

Andover Town Council



# ANDOVER TOWN COUNCIL

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## **FLEXIBLE WORKING PROCEDURE: The right to request and the duty to consider**

Information Source: South East Employers, ACAS

### 1. Purpose and Scope

There are many types of flexible working. It can describe a place of work, for example, home-working, or a type of contract, such as a temporary contract. Other common variations include: part-time working, flexitime, job sharing and shift working.

Parents of Children ages 16 or under, or disabled children under the age of eighteen (Working Parents), have the right to apply to their employer to work more flexibly.

As an employer Andover Town Council has a statutory duty to consider any applications seriously.

The right enables mothers and fathers to request to work flexibly. The application can cover

- A change to the hours of work
- A change to the times required to work
- Working from home

It does not provide an automatic right to work flexibly as there may be circumstances when Andover Town Council will be unable to accommodate your desired work pattern.

The right is designed to meet the needs of both parents and employers and aims to facilitate discussion and encourage both the employee and the employer to consider flexible working patterns and to find a solution that suits them both. Employees have a responsibility to think carefully about their desired working pattern when making an application, and as the employer we are required to follow a specific procedure to ensure requests are considered seriously.

The 2007 Work and Families Act also introduced a new right for carers of adults to request to work flexibly. A 'carer' is identified as an employee who is or expects to be caring for an adult who:

- Is married to, or the partner or civil partner of the employee; or
- Is a near relative of the employee; or
- Falls into neither category but lives at the same address as the employee

The near relative definition includes parents, parent-in-law, adult child, adopted adult child, siblings (including those who are in-laws), uncles, aunts or grandparents and step-relatives.

## 2. Principles

2.1 Employees have the right to be accompanied by a work colleague or trade union representative at formal meetings held in accordance with this procedure.

2.2 If the employee or accompanying person cannot attend a meeting, another meeting will be arranged, to take place within five working days of the original date. This timescale can be extended with mutual agreement.

2.3 Should the employee require assistance (for example because of a disability) in setting out his or her request in writing, or other written communication, at any stage of the procedure, they will be encouraged to seek assistance from their line manager, a work colleague or trade union representative.

2.4 The person hearing the request for flexible working will give the matter careful consideration before making a response.

2.5 Written records will be made at all stages of the procedure, giving details of action taken and the reasons for this. These records will be treated as strictly confidential.

2.6 The employee should be given copies of records of meetings held with them in relation to their request for flexible working.

## 3. Who can apply?

3.1 The following conditions must be satisfied in order for an application for flexible working to be made under the new right. You must:

- Be someone who is an employee (i.e. someone who works under a contract of employment, not an agency worker)
- Have a child aged 16 or under or a child with a disability under the age of 18
- Have parental responsibility for the child (this includes biological parents, legal guardians, adoptive and foster parents and spouses of these, including same sex partners as long as they have parental responsibility for the child)

- Be making an application in order to care for the child e.g. starting half an hour later than usual to take the child to school or may be a bigger change to your working hours in order to better fit their work with their childcare requirements.
- Have worked for the Council for 26 weeks continuously at the date that the application is made
- Not have made another application to work flexibly under the right during the past 12 months
- Be a carer for an elderly relative

## 4. Procedure

4.1 Employees must make an application in writing, stating that it is being made under the statutory right to apply for flexible working and include the following information:

- Confirm your relationship to the child or person you are caring for
- Set out your proposal and explain what effect you think this will have on your section/workload and how this may be dealt with.
- Specify a start date for the proposed change giving your line manager reasonable time to consider the proposal and implement it. This may take 14 weeks.
- State whether a previous application has been made and if so the date on which it was made
- The letter must be dated

4.2 Employees should be aware that if the Town Clerk or Chairman of the Staffing Committee approves the application, the variation in contractual terms is a permanent one and the employee has no automatic right to change back to their previous pattern of work, unless the application seeks the variation for a specified time period only. A trial period may be agreed. Any reduction in working hours will, of course, result in a proportionate reduction in pay and annual leave entitlement.

4.3 The Town Clerk or Chairman of the Staffing Committee when considering the application will arrange a meeting with the employee within 28 days of receiving the application to discuss the request. (This meeting is not required if the Town Clerk or Chairman of the Staffing Committee agrees to the terms of the application and notifies the employee accordingly within 28 days of receiving the application.)

4.4 Employees have the right to be accompanied by a work colleague or trade union representative at formal meetings held in accordance with this procedure.

4.5 Employees have the right to be notified of the employer's decision within 14 days of the date of the meeting.

This notification will either:

- accept the request establish a start date and any other action or and
- confirm a compromise agreed at the meeting or
- reject the request and set out clear business reasons for the rejection together with notification of the appeals process.

## 5 Appeals

5.1 If the employee is unhappy with the decision they should write to the manager who considered the original application within five working days of receiving the written response, stating the grounds for their appeal.

5.2 In most cases, the appeal will be heard by the Town Clerk, unless he or she heard the original application or the Staffing Sub-Committee. In every case the appeal will be heard by a more senior manager or members other than the one who dealt with the original application.

5.3 The employee will be invited to an appeal meeting, which will be arranged as soon as is reasonably practical. They will be informed of their right to be accompanied by a work colleague or trade union representative at the appeal meeting.

5.4 At the appeal meeting, the employee will have the opportunity to present oral and/or written submissions. The manager / members hearing the appeal will carefully consider the matter and will make a written response within five working days. If it is not possible to respond within five working days, the employee should be given an explanation for the delay and told when a response can be expected. The employee will be informed that this is the final stage of the procedure.

The notification will either:

- uphold the appeal, specify the agreed variation and start date or
- dismiss the appeal, state the grounds for the decision and contain a sufficient explanation of the refusal.
- the Town Clerk/Chairman of the Staffing Committee and the employee can agree to extend any of these time limits.
- the Town Clerk/Chairman of the Staffing Committee will record this agreement in writing, specifying the period to which the extension relates and the date on which the extension is to end.
- A copy of this record will be sent to the employee.

## 6. Grounds for refusal

6.1 Applications for flexible working arrangements can be refused only for the following reasons:

- the burden of additional costs
- detrimental effect on ability to meet customer demand
- inability to re-organise work among existing employees
- inability to recruit additional employees
- detrimental to impact on quality
- detrimental impact on performance
- insufficiency of work during the periods the employee proposes to work
- planned structural changes

## 7. What can I do if my application for flexible working is refused?

7.1 There are a number of options open if an application is refused at the appeal stage including:

- informal discussions – there may be some simple misunderstanding of the procedure or facts which can be resolved by an informal route
- use of the grievance procedure

## 8. Where agreement cannot be reached other options are:

- referral to the ACAS Arbitration Scheme if both parties agree the ACAS Arbitration scheme can be used to resolve the dispute.
- complaint to an Employment Tribunal, you must present your complaint to the Tribunal within three months of the date that the decision is notified on appeal or, in complaints relating to procedural breaches (e.g. applications not progressed in accordance with the timetable), three months from the date of the alleged breach.

## 9. Complaints can be made on the following grounds:

- the employer's failure to comply with the statutory procedure
- the employer's use of an incorrect fact to explain why the application has been refused and which the employer failed to address at the appeal
- the employer's refusal to allow the employee to be accompanied

## 10. Dismissal & detriment

Employees are protected from suffering dismissal or detriment in the exercise of their right to apply to work flexibly.