must be given.

Where the decision is to dismiss the appeal and to refuse the employee's proposals, the employer must set out the grounds on which the dismissal is based.

Withdrawal of Application

An employer may treat an application as withdrawn (and confirm this position in writing) where the employee has:

- indicated (orally or in writing) that he/she is withdrawing the application;
- failed to attend a meeting (discussion or appeal) more than one; or
- unreasonably refuses to provide the employer with information required to assess the application.

[Back to top](#)

Remedies

Where an Employment Tribunal finds that a complaint is founded it may:

- make an order requiring the employer to reconsider the employee's application for flexible working; and/or
- make an award of compensation to be paid by the employer to the employee (up to a maximum of 8 weeks' pay).

[Back to top](#)

Further Advice

Full details of the FWR legislation are available on the Internet at:

www.legislation.hmso.gov.uk.

Guidance for [managers](#) and [employees](#) on the application of the FWR within the Council can be obtained from HR Teams or by clicking on the appropriate link.

[Back to top](#)